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**REPORT No. 60/25**  
**CASE 14.042**  
**MERITS REPORT (PUBLICATION)**

**ANASTASIO HERNÁNDEZ ROJAS AND FAMILY**  
**UNITED STATES**

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## I. INTRODUCTION<sup>1</sup>

1. On March 30, 2016, the Inter-American Commission on Human Rights (the "Inter-American Commission", "Commission" or "IACHR") received a petition filed by the International Human Rights Clinic of the University of California and Alliance San Diego (the "Applicants") on behalf of Anastasio Hernández Rojas ("Mr. Rojas" or "alleged victim") and his family ("alleged victims"), alleging the international responsibility of the United States of America (the "State" or "United States") for the violation of his rights.

2. The Commission notified the parties of its admissibility report and made itself available to reach an amicable settlement. The parties were given the periods provided for in the IACHR Rules to submit additional observations on the merits of the case. All information received by the Commission was duly transmitted to the parties.

## II. ARGUMENTS OF THE PARTIES

### A. Applicants

3. The applicants allege that on 28 May 2010, Customs and Border Protection ("CBP") agents detained Anastasio Hernández Rojas as he attempted to enter the United States with his brother. He claims that Mr. Hernandez was taken to a detention centre where he was kicked by an officer, as a result of which he injured a previously fractured ankle.

4. According to the applicants, the CBP agents denied Mr. Hernandez medical attention. The applicants claim that, as a result, he was taken to an area for deportation to the State of Mexico, where CBP agents beat him, kicked him, dragged him, tasered him, tied his hands and feet, and knelt on his neck and body even though he was unarmed and injured. He points out that his death was classified as a homicide by the specialists who performed the autopsy.

5. The applicants indicate that federal agents failed to comply with Inter-American standards on the use of force at three points. First, the applicants claim that they applied illegal, unnecessary and disproportionate force against Anastasio Hernández Rojas. Secondly, they claim that the State failed in its obligation to prevent the excessive use of force. The applicants note that US legislation and CBP policy did not adequately regulate the use of force, including lethal force, or provide specific and adequate guidance or training on the use of tasers.

6. Third, they allege that the state failed to respond adequately or effectively to the unlawful use of force. Furthermore, the applicants state that the State agents, acting in their official capacity, tortured Mr. Anastasio Hernández Rojas when he was in detention, unarmed, and did not represent an imminent threat to the life or safety of the agents. On this point, the applicants further allege that the State did not comply with its obligation to investigate and punish the federal agents who tortured Mr. Anastasio Hernández Rojas and assert that U.S. federal law does not criminalize torture committed within the United States and, therefore, the federal investigation into the murder of Mr. Hernández did not include the crime of torture.

7. The State argues that the proceedings lacked fairness and independence. Specifically, he notes that the US Constitution requires federal prosecutors to convene a federal grand jury to indict a person for a federal crime. He claims that Grand Jury proceedings are conducted through secret investigations run by the Prosecutor's Office, which rarely indicts officers for acts of violence. He claims that, during the grand jury investigation into Mr. Hernandez's death, which lasted approximately three years, his family members were neither able to participate nor were they informed about the evidence presented to the grand jury, how it was evaluated, and the motivations for the decisions made.

8. He contends that based on a biased and incomplete police investigation and despite video and audio evidence of the beating, prosecutors closed the criminal investigation on 6 November 2015 without charging the officers with homicide (murder or manslaughter), violations of civil rights or obstruction of justice.

9. The applicants allege that the State has failed to provide full reparation. The applicants argue that reparation must be adequate, effective, prompt and proportionate to the gravity of the violations and the harm

<sup>1</sup> Pursuant to Article 17.3 of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, resident in the United States, did not participate in the discussion or decision of this report.

suffered. As a consequence of the foregoing, the applicants allege that the State is responsible for the violation of articles I, II, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man.

## **B. State**

10. The State argues that the Commission should review its decision on the admissibility of the case at this stage. In this regard, the petition is inadmissible because the conciliation agreement entered into by the parties constitutes supervening information pursuant to Article 34(c) of the IACHR's code. Specifically, it notes that the aforementioned article provides that the Commission shall declare any petition or case inadmissible when inadmissibility is the result of supervening information or evidence submitted to it.

11. The State points out that the settlement agreement is an adequate and effective remedy, voluntarily consensual, which renders inadmissible the claims made by the applicants. It also claims that the said agreement renders the applicants' claims 'manifestly groundless'. It indicates that the existence of friendly settlement mechanisms in human rights bodies around the world suggests that such agreements are adequate and effective remedies, specifically in cases where human rights violations are alleged.

