

**United States' Compliance with the Convention
against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment**

**Written Statement on the Death of
Israel "Reefa" Hernandez Llach
due to Miami Beach Law Enforcement's
Use of an Electroshock Weapon
and Lack of Accountability**

**53rd Session of the United Nations Committee Against Torture
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**Submitted by the Family of Israel "Reefa" Hernandez Llach,
Dream Defenders, and Community Justice Project of Florida Legal Services**



FLORIDA LEGAL SERVICES, INC.

I. Reporting Organization(s)¹

This report is submitted by the Family of Israel “Reefa” Hernandez Llach, Dream Defenders, Community Justice Project of Florida Legal Services, and endorsed by the Americas Community Center and Justice for Reefa, an informal group of activists that formed in the wake of Israel Hernandez Llach’s murder by Miami Beach Police.

II. Issue Summary

This report addresses the killing of Israel “Reefa” Hernandez Llach, an 18 year-old artist and asylee, at the hands of the Miami Beach Police Department. It details the litany of indignities suffered by his family, friends and witnesses following his killing, and the lack of accountability provided by local, state and federal government agencies for this and numerous analogous incidents. Hernandez’s intentional killing by Miami Beach Police Officer Jorge Mercado’s unwarranted use of an electroshock device (“Taser”), amounts to torture under Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”).

a. Background

Israel came to the United States from his native Colombia at the age of thirteen, along with his parents and older sister. The family was forced to flee their home after threats by guerilla forces and state-sanctioned violence left them no other choice. After being granted asylum, they believed they had found refuge from violence in the United States.

Israel was a talented artist and excelled at his coursework in this area, garnering several awards for his work and participating in numerous exhibits, including in the prestigious Art Basel. He was active in the graffiti art scene, a medium that had received increasing attention and acceptance as Miami has encouraged the placement of public murals and graffiti to draw business and tourist dollars to convert the once-depressed Wynwood neighborhood into the Wynwood Arts District.²

The offense for which Israel was targeted was minor under Florida law. Florida Statutes cover graffiti under its criminal mischief section punishable as a misdemeanor unless the property damage exceeds \$1,000.³ A related local ordinance instructs officers to “issue a notice of violation” when confronted with graffiti violations.⁴

b. The Murder of Israel “Reefa” Hernandez Llach

In the early morning hours of August 6, 2013, Israel and two young friends, both Latino immigrants, set out to “tag” a shuttered McDonald’s restaurant on Miami Beach. Shortly thereafter, they were spotted by Miami Beach police officers. The young men each ran off in different directions, and the police officers called for backup and gave chase. On official audio recordings made during the pursuit, the officers can be heard saying, “This is a misdemeanor. We are not going to be bringing out dogs for this.”⁵

Despite the relative insignificance of Israel’s acts, backup officers continued their pursuit for seven minutes and eventually found Israel. At this point, his two friends had found their way back to him and witnessed the next few tragic moments. Witness statements reported by *Fusion* describe the officers grabbing him from behind and pushing Israel forcefully into a wall as soon as they caught up to him.⁶ He sank to the ground, motionless and without making a sound. As he lay there, Officer Jorge Mercado removed his electroshock device, pointed it at Israel’s chest and released a powerful volt of energy onto his helpless body. According to witnesses interviewed for

the report, the officers proceeded to laugh, make jokes about Israel and give each other jovial high-fives over his seemingly unconscious body as the electricity coursed through him.⁷

Just thirty seconds after the officers reported to dispatch that he was in custody, the officers then called for medical assistance for what they believed was a possible seizure. Israel was taken to a nearby hospital and declared dead at 6:18 A.M., less than an hour since their chase began.

