

THE KILLING OF ANASTASIO HERNÁNDEZ ROJAS

Exposing the Mechanics of Impunity and State Violence in the United States



Report submitted by Maria Puga, the widow of Anastasio
Regarding U.S. violations of the International Covenant on Civil & Political Rights
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Acknowledgments

Maria Puga, the widow of Anastasio Hernández Rojas, extends her gratitude to the community that has stood by her in the pursuit of justice for Anastasio since 2010. She extends her heart to the many families who have suffered loss because of the abuse and impunity by law enforcement in the United States. She also extends her appreciation to the advocates and policymakers who are working to ensure that law enforcement protects, not violates, human rights. She believes that everyone has the right to live in dignity.

This report was prepared by Roxanna Altholz, co-director of the University of California, Berkeley International Human Rights Clinic, and Andrea Guerrero, executive director of Alliance San Diego, who represent Maria Puga and the family of Anastasio Hernandez Rojas before the Inter-American Commission on Human Rights. Ms. Altholz and Ms. Guerrero would like to thank Berkeley Law School students Rebecca Cooley, Lorena Ortega-Guerrero, and Maria Watson, and Alliance San Diego communications staff Mallory Adamski, Tara Kaveh, Tomas Perez, Eithel Krauss, and Erika Clark for their support.



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INTRODUCTION OF THE ANASTASIO HERNÁNDEZ ROJAS CASE

In 1995, the United Nations Human Rights Committee (“Committee” or “HRC”) issued its first set of Concluding Observations regarding the United States’ record of compliance with the International Covenant on Civil and Political Rights (ICCPR).¹ The Committee expressed concern about “the reportedly large number of persons killed, wounded or subjected to ill-treatment”² by U.S. law enforcement. HRC’s Concluding Observations urged the U.S. “to take all necessary measures to prevent any excessive use of force” by bringing U.S. law into conformity with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ensuring systematic investigation of violations of international standards on use of force, and punishing state agents found responsible.³

For nearly 30 years, at each subsequent review, the Committee has expressed similar concerns and made similar recommendations.⁴ And for nearly 30 years, the United States has either disregarded or disputed the Committee’s observations and largely ignored the Committee’s requests for specific information.⁵ Instead of discussing efforts to comply with the ICCPR, the U.S. has defended the “objectively reasonable” standard—the cornerstone of U.S. law and policies regulating use of force.⁶

In 2019, the Committee initiated its fifth review of the United States requesting information about excessive use of force and lack of accountability of law enforcement. Specifically, the Committee requested that the U.S. provide information about what steps had been taken “to limit excessive use of force by law enforcement officials against civilians, particularly those belonging to racial minorities.”⁷ The Committee also requested information about oversight of law enforcement, investigations and prosecutions of excessive use of force incidents, and relevant domestic legal standards on use of force.⁸ Lastly, the Committee instructed the United States to explain how domestic laws are “compliant, in law and in practice, with the Basic Principles on the Use

of Force and Firearms by Law Enforcement Officials.”⁹

The United States responded to HRC’s specific requests by defending a flawed domestic standard on use of force.¹⁰ According to the U.S. report:

In determining whether force used by a law enforcement officer is reasonable, courts look to the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396. Whether a particular use of force is reasonable is ‘judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.’ *Id.* Courts are mindful that ‘police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.’ *Id.* at 396-97. ‘An officer’s use of force is unreasonable if, judging from the totality of the circumstances at the time of the arrest, the officer uses greater force than was reasonably necessary to effectuate the arrest.’ *Phillips v. Community Insurance Corp.*, 678 F.3d 513, 519 (7th Cir. 2012) (citing *Gonzalez v. City of Elgin*, 578 F.3d 526, 539 (7th Cir. 2009)).¹¹

The U.S. report also rejected the binding nature of international use of force standards. Regarding the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the report noted that the Basic Principles are not a standard for conducting operations and the United States “does not advise” law enforcement to use them.¹²



The failure by the United States to recognize and adhere to its international human rights obligations has deadly consequences. Every year, over 1 million people are threatened with or subjected to use of force by U.S. law enforcement,¹³ more than 250,000 people are injured as a result,¹⁴ and over 1,000 people are killed.¹⁵ This past year, 2022, was the deadliest. Most unarmed people killed by law enforcement are people of color.¹⁶ Criminal prosecutions of law enforcement officials who commit acts of violence against civilians are exceedingly rare.

The goal of this shadow report is to provide the Committee with an understanding of the human experience of the United States' disregard of international use of force standards. The report presents the testimony of Maria Puga, who is the widow of Anastasio Hernandez Rojas. On May 28, 2010, U.S. law enforcement officials brutally beat and tased Anastasio while he was in custody, hog-tied, and lying on the ground. He died three days later from his injuries. Ms. Puga's account examines three dimensions of her experience: (1) the impact of the "objective reasonableness"

standard; (2) the failure of the United States to investigate Anastasio's death thoroughly, impartially, and independently; and (3) the family's struggle for justice. The introduction to each section discusses relevant facts and ICCPR standards.

For decades, the United States has openly flouted international principles on use of force enshrined in the ICCPR. As it has done at the conclusion of prior reviews of other State Parties,¹⁷ this Committee should find that U.S. law on use of force, specifically the objective reasonableness standard, violates international standards and should instruct the United States to ensure its domestic legislation incorporates the principles of necessity and proportionality. Rather than then repeating prior recommendations, the Committee should indicate how U.S. law on use of force violates international standards—focusing on the principles of necessity, proportionality, and legality—as well as identify the specific reforms the United States must take to bring its domestic law on use of force into compliance with the ICCPR.

TESTIMONY OF MARIA PUGA, WIDOW OF ANASTASIO

In May 2010, U.S. federal law enforcement killed Maria Puga's life partner and father of her five children, Anastasio Hernandez Rojas. For the last 13 years, Maria has bravely sought redress from U.S. authorities and courts. She has fought to uplift Anastasio's dignity and to secure justice for him and her family. After being denied access to justice in the United States, Maria and her family filed a petition against the United States before the Inter-American Commission on Human Rights ("Inter-American Commission") to challenge the law enforcement policies and practices that led to Anastasio's death. During her struggle, she has stood shoulder to shoulder with other families whose loved ones were killed by law enforcement.