12. In addition, it notes that through the settlement, the applicants explicitly waived "any claim of any kind" arising "directly or indirectly from the acts or omissions that gave rise" to the internally filed lawsuit. It points out that, as a consequence, what is important in determining the preclusive effect of the settlement agreement is not the type of claim but the underlying facts. It submits that, in this case, the domestic and international claims involve the same set of facts.

13. Moreover, the State notes that it conducted a thorough criminal investigation into the death of Mr. Hernández Rojas that began when CBP officers reported the incident to the San Diego Police Department (SDPD) on 29 May 2010. He submits that the evidence in the investigation indicated that Mr. Hernández Rojas did not comply with orders and physically assaulted CBP officers on 28 May 2010. He states that after conducting a thorough review, experienced federal prosecutors determined that the existing evidence was insufficient to bring federal civil rights charges or to prove beyond reasonable doubt that CBP personnel violated federal manslaughter laws.

14. Finally, the State requests that should the Commission conclude that the case is admissible, it considers the measures it has adopted regarding the use of force when formulating recommendations.

## **III. THE FACTS**

### **A. Context**

15. Over the past five decades, the United States has established itself as the main destination country for people in the context of human mobility. By 2020, the country had 51 million migrants, mainly from Latin America and Asia, in particular from countries such as Mexico, India, and China.<sup>2</sup> Mexican-born persons in a situation of human mobility continue to represent the largest population of international migrants in the United States of America.<sup>3</sup>

16. In this context, this Commission<sup>4</sup>, as well as the Committee on the Elimination of Racial Discrimination<sup>5</sup> and the Special Rapporteur on the human rights of migrants,<sup>6</sup> have warned about the formulation and implementation of restrictive migration policies by the State. The constant threat to the rights of persons in a situation of human mobility derived from the above restrictive framework is reinforced and aggravated if one takes into account the context of structural discrimination reflected in the state and the proven excessive use of force by police officers, as will be developed below.

<sup>2</sup> International Organization for Migration. [World Migration Report](#), para. 202.

<sup>3</sup> International Organization for Migration. [World Migration Report](#), 202.

<sup>4</sup> IACHR. Human mobility and protection obligations. Towards a sub-regional perspective. OEA/Ser.L/V/II. Doc. 194. July 21, 2023, para. 110.

<sup>5</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined tenth to twelfth reports of the United States of America, CERD/C/USA/CO/10-12, September 21, 2022, para. 51(c)

<sup>6</sup> Human Rights Council. Report of the Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante. Mission to the United States of America. A/HRC/7/12/Add(2) March 5, 2008, para. 24; Human Rights Council. Report of the Special Rapporteur on the human rights of migrants, Mr. Felipe González Morales. Report on ways to address the human rights impact of pushbacks of migrants on land and at sea. A/HRC/47/30. May 12, 2021.

17. On the one hand, this Commission has already referred to the context of structural discrimination in the United States of America, which (i) extends, among others, to people of African descent and migrants and (ii) is reflected both in high poverty indicators and in the configuration of stereotypes and prejudices that define the relationship between the State and the members of these social groups.<sup>7</sup>

18. As the Committee on the Elimination of Racial Discrimination has argued, this context has generated a differentiated impact on migrants.<sup>8</sup> In particular, it has documented the incorporation of an increasingly militarised approach to immigration law enforcement, leading to excessive and lethal use of force by CBP personnel; increased use of racial profiling by local law enforcement agencies to determine immigration status and enforce immigration laws; the mandatory detention of immigrants for prolonged periods; and the deportation of undocumented immigrants without adequate access to justice.<sup>9</sup>

19. On the other hand, many human rights bodies have warned about the excessive use of force by police officers in the United States. The UN Human Rights Committee has raised concerns about the excessive use of force in some states and called for reforms.<sup>10</sup> For its part, the Committee Against Torture has expressed concern about police brutality and excessive use of force against African-Americans and undocumented immigrants.<sup>11</sup> In turn, the UN Working Group of Experts on People of African Descent has expressed concern about alarming levels of police brutality and excessive use of force by police officers.<sup>12</sup> Finally, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has noted that "at times, the police exercise higher levels of violence against certain groups of people, based on institutional racism".<sup>13</sup> All of these positions, in turn, have been taken up in reports issued by this Commission.<sup>14</sup>

20. In this context, the UN Special Rapporteur on Torture<sup>15</sup> and the UN Committee Against Torture<sup>16</sup> have expressed concern about the existence of police practices that may involve cruel, inhuman, degrading, or life-threatening treatment such as: (i) positional asphyxiation, and (ii) the use of taser-type weapon devices.