Israel was unarmed, and an autopsy released seven months after his death confirmed that his death was a result of “sudden cardiac death” from a “conducted energy device discharge.”⁸ This was the first time in Florida that a death has been officially attributed to an electroshock device.⁹ A subsequently released toxicology report showed only trace amounts of marijuana were found in Israel’s blood stream--no amphetamines or other substances that could have, in combination with the electroshock device’s charge, led to death.

c. Mistreatment of Family and Witnesses by Law Enforcement

Despite the fact that the site of Israel’s death was only a short walk from his parents’ home and the hospital only blocks away, officials inexplicably waited almost twelve hours after the death to notify the parents, depriving them of the opportunity to say goodbye to their son.¹⁰

Immediately following the incident, Israel’s two friends on the scene were placed under arrest. They were taken to the precinct and questioned for over ten hours under harsh and threatening conditions, made to remove their shirts and shiver in a cold room during the interrogations. After the killing, the witnesses were systematically intimidated by the police, who placed police cars around their homes at all hours of the day and night.

d. Public Pressure to Respond to Case by Civil Society

The family has engaged in tireless efforts to attain justice for their son, organizing numerous public rallies and protests, and utilizing the limited avenues available through the civil court system. In addition, the family and their supporters have requested assistance from a number of local, state, federal and even international bodies. These include:

- August 2013 – A letter from the parents of Israel Hernandez to the City Commission of Miami Beach through the Americas Community Center Inc.
- Sept. 7, 2013 – A letter from the parents of Israel Hernandez to U.S. President Barack Obama.
- Sept. 23, 2013 – A letter from the parents of Israel Hernandez to U.S. Department of Justice, Civil Rights Division, urging a federal investigation. They received a form letter response on November 13, 2013 signed by a paralegal specialist, saying that they would need to wait for the local investigation to be completed to take any action.
- Dec. 19, 2013 – Letters from U.S. Representative Debbie Wasserman Schultz to the Miami-Dade Chief Medical Examiner, Florida Department of Law Enforcement, Miami Beach Police Department, Miami-Dade State Attorney, and the U.S. Department of Justice.
- April 28, 2014 – A second letter from the father of Israel Hernandez to U.S. President Barack Obama.
- May 6, 2014 – A letter from the father of Israel Hernandez to the U.S. Attorney General.

- July 10, 2014 - A letter from the Ambassador Luis Carlos Villegas to a U.S. Deputy Assistant Attorney General urging a prompt investigation.

In addition, the family appealed to the Colombian Consulate in Miami for their support. Various officers from the Consulate communicated to the Attorney General and other officials on the family's behalf to request an investigation.

Several advocacy and grassroots groups are also supporting this cause. The American Civil Liberties Union of Florida released an official statement about the case and the use of electroshock devices.¹¹ Justice for Reefa continues to organize and keep Israel's memory alive. In August 2014, seven young members of the Dream Defenders and one mother of the Miami Workers Center were arrested after engaging in civil disobedience calling for justice and accountability for Israel's death.¹² The protestors had requested a meeting with the U.S. Attorney for the Southern District of Florida of the U.S. Department of Justice to demand a federal investigation into Israel's murder.

Media coverage of Israel's death has been comprehensive, sustained and far-reaching – with local outlets, nationally renowned periodicals and international media staying on top of the story to the present day.

e. Persistent Lack of Accountability

To this day, none of these efforts have yielded action by the Miami Beach Police Department, State Attorney's Office, or U.S. Federal Government. Instead, public officials have shown a clear reluctance to pursue justice for Israel and his family, and a complete lack of action in the prosecution of his killer. Not only has Officer Jorge Mercado avoided arrest and prosecution, but over a year later he is still on the job with full benefits and pay. He remains a continued threat to residents and an affront to the family and friends of Israel who still live in Miami Beach. The Police Department has yet to release a photo of Mercado to the public. In one instance, the Miami-Dade State's Attorney's Office informed activists inquiring about the investigation into Israel's death that "not all tragic deaths will be dealt with by the criminal justice system."¹³

At the higher levels, both the state and federal governments have a long history of sanctioning state violence in Florida. According to records released by the Miami-Dade State's Attorney's Office "neither the state nor the federal government has prosecuted a police officer in Florida for the use of deadly force in 25 years."¹⁴ At the same time, an investigative report by the local NBC affiliate found that "since 1999, Florida police shot 574 people."¹⁵ In every instance, the police officer's actions were deemed justified and the State Attorney's office pursued no prosecution of the officers.