Maria is the lead petitioner before the Inter-American Commission in this first-ever case against the United States for an extrajudicial killing by law enforcement. The Commission's upcoming decision is likely to establish precedent for deciding other cases currently pending before the Inter-American Commission involving the death of Michael Brown, Rekia Boyd, Lesley Mcfadden, Sandra Bland, and others. Her testimony helps this Committee understand the consequences of deficient use of force standards, the failure to investigate killings independently and impartially, and the enormous toll of U.S. law and policies on victims and their families.

A LIFE WITH DIGNITY WITH ANASTASIO



I am Maria de Jesus Puga, the widow of Anastasio Hernández Rojas who was beaten, tortured and killed by U.S. border agents in 2010. These agents have never faced any accountability for their actions, which destroyed our family.

I am submitting this report to the United Nations to tell you who Anastasio was, what happened to him, and how my family has been denied access to justice. I hope this helps bring about change so more families do not have to suffer.

I first met Anastasio when I was 18 years old and had just arrived in San Diego, California from Nayarit, Mexico. It was love at first sight. Anastasio and I spent a lot of time together during my first few days in San Diego. We shared laughs and meals together. He made me feel at home and safe in a new country.

When it came time for me to leave San Diego to live with my uncle in another city, Anastasio said: "Güerita (a word for Blondie), if you need to leave, leave, but if you want to stay, you will always have a place here with me." I stayed with him in San Diego for the rest of his life.

Anastasio worked in construction, demolishing and fixing pools. I found a job cleaning offices. He and I trusted and respected each other. He made me feel cared for and encouraged me to pursue my dreams and independence. He insisted that I learn to drive and asked me to handle the household finances. We were a team.

Over the years, we were blessed with five children. Anastasio and I worked together to raise them. During the day, I cared for the kids and ensured they were ready for school while he worked. At night, Anastasio cared for the kids and kept them active by playing basketball or playing on the swings while I worked the night shift.

After every week of hard work, we made Sundays together special; we went to the beach, to the park, or had barbecues in the backyard. It was a good life.

Anastasio was the heart of our family and also our community. His lighthearted, charismatic personality brought everyone together. Whether it was a friend, brother, or neighbor, he always invited people in to eat. Anastasio was the heart of our family and also our community. His lighthearted, charismatic personality brought everyone together. Whether it was a friend, brother, or neighbor, he always invited people in to eat.

On May 29, 2010, San Diego police officers came to my door to tell me that Anastasio had been in a fight and was in the hospital. Anastasio was not an aggressive man so this did not sound right.



When we arrived, the hospital denied that Anastasio was there, but when I described him to a nurse, she said he was in police custody and we could not see him. Representatives from the Mexican Consulate and advocates from a community organization called the American Friends Service Committee helped us persuade hospital staff to let us see him.

I will never forget that image of my partner, the father of my children, when I entered his hospital room. He lay in a bed brain dead, kept alive only by hospital tubes, and so severely beaten that he was unrecognizable. It was traumatizing to see such an emotionally strong and brave man lay helpless in a hospital bed surrounded by law enforcement. I was allowed only one hour with Anastasio.

Anastasio's brothers and parents arrived and we cried and we prayed. My children were restless. We were all scared. When we were able to see him again it was to say goodbye. It was an impossible task. He was my partner of more than 20 years. I told him that he could rest in peace and that we would be strong. I promised him I would take care of our kids and help them lead the successful lives we had always planned for them. He died shortly thereafter.

Nobody ever came to tell me what happened to Anastasio. For two weeks, I knew nothing until the day of the funeral when someone told me there was a video recording with audio. When my family and I got home, the recording was playing on TV. It was gut wrenching to listen to. I could hear Anastasio screaming in pain and begging for his life. It was the first time I had ever heard my husband cry. As I listened, I grew angry and thought, he didn't just die. He was killed.

THE UNREASONABLENESS OF "OBJECTIVELY REASONABLE"

On May 28, 2010, Customs and Border Protection (CBP) agents detained Anastasio Hernandez Rojas—a long-time resident of San Diego, a father of five, and a Mexican national.¹⁸ He was taken to a holding station where an agent kicked him and reinjured a previously broken ankle.¹⁹ CBP agents denied Anastasio medical attention and the right to file a complaint against the agent who assaulted him.²⁰ Border agents said Anastasio did not behave like a "typical alien," but talked loudly, looked directly at the agents, and formally complained about his treatment.²¹ By insisting that he be treated with dignity, Anastasio created a "problem" for the agents. They decided

to deport him summarily. He was taken to a secure area for removal to Mexico where from approximately 9 pm to approximately 9:25 pm, at least eight U.S. Customs and Border Protection and Immigration and Customs Enforcement (ICE) agents punched, kicked, dragged, tasered, hogtied, and knelt on Anastasio's neck and body while at least nine additional agents (17 agents in total) and dozens of onlookers watched.²²

After an agent deployed a Taser four times, the last time in stun drive mode directly to Anastasio's chest for 12 seconds, Anastasio lost consciousness.²³ While Anastasio was

unconscious, unarmed, and restrained, agents continued to kneel on his back and neck, risking positional asphyxia.²⁴ Autopsy reports confirmed that Anastasio suffered extensive injuries while in custody, including bruising and abrasions on his face and body, five broken ribs, and hemorrhaging of internal organs and neck muscles. Anastasio died after suffering a heart attack, cardiac arrest, and brain damage.²⁵ His death was ruled a homicide.²⁶

On November 6, 2015, the U.S. Department of Justice (DOJ) announced that it had concluded its investigation into Anastasio's homicide and decided not to pursue criminal charges against the officers responsible.²⁷ The DOJ stated that it could not disprove claims by CBP officers that they had "used reasonable force in an attempt to subdue and restrain a combative detainee so that he could be placed inside a transport vehicle."²⁸ The DOJ determined that the CBP actions were not unlawful because Anastasio was "non-compliant and physically assaultive."²⁹ Moreover, the DOJ asserted that, based on evidence related to the CBP officers' use of force training, the officers had not acted without due caution and circumspection.³⁰