21. This *modus operandi* would continue to the present, as can be inferred from the Press Release of the UN Group of Independent Experts on human rights, issued on February 10, 2023.<sup>17</sup> It warns of police officers' use of tasers as a routine protocol to incapacitate those who do not follow orders and who often do not appear to pose a severe danger to themselves or others.<sup>18</sup>

22. As this Commission has indicated, this context of disproportionate use of force has particularly affected migrants, including Latinos.<sup>19</sup> Indeed, racial profiling tactics have been documented on the basis of national origin or perceived national origin and mother tongue.<sup>20</sup>

23. In this regard, the Human Rights Committee, in its Concluding Observations on the fifth periodic report of the United States of America, expressed particular concern about: "[the] brutality and the excessive and deadly use of force by law enforcement officials, including Customs and Border Protection officers, which has a disparate

<sup>7</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, paras. 47 and 95.

<sup>8</sup> Committee on the Elimination of Racial Discrimination. Concluding observations on the combined seventh to ninth periodic reports of the United States of America. CERD/C/USA/CO/7-9. September 25, 2014, paras. 15, 17, and 18.

<sup>9</sup> Committee on the Elimination of Racial Discrimination. Concluding observations on the combined seventh to ninth periodic reports of the United States of America. CERD/C/USA/CO/7-9. September 25, 2014, paras. 15, 17, and 18.

<sup>10</sup> Human Rights Committee. Concluding Observations 2014, April 23, 2014, para. 11.

<sup>11</sup> CERD, Concluding Observations 2014, September 25, 2014, para. 17. On border violence and the use of force in cross-border areas; Written statement submitted by Advocates for Human Rights, a non-governmental organization in special consultative status. Recent events highlight need to dismantle systemic racism in the United States of America. July 13, 2020. A/HRC/44/NGO/75.

<sup>12</sup> UN., Working Group on People of African Descent. Report on mission to the U.S., 18 August 2016, paras. 20-26. 195.

<sup>13</sup> UN., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Study on police oversight mechanisms, A/HRC/14/2/Ad. 8, May 28, 2010, para. 10.

<sup>14</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, paras. 47 and 95.

<sup>15</sup> Nigel S. Rodley (Special Rapporteur on Torture and cruel, inhuman or degrading treatment or punishment), Summary of communications transmitted to Governments and replies received, para. 786, U.N. Doc. E/CN.4/1996/35/Add.1 (Jan. 16, 1996).

<sup>16</sup> Press Release, Committee against Torture, Committee against Torture Concludes Thirty-Ninth Session (Nov. 23, 2007); Concluding Observations of the Committee Against Torture: United States of America, para. 27.

<sup>17</sup> United States: UN rights experts gravely concerned over 'brutal deaths' at hands of police. February 10, 2023.

<sup>18</sup> United States: UN rights experts gravely concerned over 'brutal deaths' at hands of police. February 10, 2023.

<sup>19</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, para. 81.

<sup>20</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, para. 81.



impact on people of African descent, members of Indigenous Peoples, **persons of Hispanic/Latino origin, migrants and asylum-seekers.**"<sup>21</sup> (Emphasis added to the original)

24. This context is made even more complex by the high incidence of impunity for police violence.<sup>22</sup> As noted in the Report on African Descent, Police Violence and Human Rights in the United States, Thousands of Police-Related Murders between 2005 and 2015, only 54 police officers were ever charged with a crime, and most were eventually released or found innocent<sup>23</sup>.

## B. Relevant regulatory framework

25. The United States has a varied jurisprudential and normative development concerning the use of force. In particular, two landmark cases decided by the Supreme Court of Justice have underpinned much of the legislation on the subject. In 1985, in the case of *Tennessee v. Garner*, the court concluded that officers "may use deadly force to prevent the escape of a fleeing suspect only if the officer has a good-faith belief that the suspect poses a significant threat of death or serious physical injury to the officer or others."<sup>24</sup>

26. In 1989, the same Court, in the case of *Graham v. Connor*, indicated that to determine whether the use of force was objectively reasonable, one must thoroughly consider "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest."<sup>25</sup> In this case, the Court did not distinguish between the use of lethal and non-lethal force, nor did it refer to the requirements of necessity or proportionality as guiding and cross-cutting parameters for action by State agents.<sup>26</sup>

27. Concerning the legal framework, the United States has a number of Regulatory Provisions on the use of force, the scope and content of which vary from state to state. At least 43 states have defined minimum requirements –albeit tangentially– for the deployment of force.<sup>27</sup>

28. Of these, on the one hand, 41 states have expressly regulated the use of lethal force and made it conditional, primarily, on the commission of a serious violent crime or the existence of a threat to human life.<sup>28</sup> On the other hand, at least 40 states have regulated the deployment of non-lethal force and enabled it, among other reasons, for crowd control, to prevent the escape of a person or harm to the officer or third parties.<sup>29</sup>

<sup>21</sup> Human Rights Committee. Concluding observations on the fifth periodic report of the United States of America. December 7, 2023. CCPR/C/USA/CO/5, para. 36.