The disproportionate impact of excessive force and police brutality on communities of color and immigrant communities in the United States is particularly troubling. Members of these marginalized groups also face additional obstacles when seeking redress through the U.S. court system. The inability for the family to obtain justice or redress in Israel's case is yet another demonstration of the pervasiveness of these structural and institutional problems.

e. Use of Electroshock Devices in Florida

While the United States maintains that electroshock devices are "non-lethal" weapons, medical researchers have described the risk of sudden cardiac arrest as a "scientific fact"¹⁶ and found significant bias in previous research studies to the contrary.¹⁷ The problem became so acute

in South Florida, in particular, that medical professionals provided guidelines on managing injuries resulting from the devices.¹⁸

In its most recent study of deaths from electroshock devices, Amnesty International found that Florida had the second highest number in the United States with 65 deaths between 2001-2012.¹⁹ Nearby Orange County, was an early adopter of the technology and has equipped every frontline officer with a device.²⁰ Just over a year after their release, they had already become the most used method of force by officers. During that same period, the overall use of force increased by 37%.²¹ Their report noted numerous incidents of excessive use of these devices across the state, including two incidents where students were subjected to these devices on school grounds or school buses.

Since 2012, at least eleven additional victims have lost their lives as a result of police electroshock devices in Florida:

- Mar. 2012: Nehemiah Dillard dies after Alachua County Sherriff used an electroshock device to subdue him while under the care of a mental health facility.²²
- Mar. 2012: James Barnes dies after being shocked three times by Pinellas County Police as family looks on, begging them to stop.²³
- April 2012: 21-year old George Salgado dies after West Miami Police Department uses an electroshock device on him multiple times.²⁴
- July 2012: 21-year old Joshua Savanto is killed by Marion County Sherriff's officers as he retreated from officers.²⁵
- Sept. 2013: 20-year old Danielle Maudsley dies after living in an extended vegetative state. Two years earlier, a Florida Highway Patrol trooper had used an electroshock device while Danielle was handcuffed and running away from the trooper, she fell and suffered severe brain damage.²⁶
- Sept. 2013: Nelson Mandela's former bodyguard, Norman Oosterbroek, is killed by Miami-Dade Police.²⁷
- July 2013: Gerald Altamore is killed by St. Cloud Police after a car accident.²⁸
- Feb. 2014: Just six months after Israel's death, 21-year old Willie Sams is killed by Pinecrest Police.²⁹
- Feb. 2014: Maykel Antonio Barrera is killed by Miami-Dade Police.³⁰
- Feb. 2014: Treon Johnson is killed by Hialeah Police after fighting off a neighbor's dog that had bitten him.³¹
- Aug. 24, 2014: Timothy Griffis is killed by police in Lake City.³²

None of these cases have led to a criminal prosecution or a federal investigation into the officers or departments involved.

III. Concluding Observations and U.S. 2006 Response

The CAT Committee's 2006 Concluding Observations included several recommendations relevant to Hernandez's killing by Miami Beach Police Officer Jorge Mercado's use of an electroshock device ("Taser").