The cornerstone of U.S. law and policy regulating the use of force is the "objective reasonableness" standard. Under the "objective reasonableness" standard, U.S. courts examine the conduct of law enforcement officers "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."³¹ According to the U.S. Supreme Court, the objective reasonableness standard lacks "precise definition."³² Rather, courts must "balance the nature and quality of the intrusion on the individual's constitutional rights against the importance of the governmental interest alleged to justify the intrusion."³³ Although non-exhaustive,³⁴ the Supreme Court recognized key factors to include: (1) the extent of the governmental intrusion;³⁵ (2) the severity of the crime at issue; (3) whether the subject posed an immediate threat to the

safety of the officer or others; and (4) whether the subject was actively resisting arrest or attempting to evade arrest by flight.³⁶

In contrast to U.S. law, international human rights standards on use of force are guided by the imperative of protecting the right to life—a supreme, nonderogable right—from arbitrary deprivation by the State.³⁷ The ICCPR prohibits the arbitrary deprivation of the right to life and torture.³⁸ The rights to life (Article 6) and personal integrity (Article 7) are absolute rights from which no derogation is permitted.³⁹ Indeed, this Committee has affirmed that the right to life is "most precious" and "constitutes a fundamental right" and a "prerequisite for the enjoyment of all other human rights."⁴⁰

Compliance with the ICCPR requires State Parties to "take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials" by ensuring that officials adhere to "relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles of the Use of Force and Firearms by Law Enforcement Officials."⁴¹

U.S. use of force law and policies:

- do not require state agents to use the minimum amount of force necessary; to use a type of force that is proportionate to the threat posed; to exhaust available, less-harmful force alternatives; or to deploy de-escalation tactics;⁴²
- permit law enforcement in the border region to engage in racial profiling;⁴³
- permit the use of tasers, a weapon described by international bodies as a lethal force device, in wide-ranging circumstances that involve no serious threat to life or safety;⁴⁴ and
- authorize in many cities the use of force to prevent a suspect's escape, to prevent the

commission of a felony, and in cases of self-defense regardless of the immediacy of the threat or whether the force was proportional to the threat or resistance confronted by the officer.⁴⁵

U.S. law condones as “objectively reasonable” force that under international standards amounts to torture or excessive use of force. In contravention to international protections, the

United States’ legal standard on use of force prioritizes the officer’s subjective perception of danger with no meaningful objective assessment of the reasonableness of that belief over preservation of the life of the civilian. This lax and deficient standard provided law enforcement officials with a green light to use excessive force against Maria’s husband and shielded the agents responsible for his death from accountability.



Soon after Anastasio died, U.S. federal border agents said they had apprehended Anastasio. Although Anastasio had lived in San Diego for decades, he did not have any papers to be in the United States legally and no pathway to get them, just like millions of people in the United States. The federal agents also said that Anastasio had been aggressive and used that to justify their use of force against him. Soon after, the local police investigators closed the investigation.

For two years, I sat with the doubt of what had happened. None of what the federal agents said about Anastasio made sense. Then, in 2012, a second video emerged from an eyewitness who had been scared to come forward earlier. Her video confirmed my initial skepticism. In the video, Anastasio was face down on the ground, with hands and feet tied behind him, with his pants off, and surrounded by many law enforcement officials. He was not assaulting them. They were assaulting him.

The video showed the surrounding agents beating him, yelling at him, and then electrocuting him with a Taser gun. They tortured my husband in public. If government agents could do this in front of dozens of witnesses, I can’t help but think: what are they doing to people behind closed doors?

Our attorney was able to get the records from the Taser gun and it showed that an agent used the Taser for nearly a minute straight against Anastasio. His cries of pain that we can hear in the videos are from this time. He cries out for help, “Ayudame! [Help me!]” and for mercy, “No soy un animal! [I am not an animal!], but the agents don’t stop. I will never understand how they could treat a human being that way.

When the second video emerged, Anastasio’s mother and brother went to Washington, D.C. with advocates from Alliance San Diego and asked the U.S. Department of Justice to look at the video evidence and consider charging the responsible federal agents. But ultimately, they chose not to bring any charges. On May 29, 2010, San Diego police officers came to my door to tell me that Anastasio had been in a fight and was in the hospital. Anastasio was not an aggressive man so this did not sound right.



Image captured from eyewitness video: Border agents beating and tasing Anastasio.



DENIAL OF ACCESS TO JUSTICE BY THE UNITED STATES

Impunity is the predestined outcome in many cases of excessive use of force in the United States because of the failure by the United States to conduct exhaustive, timely, independent, and impartial investigations and law enforcement’s efforts to cover up their brutality.

From the beginning, the cards were stacked in favor of law enforcement officials during the criminal investigation of Anastasio’s death. Although the San Diego police were conducting a homicide investigation, police reports identified Anastasio as the suspect and the agents as the victims.⁴⁶ During the police investigation, border agents destroyed video evidence, altered government documents, and inappropriately used an administrative subpoena to acquire Anastasio’s medical records, and then refused to give the records to the police for their criminal investigation of border agents.⁴⁷

The actions taken by border agents to cover up their responsibility for Anastasio’s death was

part of a longstanding pattern and practice in the U.S. Border Patrol, the largest component of CBP, to shield agents from accountability. In October 2021, advocates informed U.S. Congress that since at least 1987, shadow police units, often referred to as Border Patrol’s Critical Incident Teams (BPCITs) among other names, had investigated, without legal authority, use-of-force incidents involving border agents with the aim of mitigating and concealing agent responsibility. Subsequently, several congressional committees announced their own joint investigation into BPCITs’ interference with investigations of use-of-force incidents and urged federal agencies to investigate the abuse of authority.⁴⁸ In May 2022, CBP announced plans to disband Border Patrol’s cover-up units.⁴⁹

There has been no effort to provide Anastasio’s family or the public a full accounting of what happened. None of the five federal investigations conducted into Anastasio’s death—including a

federal grand jury and separate investigations by the BPCIT, the Department of Homeland Security Office of Inspector General, CBP's Office of Internal Affairs (now called Office of Professional Responsibility), and CBP's National Use of Force Review Board—have been released to Maria and her family or the public. The official accounting of Anastasio's death consists of a one-page press release issued by the DOJ announcing its decision to close the investigation without pursuing charges.⁵⁰