<sup>22</sup> Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality Report of the United Nations High Commissioner for Human Rights. August 2, 2022. A/HRC/51/53, para. 19.

<sup>23</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, paras. 81 and 105.

<sup>24</sup> *Tennessee v. Garner*. 471 U.S. 1, 3 (1985).

<sup>25</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>26</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, para. 211.

<sup>27</sup> Alabama (§ 13A-3-27); Alaska (§ 11.81.370 § 12.25.070); Arizona (§ 13-3881 § 13-409 § 13-410); Arkansas (§ 5-2-610); California (Gov't Code § 7286.5 Penal Code § 196 Penal Code § 835a Penal Code § 843); Colorado (§ 16-3-101 § 18-1-707 § 24-31-905); Connecticut (§ 53a-22); Delaware (11 Del. C. § 467 11 Del. C. § 607A); District of Columbia (§ 5-125.01 § 5-125.02 § 5-125.03 § 5-331.16); Florida (§ 776.05 § 776.06 § 776.07 § 870.05 § 901.20); Georgia (§ 15-12-71 § 16-3-21 § 17-4-20); Hawaii (§ 703-307 § 803-7); Idaho (§ 18-4011 § 19-602 § 19-610); Illinois (720 ILCS 5/7-5 720 ILCS 5/7-5.5 720 ILCS 5/7-9); Indiana (§ 35-41-3-3); Iowa (§ 704.8 § 804.13 § 804.8); Kansas (§ 21-5227); Kentucky (§ 431.025 § 503.090); Maine (17-A M.R.S. § 101 17-A M.R.S. § 107); Michigan (§ 750.525); Minnesota (§ 609.06 § 609.066 § 629.32 § 629.33); Mississippi (§ 97-3-15 Missouri § 544.190 § 563.046 § 563.056); Montana (§ 45-3-106 Nebraska § 28-1412); Nevada (§ 171.122 § 171.1455 § 200.140 NV AB 3 (32nd 2020 special session); New Hampshire (§ 594:4 § 627:5); New Jersey (§ 2A:18-58 § 2C:3-7 § 2C:3-9); New Mexico (§ 30-2-6); New York Penal Law (§ 121.13-a Penal Law § 35.30); North Carolina (§ 15A-401); North Dakota (§ 12.1-05-07 § 29-06-10); Ohio (§ 2917.05); Oklahoma (21 Okl. St. § 732 Oregon § 133.605 § 161.239 § 161.245 § 161.265 HB 4208 (2020 first special session) HB 4301 (2020 second special session); Pennsylvania (18 Pa.C.S. § 508); Rhode Island (§ 12-7-8 § 12-7-9); South Dakota (§ 22-16-32 § 22-18-2 § 23A-3-5); Tennessee (§ 38-3-121 § 38-8-113 § 39-11-620 § 40-7-108); Texas Penal Code (§ 9.51 Penal Code § 9.52); Utah (§ 76-2-403 § 76-2-404 § 77-7-7); Vermont (13 V.S.A § 1032 SB 119 (2020); Virginia (§ 18.2-411); Washington (§ 10.31.050 § 9A.16.020 § 9A.16.040). Cfr. NCL. Use of force standards. Database.

<sup>28</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington. Cfr. NCL. Use of force standards. Database.

<sup>29</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Missouri, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington. Cfr. NCL. Use of force standards. Database.

29. The Commission notes that: (i) only in one state is the proportionality requirement expressly invoked<sup>30</sup>; (ii) only in three states are officers urged to seek alternatives prior to the deployment of force<sup>31</sup>; (iii) only three states generally require State agents to warn of the imminent use of deadly force<sup>32</sup>, and, in nine states, such an obligation arises only if "feasible"<sup>33</sup>; (iv) 12 states expressly regulate the technique of choking<sup>34</sup>, and (v) at least eight states maintain clauses making the use of force conditional on the existence of a "reasonable belief".<sup>35</sup>

30. In the state of California, the use of force has been regulated through the *Gov't Code*<sup>36</sup> and the *Penal Code*.<sup>37</sup> These rules, first, empower officers to use "all necessary means" to advance an arrest in case the person attempts to flee or resists arrest.<sup>38</sup> Second, they define the use of lethal force as "the use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm."<sup>39</sup>

31. Third, it justifies the deployment of force "[...] when the officer reasonably believes that such force is necessary: to defend against an imminent threat of death or serious bodily injury to the officer or to another person and to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended."<sup>40</sup>

32. Fourth, they provide that "where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used". However, it relieves officers of this duty in cases where "the officer has objectively reasonable grounds to believe the person is aware of those facts".<sup>41</sup> Finally, the state's regulatory framework does not expressly refer to the concept of proportionality.