In paragraph 25, in response to allegation of impunity for acts torture or cruel, inhuman or degrading treatment or punishment by officers from the Chicago Police Department, the Committee recommended that the U.S. “promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law-enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12 of the Convention.”³³ The U.S. did not respond to this particular recommendation in its 2006 response.³⁴

In paragraph 35, the Committee expressed its ongoing concern about the extensive use of electroshock devices by law enforcement, particularly because of the issues it raises as to compatibility with article 16 of the Convention.³⁵ It called upon the U.S. to review the use of these devices and regulate their use, restricting their use to substitutes for lethal weapons. The U.S. did not respond to this particular recommendation in its 2006 response and more than eight years later they have yet to enact regulations on the use of electroshock devices.³⁶

IV. Legal Framework

The applicable provisions of the CAT to the killing of Israel Hernandez are Articles 1, 12 and 16. Article 1 of the Convention defines torture as “[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, *or for any reason based on discrimination of any kind*, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” (emphasis added) The Committee has emphasized that “the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.”³⁷ Many community groups across the U.S. have noted a pattern of law enforcement killing of unarmed migrants and black persons. By witness accounts Israel was already incapacitated by the time that Officer Mercado used an electroshock device on him. Discharging a Taser unnecessarily into Israel’s chest was gratuitous violence, torture and illustrative of the broad impunity officers enjoy in Florida.

Article 12 states that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” The Committee has specifically instructed all state parties to “ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection...”³⁸ State party obligations under the Convention reach actions committed at the lower levels of government; the U.S. may not abdicate its responsibility over the acts and omissions of Florida officials simply by hiding behind the U.S.’s federal system of government.³⁹ The failure of any level of government to take into consideration the numerous pleas by the Hernandez family for an independent or federal investigation into the killing of their son and prosecution of the offending officer violates Article 12’s call for investigation and accountability for all acts of torture committed by public officials. The inaction of the State Attorney’s Office and indifference at higher levels also stand in contravention to Article 14’s obligation under the Convention to ensure that any victim of an act of torture or the victim’s family obtain redress and a right to adequate compensation.

Article 16 prohibits “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the

instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” and extends Article 12’s right to an investigation to acts that fall under Article 16. The former U.N. Special Rapporteur on the question of torture, Theo van Boven, noted that the misuse of weapons, including Tasers, can amount to “torture or other forms of ill-treatment.”⁴⁰ As the Midwest Coalition For Human Rights And The Legal Clinic Of The University Of Iowa College Of Law’s 2013 report to the Human Rights Committee noted in detail,

“A Taser is a handheld device that uses compressed nitrogen to fire two barbed darts up to a distance of ten meters at a speed of fifty meters per second. The barbed darts remain attached to the device by a set of insulated wires after the darts are fired. Once the darts make contact with an individual’s body, ‘the Taser delivers an electrical impulse of 50,000 volts . . . resulting in immediate loss of the individual’s neuromuscular control and ability to perform coordinated movements for the duration of the shock.’ The electro-shock from a Taser causes severe pain to its victims, pain that rises to the level of torture. One law enforcement official described the feeling from a Taser shock as ‘the most excruciating pain anyone can feel.’”⁴¹

Thus, even when use of a Taser does not lead to death, excessive or unwarranted use of the device can fall under Article 16’s prohibition of cruel, inhuman or degrading treatment.

V. The CAT Committee List of Issues and USG Periodic Report

In Question 36, the Committee asked the U.S. whether it “reviewed the use of electroshock devices and regulated their use, restricting it to substitution for lethal weapons, as recommended by the Committee in its previous concluding observations (para. 35)” and whether “such devices still used to restrain persons in custody?” In response, the U.S. cited one instance of enforcing the limitation on the use of electroshock devices and a review being conducted by the Department of Justice’s National Institute of Justice of “instances in which individuals died after law enforcement officers used [Electro-Muscular-Disruption devices] to subdue them, and stated that it was “work[ing] with local law enforcement agencies in their policy development regarding the use of EMD devices.” However, such general statements should be viewed as insufficient by the Committee.