Under Article 2 of the ICCPR, victims of the unlawful use of force by law enforcement officials must have access to an effective remedy.⁵¹ The State must conduct "a thorough, prompt and impartial investigation" into any death in custody.⁵² Investigators must be "independent of the suspected perpetrators and the agency they serve."⁵³ The failure to provide a plausible explanation for a death in custody through an independent and thorough investigation gives rise to a presumption that the person was arbitrarily killed.⁵⁴ For an investigation to be "effective," the victim or victim's family must be involved, have access to all information relevant to the investigation, and at a minimum must be informed of the outcome of the investigation.⁵⁵

Additionally, international law requires that the investigation be conducted in public and that its results be published.⁵⁶ A failure to investigate allegations of violations could in and of itself give rise to a separate breach of Articles 2(3) and 6 of the ICCPR.⁵⁷

This Committee has interpreted the ICCPR to require that State Parties "investigate and, where appropriate, prosecute the perpetrators . . . of incidents involving allegations of excessive use of force with lethal consequences."⁵⁸ Although this Committee has urged the U.S. to ensure that killings or torture by law enforcement are "effectively investigated; that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions,"⁵⁹ impunity for killings by U.S. law enforcement is still the rule. According to a national study, "fewer than 3% of killings by police result in officers being charged with a crime."⁶⁰ No federal border agent has ever been convicted for taking a life while on duty.

Maria Puga and her family have endured the weight of impunity for more than thirteen years. They suffered extreme hardship in coping with Anastasio's death and have fought relentlessly for justice.



In 2015, three years after the second video was made public, the U.S. Department of Justice told our family that they would not pursue criminal charges against the agents. They repeated what the federal agents had said before that Anastasio was aggressive, even though the video refuted this, and that agents' actions were justified.

This was devastating. It was a slap in the face. I only discovered there was a grand jury proceeding after it was concluded. I never received information about the grand jury, including the outcome of proceedings, the witnesses, the version of the events presented to the jury, or the prosecutor's recommendations of charges. Nothing.

During the investigations of Anastasio's death, it appeared as if government agencies were only investigating what they wanted to find and hid what was not in their favor to protect the agents from accountability. The video was clear: Anastasio lay defenseless on the ground while agents brutally beat him. They ignored the evidence. After this experience, I lost complete faith in the U.S. legal and justice system.

In 2021, we received new information about Border Patrol cover-up teams that had interfered with investigations, including the investigation of Anastasio's death. This new information led Congress to open investigations into the cover-up teams, and in 2022, the government announced that it was going to eliminate those teams, but the damage in Anastasio's case was already done.

In 2022, I asked the San Diego District Attorney to look into bringing criminal charges against the border agents who had covered up evidence in Anastasio's case. After several months, the District Attorney told me that she would not. She said that the time period to consider those charges had expired. This was frustrating since no prosecutor ever bothered to consider this before and it was up to us to even point it out.

I have stayed up many nights grieving Anastasio's death. I struggle to move past the image of agents brutally beating Anastasio. I have nightmares. In one of my nightmares, Anastasio told me that while agents tortured him, he yelled like a little girl because he was in extreme pain. I also dreamt that he asked me to seek justice for his murder. I cannot understand how agents took my husband's life without consequence or even a simple apology. I will not be at peace until I achieve justice for my husband, and after 13 years in that pursuit, my pain and drive have not subsided.

REACHING FOR HOPE IN THE INTERNATIONAL SYSTEM

Since 2010, the year Anastasio was killed, law enforcement, including local and federal agents have killed an estimated 15,000 people in the United States.⁶¹ In 2023, use of force is on the rise and this year could be the deadliest.⁶² Until and unless the use of force standard changes in the United States, law enforcement at every level will continue to violate human rights and get away with it.

Customs and Border Protection (CBP) is the largest law enforcement agency in the United States with over 60,000 employees. Roughly, 85% of CBP agents are deployed at the U.S.-Mexico border. CBP claims the authority to conduct warrantless stops and seizures anywhere within 100 miles of U.S. land or sea borders, an area that covers approximately two-thirds of the U.S. population. CBP aims to become a national police force with extraconstitutional powers⁶³ and has the resources to accomplish that ambition.⁶⁴

Since 2010, more than 270 migrants and U.S. citizens have died as the result of an encounter with a CBP agent at the U.S.-Mexico border.⁶⁵ Successful disciplinary, civil, or criminal actions against U.S. border agents are exceedingly rare for killings: CBP's system for handling complaints of abuse and misconduct is patently ineffective and the U.S. Department of Justice has closed

all but one criminal investigation of a border killing without pursuing charges.⁶⁶ Consequently, no border agent has ever been successfully prosecuted and convicted for taking a life.

Failure to provide victims full reparations in accordance with Article 2(3) could "give rise to a separate breach" of the ICCPR.⁶⁷ Yet, reparations by the U.S. for the victims and their families in cases involving excessive use of force are virtually nonexistent. In the view of this Committee, full reparation entails measures of satisfaction, which can include public apologies, public memorials, guarantees of non-repetition, and amending laws, in addition to other types of measures.⁶⁸ This Committee has instructed State Parties "to prevent similar violations in the future"⁶⁹ by reforming domestic law and practices to meet the covenant standards.⁷⁰

Today, we know more about the anatomy of violence and the mechanics of impunity in the United States because of the tenacity and courage of Anastasio's family to pursue justice. We now understand what changes must be enacted to ensure that more families do not suffer what Maria and her family were forced to endure. Maria requests that the United Nations Human Rights Committee press the United States to enact necessary reforms of laws and practices.



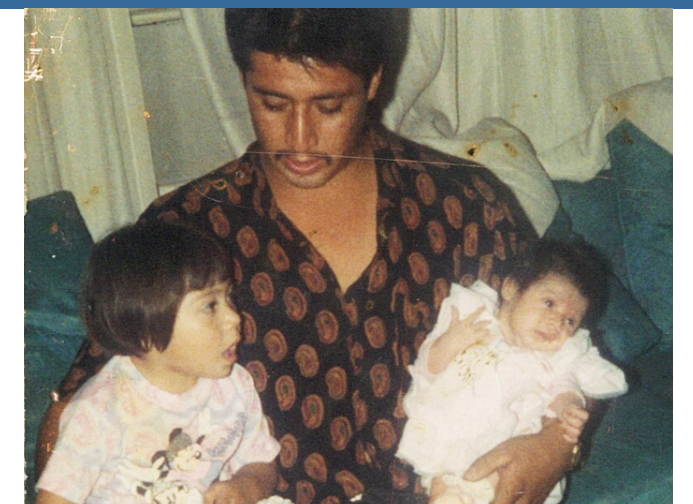
My family and I could not rest when the government told us they would not hold anyone responsible for Anastasio's death. I was concerned that if they were not going to make agents answer in this case with so much evidence, the government would never make them answer for taking a life and destroying a family. After Anastasio's death, hundreds more people died in encounters with border agents. No agent has ever been held accountable in any of these cases or in any cases ever.