33. This Commission notes that, at the time of the facts, the 2004 CBP Interim Use of Force and Firearms Guidelines ("2004 CBP Policy")<sup>42</sup>, the 2004 DHS Policy on the Use of Lethal Force ("2004 DHS Policy on Lethal Force")<sup>43</sup>, and the 2009 CBP Directive No. 4510-029 on the Use of Electronic Control Devices<sup>44</sup> were in force. The Commission notes that none of these guidelines defined the circumstances in which force could be used, did not limit the number of times the taser could be used, or defined precisely the exceptional circumstances in which it could be used.

### C. Information available on Mr. Anastasio Hernández Rojas

34. According to the information provided by the applicants, not contested by the State, Anastasio Hernández Rojas was born on May 2, 1968, in San Luis Potosí, Mexico.<sup>45</sup> He was the third child of Mr. Porfirio Hernández Rojas and Mrs. María de la Luz Rojas Olivo, in a family of nine siblings.<sup>46</sup> At the age of fifteen, he moved to San Diego, California, in order to find employment and provide financial support for his family.<sup>47</sup>

35. At the age of twenty-one, he met María de Jesús Puga Morán.<sup>48</sup> The couple had five children, all born in San Diego: Yeimi Judith (born March 20, 1990), Daisy Alejandra (born April 16, 1992), Fabian Anastasio (born

<sup>30</sup> Vermont. Cfr, NCL. Use of force standards. Database.

<sup>31</sup> Colorado, Connecticut, Georgia, Maine, New Hampshire, New Jersey, Oregon, Washington. NCL. Use of force standards. Database.

<sup>32</sup> Colorado, Oregon, Tennessee. Cfr, NCL. Use of force standards. Database.

<sup>33</sup> California, Connecticut, Florida, Indiana, Nevada, New Mexico, Utah, Washington. Cfr, NCL. Use of force standards. Database.

<sup>34</sup> Colorado, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Minnesota, Nevada, Hampshire, New York, Tennessee. Cfr, NCL. Use of force standards. Database.

<sup>35</sup> Colorado, Connecticut, Georgia, Maine, New Hampshire, New Jersey, Oregon, Washington. Cfr, NCL. Use of force standards. Database.

<sup>36</sup> Gov't Code § 7286.5

<sup>37</sup> Penal Code § 196, § 835a, § 843.

<sup>38</sup> Penal Code § 843.

<sup>39</sup> Penal Code § 835a.

<sup>40</sup> Penal Code § 835a.

<sup>41</sup> Penal Code § 835a.

<sup>42</sup> Annex 1. 2004 Interim CBP Use of Force and Firearms Guidelines. P. 185 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>43</sup> Annex 2. 2004 Policy on the Use of Deadly Force. P. 242 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>44</sup> Annex 3. CBP Directive 4510-029 P. 246 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>45</sup> Communication of March 30, 2016. Page 5.

<sup>46</sup> Communication of March 30, 2016. Page 5.

<sup>47</sup> Communication of March 30, 2016. Page 5.

<sup>48</sup> Communication of March 30, 2016. Page 5. Annex to the applicants' submission of March 30, 2016.



September 19, 1998), and twins Daniel and Daniela (born March 29, 2006).<sup>49</sup> Anastasio Hernández Rojas supported his family economically by working in the construction and demolition sectors.<sup>50</sup>

## D. Facts of the case

### 1. Arrest on May 10, 2010, and deportation

36. On 10 May 2010, Mr. Anastasio Hernández Rojas was arrested for allegedly attempting to shoplift food and beverages from a supermarket in San Diego, California (United States of America).<sup>51</sup> In the arrest report, it was recorded that: (i) the use of narcotics by Mr. Hernández was not suspected<sup>52</sup>; (ii) the alleged Victim had taken such articles for the subsistence of his family<sup>53</sup>, and (iii) there is no record that, in the deposition made before the police officers –in which he incriminated himself–, he had received legal advice.<sup>54</sup>

37. Following the above procedures, Mr. Hernandez was transported to Police Headquarters for prosecution and booked into the San Diego County Jail, California.<sup>55</sup> Two weeks later, Mr. Hernandez was deported from the United States to Mexico.<sup>56</sup>

### 2. Arrest on May 28, 2010, and transfer to Chula Vista Station

38. On May 28, 2010, following their irregular entry into the United States of America, Mr. Antastasio Hernández Rojas and his brother, Mr. Pedro Hernández Rojas, were arrested by a police officer at 4 p.m. in San Diego, California.<sup>57</sup> In this context, the Hernández brothers were escorted to the vehicle of the officer in charge of the operation, who, in turn, requested reinforcements of two more officers, as he considered Mr. Anastasio Hernández Rojas's behaviour strange. In particular, he indicated that, in contrast to the other migrants, Mr. Anastasio Hernández Rojas was "talking a lot".<sup>58</sup>