The Human Rights Committee, in its review of the U.S. last year, expressed concern “about the still high number of fatal shootings by certain police forces, including, for instance, in Chicago, and reports of excessive use of force by certain law enforcement officers, including the deadly use of Tasers, which has a disparate impact on African Americans” and migrants.⁴² The U.S., in its periodic report to the Human Rights Committee, avowed that its legal standard on the use of Tasers must reflect basic principles of proportionality: “The determination of whether use of an Electro-Muscular-Disruption (EMD) device is justifiable under this standard requires balancing the amount of force applied against the need for that force” and that one factor to consider in that balancing test is the vulnerability of the target of that force.⁴³ This standard, however, is hard to operationalize when law enforcement policies encourage the use of Tasers as an alternative to deadly force without appropriate federal regulations or guidelines.⁴⁴

Furthermore, Amnesty International found that between 2001 and 2012, at least 500 people in the U.S. died after being shocked with Tasers either during their arrest or while in jail.⁴⁵ Out of the hundreds of cases it reviewed, “90 percent of those who died were unarmed.”⁴⁶ The plausibility of such consequences was confirmed by a study published in 2012 by the American Heart Association’s *Circulation* Journal, which concluded that misuse of such devices can cause sudden cardiac arrest and death.⁴⁷ The U.S. government should go further to prevent and punish law enforcement’s excessive and discriminatory use of electroshock devices by issuing clear regulations and guidelines on their use, only as a substitute for deadly force.

VI. Recommended Questions

1. What steps has the United States taken or what steps does it plan to take, to ensure that “a prompt and impartial investigation” (Article 12) is made into the acts of torture committed by Miami Beach police, and in particular, the killing of Israel Hernandez Llach?
2. What steps has the United States taken or what steps does it plan to take, to ensure that the victims of torture or cruel, unusual or degrading treatment at the hands of Florida police obtain “redress” and “fair and adequate compensation, including the means for as full rehabilitation as possible” (Article 14)?
3. Why has the U.S. Department of Justice failed to open investigations on Miami Beach Police Officer Jorge Mercado for the murder and deprivation of civil rights of Israel Hernandez Llach; the Miami Beach Police Department; or the Miami-Dade Office of State Attorney Katherine Fernandez-Rundle for their complicity in allowing these patterns and practices of torture and abuse to continue?
4. What steps has the United States taken to ensure that law enforcement agencies limit their use of electroshock/Taser devices to incidents where they are threatened with deadly force and only as an alternative to more lethal means of defense?

VII. Suggested Recommendations

- Miami Beach Officer Jorge Mercado should be suspended without pay and prosecuted for the murder of Israel “Reefa” Hernandez Llach.
- The U.S. Department of Justice should immediately open a federal investigation into the death of Israel “Reefa” Hernandez Llach at the hands of Miami Beach Police Officer Jorge Mercado and open a “policies and practices” investigation into the Miami Beach Police Department. In addition, the Department of Justice should also investigate the Miami-Dade Office of State Attorney Katherine Fernandez-Rundle’s role in systematically failing to hold police officers accountable for their crimes.
- The U.S. should enact strict federal regulations on law enforcement’s use of electroshock/Taser devices, including prompt and transparent investigatory and accountability procedures when law enforcement officers are accused of excessive force, given the mounting evidence of their lethal capacity. In particular, these policies should ensure that law enforcement agencies limit their use of electroshock/Taser devices to incidents where they are threatened with deadly force and are only used as an alternative to more lethal means of defense.
- The U.S., with input from communities of color and others vulnerable to police brutality, should develop national use of force standards that acknowledge and combat the role of implicit bias and overt forms of racial discrimination in policing.
- The DOJ should work with local departments, such as the Miami Beach Police Department, to train law enforcement officers on these regulations and guidelines.



A joint mural created by ten local artists depicting Israel “Reefa” Hernandez Llach. Photography by El Nuevo Herald.

¹ This report was written by Alana Greer and Meena Jagannath, Staff Attorneys at Community Justice Project of Florida Legal Services, in collaboration with the community group signatories.

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