As a family, we decided to appeal to the Inter-American Commission on Human Rights because the justice system in the United States failed us. The Commission scheduled a public hearing on the case for November 4, 2022, but the U.S. government tried to close the doors to the public. When they did that, we held a press conference and rallied support to keep it open. If the government could kill my husband in public, it should have to answer for it in public.

At the November hearing, which was broadcast online, I spoke and so did a Mexican government official who witnessed the incident. This public hearing before the Commission was the first time we were able to show the world what happened to Anastasio. The government did not respond to what happened. Instead they talked about how justice works in the United States and said our case should not be heard by the Commission. This felt like a slap in the face. We are now waiting for the decision from the Commission.

The fight for justice is a painful and exhausting process, but Anastasio knew that he left his kids and community in good hands with me. He made me strong. Already, the case has garnered a lot of attention. People know Anastasio's name; they know his story; thirteen years later, we have kept him alive. His death will not be in vain.

I am now submitting this report to the United Nations Human Rights Committee to share this story with you. What happened to my husband continues to happen to others and will keep happening until something changes. My hope in telling you this is that you can urge the United States to make the necessary changes so that no other family has to suffer what we have suffered at the hands of law enforcement in the U.S.



SUGGESTED QUESTIONS & RECOMMENDATIONS

We respectfully request that United National Human Rights Committee use the occasion of its Fifth Review of the U.S.' compliance with ICCPR to ask questions and make recommendations that engage the United States to effectively implement the treaty protections against excessive use of force and ensure the independent and impartial investigation of incidents involving violence by U.S. law enforcement. In addition to these questions and recommendations, we urge the Committee to issue a finding that U.S. law on use of force, specifically the objective reasonableness standard, does not conform to the ICCPR and specify what legal reforms must be taken to bring U.S. standards in line with the principles of necessity and proportionality.

▶ ENDING EXCESSIVE FORCE (ART. 6, 7):

QUESTION: How will the United States change its use of force standard to limit force to that which is 'necessary and proportional' rather than 'objectively reasonable' in order to protect life and prevent inhumane treatment pursuant to the ICCPR, the U.N. Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials?

RECOMMENDATION: (1) Incorporate international law on use of force into domestic jurisprudence in the courts. (2) Adopt federal and state legislation that limits use of force to 'necessary and proportional' in compliance with U.N. standards. (3) Issue an Executive Order directing all federal agencies to amend their use of force policies to conform with the U.N. Code of Conduct and Basic Principles.

▶ ENDING IMPUNITY AND ENSURING NON-REPETITION (ART. 2, 50):

QUESTION: How will the United States change its laws and policies to ensure that criminal investigations of use of force by CBP are independent and impartial and do not involve any CBP or Border Patrol agents or management?

RECOMMENDATION: (1) Issue an Executive Order directing all federal agencies to amend their policies and prohibit involvement in criminal use of force investigations of their own officers. (2) Adopt legislation to protect the integrity of criminal investigations and end the concurrent jurisdiction of agencies to investigate their own officers in 6 U.S.C. 211(j)(3).

ENDNOTES

¹ U.N. Human Rights Committee [UN HRC], *Concluding observations on the initial report of the United States of America*, U.N. Doc. CCPR/C/79/Add.50 (Apr. 7, 1995) [hereinafter UN HRC, *Concluding observations on the initial report of the United States of America*].

² *Id.* at 282.

³ *Id.* at 297.

⁴ *Id.* at ¶¶ 282, 297. U.N. Human Rights Committee [UN HRC], *Concluding observations on the second and third reports of the United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, ¶ 30 (Dec. 18, 2006) [hereinafter UN HRC, *Concluding observations on the second and third reports of the United States of America*] (noting concern about excessive use of force by U.S. law enforcement officials and recommending that the United States "bring its policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement

Officials"); U.N. Human Rights Committee [UN HRC], *Concluding observations on the fourth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4, ¶ 6 (Apr. 23, 2014) [hereinafter UN HRC, *Concluding observations on the fourth periodic report of the United States of America*] (noting concern about excessive use of force by U.S. law enforcement officials and recommending that the United States "step up its efforts to prevent the excessive use of force by law enforcement officers by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials").

⁵ U.N. Human Rights Committee [UN HRC], *Third periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/3, ¶ 461 (Nov. 28, 2005) [hereinafter UN HCHR, *Third periodic report of the United States of America*] (responding to the Committee's recommendation that the U.S. bring use of force law and policies in conformity with international principles with only the general and brief assertion that the United States "prohibits and punishes excessive use of force by government officials" at the state and federal level); U.N. Human Rights Committee [UN HRC], *Fourth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/4, ¶ 663 (May 22, 2012) [hereinafter UNHCHR, *Fourth periodic report of the United States of America*] (asserting that United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are "non-binding" and that U.S. law and policies on use of force are "consistent" with UN Principles); U.N. Human Rights Committee [UN HRC], *Fifth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/5, ¶ 56 (Nov. 11, 2021) [hereinafter UN HRC, *Fifth periodic report of the United States of America*] (arguing "[u]se of force, including lethal force, by state officials is subject to the U.S. Constitution and federal laws"; that UN principles on use of force are "non-binding" and "vary from U.S. law, policy, and practices"; and that U.S. law enforcement are not required to use the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials "as a standard for conducting operations, and the U.S. government does not advise them to do so").