39. The Hernández were subsequently transferred to the transport unit bound for the Chula Vista Border Patrol Station<sup>59</sup> –where they arrived, according to the depositions, between 7:30 and 8:00 pm<sup>60</sup>–. Upon arrival, they were met by two Border Patrol agents<sup>61</sup>, who confirmed that: (i) the brothers were not carrying weapons or contraband;<sup>62</sup> and (ii) Mr. Anastasio Hernández Rojas was only carrying a bottle of water.<sup>63</sup>

<sup>49</sup>Communication of March 30, 2016. Page 5. Annex to the applicants' submission of March 30, 2016.

<sup>50</sup>Communication of March 30, 2016. Page 5. Annex to the applicants' submission of March 30, 2016.

<sup>51</sup> Annex 4. Arrest report. May 10, 2010. Page 1. Annex to the applicants' submission of March 30, 2016.

<sup>52</sup> Annex 4. Arrest report. May 10, 2010. Page 1. Annex to the applicants' submission of March 30, 2016.

<sup>53</sup> Annex 4. Arrest report. May 10, 2010. Page 5. Annex to the applicants' submission of March 30, 2016.

<sup>54</sup> Annex 4. Arrest report. May 10, 2010. Page 1. Annex to the applicants' submission of March 30, 2016.

<sup>55</sup> Annex 4. Arrest report. May 10, 2010. Page 4. Annex to the applicants' submission of March 30, 2016.

<sup>56</sup> Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016; Annex 6. Declaration of border patrol agent. Nicholas Austin. Pages 78-79. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>57</sup> Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016; Annex 6. Declaration of border patrol agent. Nicholas Austin. Pages 78-79. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>58</sup> Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016; Annex 6. Declaration of border patrol agent. Nicholas Austin. Pages 78-79. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>59</sup> Annex 6. Declaration of border patrol agent. Nicholas Austin. Pages 78-79. April 18, 2013. Annex to the applicants' submission of March 30, 2016; Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>60</sup> Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016.

<sup>61</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 81-83. Annex to the applicants' submission of March 30, 2016; Annex 9. Declaration of Agent V315. December 19, 2013. Pages 81-87. Annex to the applicants' submission of March 30, 2016.

<sup>62</sup> Annex 9. Declaration of Agent V315. December 19, 2013. Pages 81-87. Annex to the applicants' submission of March 30, 2016; Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>63</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' communication of March 30, 2016.

40. In this context, Border Patrol Agent V325 ordered Anastasio to put the water he was carrying in a bin.<sup>64</sup> In this regard, this Commission takes note of the existence of two different approaches to the subsequent facts. On the one hand, Officers V325 and V315 noted that Mr. Hernandez initially refused to throw away his water bottle and, subsequently, he complied, slowly emptying its contents. For this reason, the officer threw the bottle in the trash and sent the alleged victim to the interview room –where he proceeded with the five-minute search and interview of Mr. Hernández–<sup>65</sup>.

41. The two previously identified officers noted that, during the search, Mr. Anastasio resisted and refrained from standing still.<sup>66</sup> Under this framework, and according to their depositions, agents V315 and V325 handcuffed Mr. Hernández and held his legs open to perform the procedure.<sup>67</sup> Following this process, Mr. Hernández stated that he felt pain in one of his ankles<sup>68</sup> and officer V325 indicated that he had explained to the alleged victim that: (i) he had not been beaten; (ii) the officers had only opened his legs for the purposes of the search; and (iii) if he required medical attention –an option that, according to the officers, was rejected–.<sup>69</sup> In this context, a police officer checked Mr. Hernandez's ankle and stated that no anomaly was evident.<sup>70</sup>

42. In any case, this Commission notes that, according to the officers' testimonies, only by visual comparison of the two ankles was it concluded that "the complaints of Anastasio Hernandez were not of such a nature that he reasonably required medical attention".<sup>71</sup> In turn, the Commission notes that officials justified their failure to provide such care on the grounds that, in the past, "detainees falsely exaggerated the need for medical care in order to delay the process".<sup>72</sup>

43. On the other hand, Mr. Pedro Hernández, the victim's brother, argued that when Mr. Anastasio emptied the water from the jug into the bin, the officer in charge got angry, snatched the jug from his hands, pushed him against a wall and kicked him in his foot.<sup>73</sup> Afterwards, according to Mr. Pedro, Mr. Anastasio Hernández Rojas was taken to an interview room.<sup>74</sup>

44. In this context, as indicated by another officer, Mr. Anastasio Hernández Rojas complained persistently about his ankle pain and asked for medical attention.<sup>75</sup> However, Supervisor V61 states that he does not recall being informed that Mr. Anastasio Hernández Rojas had complained of mistreatment or sought medical attention<sup>76</sup> – although he acknowledged having received information about his "leg" pain.<sup>77</sup>

45. In any case, all the versions coincide in pointing out that, subsequently: (i) Mr. Anastasio Hernández Rojas was taken to the prosecution area<sup>78</sup>; (ii) he was able to fill out the voluntary return form<sup>79</sup>; (iii) Officer V315

<sup>64</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Communication of March 30, 2016. Page 6. Annex to the applicants' submission of March 30, 2016.