⁶ U.N. Human Rights Committee [UN HRC], *Initial periodic report of the United States of America*, U.N. Doc. CCPR/C/81/Add.4, ¶ 138 (Aug. 24, 1994) [hereinafter UN HRC, *Initial periodic report of the United States of America*] (citing to U.S. Supreme Court jurisprudence interpreting the "objective reasonableness" standard); UN HRC, *Fourth periodic report of the United States of America*, *supra* note 5, at ¶ 663 (referring to the "objective reasonableness" standard established by U.S. Supreme Court jurisprudence); UN HRC, *Fifth periodic report of the United States of America*, *supra* note 5, at ¶ 52 (citing to U.S. Supreme Court case law applying the "objective reasonableness" standard to excessive use of force cases).

⁷ U.N. Human Rights Committee [UN HRC], *List of issues prior to submission of the fifth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/QPR/5, ¶ 14 (Apr. 18, 2019) [hereinafter UN HRC, *List of issues prior to submission of the fifth periodic report of the United States of America*].

⁸ *Id.*

⁹ *Id.*

¹⁰ For example, regarding use of force, the United States referred to a credentialing process established by an Executive Order issued by President Trump which requires police departments to enact policies and training regarding use of force and de-escalation techniques in order to be eligible for federal grants. UN HRC, *Fifth periodic report of the United States of America*, *supra* note 5, at ¶ 49.

¹¹ *Id.* at ¶ 52.

¹² *Id.* at ¶ 56.

¹³ University of Illinois Chicago, School of Public Health, Law Enforcement Epidemiology Project, <https://policeepi.uic.edu/u-s-data-on-police-shootings-and-violence/> (last visited Sept. 1, 2023) [hereinafter University of Illinois Chicago, Law Enforcement Epidemiology Project].

¹⁴ *Id.*

¹⁵ Mapping Police Violence, 2022 Police Violence Report, <https://policeviolencereport.org/> (last visited Sept. 1, 2023) [hereinafter Mapping Police Violence].

¹⁶ *Id.*

¹⁷ U.N. Human Rights Committee [UN HRC], *Concluding observations on the second periodic report of Angola*, U.N. Doc. CCPR/C/AGO/CO/2/, ¶ 25 (May 8, 2019) (concluding that the domestic legal framework on use of force "is not in line with international standards" and recommending that Angola ensure that "the principles of necessity and proportionality in the use of force are adequately reflected in legislation and policies and complied with in practice"); U.N. Human Rights Committee [UN HRC], *Concluding observations on the sixth periodic report of Mexico*, U.N. Doc. CCPR/C/MEX/CO/6/, ¶ 20 (Dec. 4, 2019) (finding that domestic laws on use of force "run counter to the Covenant and the Committee's general comment No. 36 (2019) on the right to life" and recommending that Mexico bring the domestic legal framework in compliance with the Covenant and General Comment 36); U.N. Human Rights Committee [UN HRC], *Concluding observations on the sixth periodic report of Tunisia*, U.N. Doc. CCPR/C/TUN/CO/6/, ¶ 47 (Apr. 24, 2020) (finding that domestic law on use of force does not "fully conform to international standards" and instructing Tunisia to ensure that legislative and regulatory provisions governing the use of force comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials); U.N. Human Rights Committee [UN HRC], *Concluding observations on the second periodic report of Ethiopia*, U.N. Doc. CCPR/C/ETH/CO/2/, ¶ 21 (Dec. 7, 2022) (noting that the existing legal framework for the use of force and firearms by State agents is "inadequate and not in line with the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" and urging Ethiopia to "[e]xpeditiously the adoption of the draft law on the use of force by State agents, ensuring it is in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials . . .").

¹⁸ Anastasio Hernandez Rojas and Family v. United States, Case No. 14.042, Additional Observations on the Merits, 8 (Jan. 27, 2021), <https://drive.google.com/drive/folders/1Mvr-2Hlb9ib4rSULzShhw57uD4pGdat> (last visit Sept. 1, 2023) [hereinafter IACHR, Petitioners' Merits Brief].

¹⁹ *Id.* at 7 (citing Petition, Exh. 1 at 7).

²⁰ *Id.* at 7 (citing Petition, Exh. 1 at 8).

²¹ *Id.* at 7 (citing Petition, Exh. 4 at ¶¶ 6-8; Petition, Exh. 10 at 18, 90; Petition, Exh. 11 at 11-12).

²² *Id.* at 7-12.

²³ *Id.* at 10.

²⁴ *Id.* at 10-11.

²⁵ *Id.* at 13.

²⁶ *Id.* (citing Petition, Exh. 25 at 4; Petition, Exh. 27 at 8).

²⁷ Press Release, U.S. Department of Justice, Office of Public Affairs, Federal Officials Close the Investigation into the Death of Anastasio Hernandez-Rojas (Nov. 6, 2015), <https://www.justice.gov/opa/pr/federal-officials-close-investigation-death-anastasio-hernandez-rojas> (last visit Sept. 1, 2023) [hereinafter Federal Officials Close the Investigation].

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

³² *Id.* at 396 (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

³³ *Scott v. Harris*, 550 U.S. 372, 383 (2007) (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)).

³⁴ See, e.g., *Pauly v. White*, 874 F.3d 1197, 1207 (10th Cir. 2017) (considering the “three non-exclusive factors articulated in *Graham v. Connor*”).

³⁵ *Tennessee v. Garner*, 471 U.S. 1, 8 (1985) (“[O]ne of the factors is the extent of the intrusion . . .”).

³⁶ The first three factors are widely known as the *Graham* three-prong test. However, *Graham* provides that examining the particular “facts and circumstances” includes a review of these factors, indicating that the three-part test is non-exhaustive. See *Graham*, 490 U.S. at 396.

³⁷ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112-13, principles 4, 9 (1990) [hereinafter U.N. Basic Principles on the Use of Force]; U.N. Human Rights Committee [UN HRC], *General Comment No. 36 on Article 6: Right to Life*, U.N. Doc. CCPR/C/GC/36, at ¶ 2, 12-14 (Sept. 3, 2019) [hereinafter UN HRC *General Comment No. 36*]; UN HRC, *General Comment No. 6 on Article 6: Right to Life*, U.N. Doc. HRI/GEN/1/Rev.1 at ¶ 1 (Apr. 30, 1982) [hereinafter UN HRC *General Comment No. 6*].

³⁸ Notably, the ICCPR also protects individuals’ right to humanity and dignity while in custody (Article 10) and equal protection (Article 26). This Committee has noted how excessive use of force impacts these rights. See e.g., UN HRC, *Concluding observations on the fifth periodic report of Portugal*, U.N. Doc. CCPR/C/PRT/CO/5 ¶ 26-27 (Apr. 28, 2020); UN HRC, *Concluding observations on the sixth periodic report of Peru*, U.N. Doc. CCPR/C/PER/CO/6, ¶ 16, 26, 38 (Apr. 5, 2023) [hereinafter UN HRC *Concluding observations on Peru*].

³⁹ ICCPR, art. 4(2); see also UN HRC *General Comment No. 36*, *supra* note 37, at ¶ 2, 67.

⁴⁰ UN HRC *General Comment No. 36*, *supra* note 37, at ¶ 2.

⁴¹ *Id.* at ¶ 13. The HRC has instructed State Parties to bring domestic use of force standards into compliance with these international standards. See e.g., UN HRC, *Concluding observations on the third periodic report of Turkmenistan*, U.N. Doc. CCPR/C/TKM/CO/3, ¶¶ 22-23 (Apr. 12, 2023), (instructing the state to revise national legislation to ensure conformity with international principles); UN HRC *Concluding observations on Peru*, *supra* note 38, at ¶¶ 26-27 (noting that Peru eliminated the principle of proportionality from national law on use of force and directing the State to “[u]rgently” revise national laws to “bring the legislative framework into line with the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”); UN HRC, *Concluding observations on the fourth periodic report of Luxembourg*, U.N. Doc. CCPR/C/LUX/CO/4, ¶¶ 13-14 (Sept. 14, 2022) (noting with concern that use of force standards “do not comply with the criteria of necessity and proportionality set out in international standards” and recommending the State to “bring its legislation on the use of force and firearms by law enforcement officials into line with the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other relevant standards”); UN HRC, *Concluding observations on Nigeria in the absence of its second periodic report*, U.N. Doc. CCPR/C/NGA/CO/, ¶ 27 (August 29, 2019) (recommending that State “revis[e] legislation and policies controlling the use of force by law enforcement officials, taking due account of the Committee’s general comment No. 36 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”).

⁴² For example, the 2021 CBP Use of Force Policy states that there is no duty to “meet force with equal or lesser force,” to “retreat to avoid the use of reasonable force,” or “wait for an attack before using reasonable force to stop a threat.” U.S. Customs and Border Protection, CBP Use of Force Policy 4 (2021), https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/cbp-use-of-force-policy_4500-002A.pdf (last visited Sept. 1, 2023) [hereinafter CBP Use of Force Policy]. *But see* UN HRC *General Comment No. 36*, *supra* note 37, at ¶ 13 (interpreting the ICCPR to require that lethal force for law enforcement purposes be “resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat”); U.N. Code of Conduct at art. 3 (establishing that “firearms should not be used except when . . . less extreme measures are not sufficient to restrain or apprehend the suspected offender”); U.N. Basic Principles on the Use of Force at art. 4 (indicating that “[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”).

⁴³ U.S. Department of Justice, GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, GENDER IDENTITY, AND DISABILITY, Footnote 5, part (c), https://www.justice.gov/d9/2023-05/Sec.%209%28e%29%20-%20Guidance%20for%20Federal%20LEAs%20on%20the%20Use%20of%20Protected%20Characteristics_FINAL%205.25.23_508.pdf (last visited Sept. 1, 2023). *But see* ICCPR at art. 2 (requiring that State Parties “undertake[] to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”).

⁴⁴ U.S. Customs and Border Protection, *CBP Directive 4510-029: Policy on the Use of Electronic Control Devices* (2009) (establishing that “[t]he use of less-lethal devices/techniques (or any other weapon) as deadly force (i.e., in a manner that could reasonably cause death or serious bodily injury) is not precluded if the use of deadly force would otherwise be objectively reasonable”). *But see* UN HRC *General Comment No. 36*, *supra* note 37, at ¶ 14 (observing that “less-lethal weapons must be employed only subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be or clearly are ineffective to address the threat”).

⁴⁵ Univ. Chi. L. Sch. Glob. Hum. Rts. Clinic, *Deadly Discretion: The Failure of Police Use of Force Policies to Meet Fundamental International Human Rights Law and Standards*, 6 (2020), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1014&context=ihr> [hereinafter, “*Deadly Discretion*”]. *But see* UN HRC *General Comment No. 36*, *supra* note 37, at ¶ 13 (observing that “the use of potentially lethal force for law enforcement purposes . . . cannot be used, for example, in order to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others”).

⁴⁶ IACHR, *Petitioners’ Merits Brief*, *supra* note 18, at 17 (citing *Petition*, Exh. 43 at 29).

⁴⁷ *Id.* at 19-20.

⁴⁸ Letter from 10 House and Senate Congressional Committees to U.S. Government Accountability Office (Jan. 24, 2022), <https://perma.cc/DJ5F-29KQ>; Letter from Carolyn B. Maloney, Chairperson, House Comm. on Oversight and Reform, and Benny G. Thompson, Chairperson, House Comm. on Homeland Sec. (Jan. 24, 2022), <https://perma.cc/6PTR-B8GC>. Additionally, the DHS Office of Civil Rights and Civil Liberties opened an investigation. Letter from Dana Salvano-Dunn, DHS Office of Civil Rights and Civil Liberties to Chris Magnus, Commissioner, U.S. Customs and Border Protection and Scott K. Falk, Chief Counsel, U.S. Customs and Border Protection (Feb. 4, 2022), <https://perma.cc/A3JJ-BHVU>.

⁴⁹ Memorandum from Chris Magnus, Commissioner U.S. Customs and Border Protection regarding Critical Incident Response Transition and Support (May 3, 2022), <https://perma.cc/F2CH-W6HP>. See also Joe Davidson, *Border Patrol Disband Units Accused of Covering Up Abuse*, *Washington Post* (May 12, 2022), <https://perma.cc/4MBA-HQY2>.

⁵⁰ Federal Officials Close the Investigation, *supra* note 26.

⁵¹ U.N. Human Rights Committee [UN HRC], *General Comment 31, The nature of the general legal obligation imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, ¶ 15 (May 26, 2004) (noting that Article 2(3) of the ICCPR obliges States parties to “ensure

that individuals . . . have accessible and effective remedies to vindicate [their] rights”) [hereinafter UN HRC, *General Comment 31*].