<sup>65</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>66</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>67</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>68</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>69</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>70</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 10. Declaration of border patrol agent Sandra Cárdenas. May 16, 2013. Pages 118-120. Annex to the applicants' submission of March 30, 2016.

<sup>71</sup> Annex 10. Declaration of border patrol agent Sandra Cárdenas. May 16, 2013. Pages 118-120. Annex to the applicants' submission of March 30, 2016.

<sup>72</sup> Annex 11. Declaration of border patrol supervisor V61. Pages 122-125. Annex to the applicants' submission of March 30, 2016.

<sup>73</sup> Annex 12. Witness Statement. Pedro Hernandez. May 29, 2010. Pages 285-281. Annex to the applicants' submission of March 30, 2016.

<sup>74</sup> Annex 12. Witness Statement. Pedro Hernandez. May 29, 2010. Pages 285-281. Annex to the applicants' submission of March 30, 2016.

<sup>75</sup> Annex 13. Witness Statement. Robinson Ramirez. May 29, 2010. Page 534. Annex to the applicants' submission of March 30, 2016.

<sup>76</sup> Annex 14. Videotaped deposition of Ishmael P. Finn. January 10, 2013. Page 554. Annex to the applicants' submission of March 30, 2016.

<sup>77</sup> Annex 14. Videotaped deposition of Ishmael P. Finn. January 10, 2013. Page 553. Annex to the applicants' submission of March 30, 2016.

<sup>78</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' communication of March 30, 2016.

<sup>79</sup> Annex 15. Notification of rights and application for resolution. May 28, 2010. Page 113. Annex to the applicants' submission of March 30, 2016.

contacted the supervisor identified under code V61 –who spoke with the alleged Victim in Spanish<sup>80</sup> and listened to his complaints about his ankle condition<sup>81</sup>– and (iv) the latter officer requested the expeditious processing of the deportation of Mr. Anastasio Hernández Rojas to Mexico, leaving aside the possible activation of a voluntary return, considering that the alleged Victim "represented a potential danger to the safety of others".<sup>82</sup>

### **3. Transfer to the San Ysidro Port of Entry, deployment of force, and incremental intervention of Police Force members**

46. Following the order issued by Officer V61, and according to the depositions collected internally, Agents V315 and V325 moved Mr. Hernandez in a vehicle to the San Ysidro Port of Entry –a journey of approximately four minutes<sup>83</sup>– in order to advance his immediate removal to the State of Mexico.<sup>84</sup> The officers kept Mr. Anastasio Hernández Rojas handcuffed until he entered the area known as Whiskey-2<sup>85</sup>, also known as the "deportation gate".

47. This Commission takes note of the discrepant testimonies about Mr. Hernandez's reaction after the officers removed his handcuffs in the Whiskey-2 area. On the one hand, Agent V325 stated that, after these events, Mr. Hernandez "went crazy", started moving like "a tornado", and pushed and grabbed the two officers present.<sup>86</sup> However, he indicated that the alleged victim had not beaten them.<sup>87</sup> In turn, agent V315 indicated that Mr. Anastasio Hernández Rojas "began to tremble and go crazy". However, he indicated that Mr. Anastasio Hernández Rojas did not try to knock him down.<sup>88</sup> This position was supported by Officer L, who stated that he had not seen Mr. Hernandez hitting or assaulting the officers.<sup>89</sup>

48. On the other hand, two Immigration and Customs Enforcement ("ICE") agents, identified as 7G2186 and 2054 –who subsequently intervened with an Extendable Steel Baton– stated that Mr. Anastasio Hernández Rojas was "throwing punches" and "fists" at the officers.<sup>90</sup>

49. In this context, and after having removed Mr. Hernández's handcuffs, the aforementioned agents 7G2186 and 2054 intervened in the incident, tried to knock him down, put him back in handcuffs and beat him with an extendable steel baton.<sup>91</sup> Although the police officers state that Mr. Hernández received two to four blows<sup>92</sup> to the

<sup>80</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 16. Declaration of border patrol agent Jose Galván. May 17, 2013. Pages 108-111. Annex to the applicants' submission of March 30, 2016.