⁵² UN HRC, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2252/2013*, U.N. Doc. CCPR/C/122/D/2252/2013, at ¶ 9 (May 24, 2018). See also UNHR, *General comment No. 31*, *supra* note 51, ¶ 15 (noting that Article 2(3) of the ICCPR imposes a “general obligation to investigate allegations of violations . . . thoroughly and effectively through independent and impartial bodies”).

⁵³ UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”)*, HR/P/PT/8/Rev.1, at 79 (2004). See also UN HRC, *Concluding Observations on Hong Kong*, UN Doc. CCPR/C/79/Add. 57, ¶ 11 (Nov. 15, 1996) (noting that investigations of police were handled by police and emphasizing that investigations should be carried out by an independent mechanism); UN HRC, *Concluding Observations on Zambia*, UN Doc. CCPR/C/79/Add. 62, ¶ 12 (Apr. 3, 1996) (expressing concern that allegations of abuse by law enforcement are not “dully investigated by an independent body”); UN HRC, *Concluding Observations on Kenya*, UN Doc. CCPR/CO/83/KEN, ¶ 18 (Apr. 29, 2005) (underscoring that allegations of violations by the police must be “promptly and thoroughly investigated by an independent body” to ensure justice); UN HRC, *Concluding Observations on Slovenia*, UN Doc. CCPR/CO/84/SVN, ¶ 9 (Jul. 25, 2005) (urging the State party to perform “prompt, thorough, independent and impartial investigation into all allegations of violations of human rights”).

⁵⁴ U.N. Human Rights Committee [UN HRC], *Communication No. 1225/2003, Eshonov v. Uzbekistan*, U.N. Doc. CCPR/C/9/D/1225/2003, ¶ 9.2 (Aug. 18, 2010) [hereinafter UN HRC, *Eshonov v. Uzbekistan*].

⁵⁵ See UN HRC, *Communication No. 1422/2005, El Hassy v. Libyan Arab Jamahiriya*, U.N. Doc. CCPR/C/91/D/1422/2005, ¶ 8 (Oct. 24, 2007); UN HRC, *Communication No. 2054/2011, Ernazarov v. Kyrgyzstan*, U.N. Doc. CCPR/C/113/D/2054/2011, ¶ 9.6 (May 7, 2015).

⁵⁶ UN HRC, *General comment No. 36*, *supra* note 37, at ¶ 28 (stating that States Parties should “disclose relevant details about the investigation to the victim’s next of kin and make public its findings, conclusions and recommendations, unless absolutely prevented from doing so due to a compelling need to protect the public interest or the legal rights of directly affected individuals”).

⁵⁷ See *Id.* at ¶ 15. See also, UN HRC, *Eshonov v. Uzbekistan*, at ¶ 9.2.

⁵⁸ UN HRC, *General comment No. 36*, *supra* note 37, at ¶ 27.

⁵⁹ *Concluding Observations on the Fourth Periodic Report of the United States of America*, *supra* note 5, ¶ 11.

⁶⁰ *Mapping Police Violence*, *supra* note 15.

⁶¹ *Id.* (documenting that over 11,900 people were killed since 2013, the first year that data is available, and showing that over 1,000 people are killed every year; assuming that at least 1,000 were killed in 2010, 2011, and 2012, the total of people killed by police is approximately 15,000); See also *Deaths by Border Patrol: Track Death and Abuse by Border Patrol*, SOUTHERN BORDER COMMUNITIES COALITION, https://www.southernborder.org/deaths_by_border_patrol (last visited September 4, 2023, and showing 278 fatalities in encounters with federal border agents since 210).

⁶² *Id.* See also CBP Assaults and Use of Force Statistics, Force Incidents, <https://www.cbp.gov/newsroom/stats/assaults-use-force>.

⁶³ CBP’s stated goal is “[t]o serve as the premier law enforcement agency.” U.S. Customs and Border Protection, *Snapshot: A Summary of CBP Facts and Figures (2020)*, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/CBP-Snapshot-20200611-web.pdf> (last visited Sept. 1, 2023).

⁶⁴ Each year, the U.S. allocates more funding to CBP than the combined budgets of the FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Secret Service; and U.S. Marshals—plus the entire annual budget of the New York Police Department. Garrett M. Graff, *The Green Monster*, *POLITICO MAG.* (Nov./Dec. 2014), <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220> (last visited Sept. 1, 2023).

⁶⁵ See *Deaths by Border Patrol: Track Death and Abuse by Border Patrol*, SOUTHERN BORDER COMMUNITIES COALITION, https://www.southernborder.org/deaths_by_border_patrol (last visited Aug. 30, 2023).

⁶⁶ *Anastasio Hernandez Rojas and Family v. United States*, *Petition*, Inter. Am. Comm. H.R., 8 (Mar. 29, 2016), <https://drive.google.com/drive/folders/1kPv6QJfgpYLLLEIFU0AVQ7srFSwoX72> (last visited Sept. 1, 2023).

⁶⁷ UN HRC, *General comment No. 31*, *supra* note 51, at ¶ 13.

⁶⁸ *Id.* at ¶ 16. See also U.N. Human Rights Committee [UN HRC], *Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, ¶ 2 (2016), U.N. Doc. CCPR/C/158 (Nov. 30, 2016).

⁶⁹ U.N. Human Rights Committee [UN HRC], *Communication No. 2018/2010, Kedar Chaulagain v. Nepal*; U.N. Doc. CCPR/C/112/D/2018/2010, ¶ 13 (Jan. 8, 2015); U.N. Human Rights Committee [UN HRC], *Communication No. 1756/2008, Turdukan Zhumbaeva v. Kyrgyzstan*, U.N. Doc. CCPR/C/102/D/1756/2008, ¶ 10 (Aug. 24, 2011) (stating that article 2, paragraph 3 (a) obligates States to provide an effective remedy, that the remedy in the case of a law enforcement killing “should include an impartial, effective and thorough investigation into the circumstances of the . . . death, prosecution of those responsible, and full reparation including appropriate compensation”, and that “the State party is also under an obligation to prevent similar violations in the future”).

⁷⁰ University of Illinois Chicago, *Law Enforcement Epidemiology Project*, *supra* note 13.

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