<sup>81</sup> Communication of March 30, 2016. Page 6, Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 11. Declaration of border patrol supervisor V61. Pages 122-125. Annex to the applicants' submission of March 30, 2016.

<sup>82</sup> Communication of March 30, 2016. Page 6. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 11. Declaration of border patrol supervisor V61. Pages 122-125. Annex to the applicants' submission of March 30, 2016.

<sup>83</sup> Annex 8. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>84</sup> Annex 7. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016.

<sup>85</sup> Annex 7. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Communication of March 30, 2016. Page 7

<sup>86</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>87</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>88</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>89</sup> Annex 17. Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016.

<sup>90</sup> Annex 18. Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016. Annex, 19. Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 610. Annex to the applicants' submission of March 30, 2016.

<sup>91</sup> Annex 18. Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016.

<sup>92</sup> Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 18. Deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016.

fibula<sup>93</sup>, the alleged victims' representation indicates that the injuries were caused to the chest and diaphragm<sup>94</sup> – bearing in mind that the autopsy carried out by Dr. Pietruszka revealed fractures to Mr. Hernández's ribs.<sup>95</sup>

50. However, both parties agree that one of the ICE agents carrying the baton also unintentionally struck Agents 325 and 315, which is why both officers stopped using the baton.<sup>96</sup> However, as is evident from the officers' depositions, the two officers continued to physically intervene at the scene.<sup>97</sup>

51. As recorded in the depositions, the four officers present knocked Mr. Hernandez down and placed him face down.<sup>98</sup> After this, one more Cross-Border Police officer intervened<sup>99</sup> and, being five officers, they placed Mr. Anastasio Hernández Rojas' hands behind his back and handcuffed him again.<sup>100</sup> It is established that Mr Hernández started to ask for help in Spanish.<sup>101</sup>

52. Officer V325 reported the incident with Mr. Hernandez to Border Patrol Supervisor V61, who ordered that the alleged victim be transported back so that the officers could file charges against him.<sup>102</sup> According to depositions provided by police officers, two more officers joined in –a total of seven officers– in order to get Mr. Hernández into a vehicle.<sup>103</sup> However, given that he resisted, they gave up and placed him back on the floor, face down.<sup>104</sup> According to witnesses, police officers knelt on the back of Anastasio's neck and lower back while others repeatedly punched, kicked and stomped on his head and body.<sup>105</sup>

53. Police officers indicate that Mr. Hernández began to bang his head against the pavement, which is why the officer identified with the code V325 located Mr. Anastasio Hernández Rojas' jacket on his upper body.<sup>106</sup> The two officers V315 and V325 agree that, after these events, they moved away from Mr. Hernández and, as a result, five officers remained with him.<sup>107</sup>

<sup>93</sup> Annex 7. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 18. Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016. Annex 19. Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 604. Annex to the applicants' submission of March 30, 2016.

<sup>94</sup> Communication of March 30, 2016. Page 7.

<sup>95</sup> Annex 20. Videotaped deposition of Marvin Pietruszka. M.D. J.D., March 21, 2013. Pages 173-193. Annex to the applicants' submission of March 30, 2016.

<sup>96</sup> Communication of March 30, 2016. Page 7. Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>97</sup> Communication of March 30, 2016. Page 7. Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>98</sup> Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 18. Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 582. Annex to the applicants' submission of March 30, 2016.

<sup>99</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>100</sup> Annex 5. Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>101</sup> Annex 18. Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 583. Annex to the applicants' submission of March 30, 2016. Annex 19. Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 610. Annex to the applicants' submission of March 30, 2016.

<sup>102</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>103</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. .

<sup>104</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>105</sup> Annex 21. Videotaped deposition of Sergio Gonzalez Gomez. January 10, 2013. Page 743. Annex to the applicants' submission of March 30, 2016.

<sup>106</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>107</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.



#### 4. Death of Mr. Anastasio Hernández Rojas

54. It is evident from the documents in the international file that, after the above-mentioned events, two vehicles arrived at the scene, from which a police officer known as Jerry Vales –a customs and border protection officer– got out and went to Mr. Hernandez. Witnesses state that the officer: (i) urged Mr. Hernandez to stop resisting –even though he was handcuffed; and (ii) "went straight at Hernandez, who was on the ground, and kicked him hard, like a football kick".<sup>108</sup>

55. The Commission notes that these events attracted the attention of passers-by, who stood around a pedestrian bridge near the site and recorded these scenes with their mobile devices.<sup>109</sup> In this context, witnesses indicate that the agents knelt on the back of Mr. Anastasio Hernández Rojas' neck and on his lower back<sup>110</sup> while others repeatedly punched, kicked and stomped him on his head and body.<sup>111</sup> Eyewitness accounts indicate that Anastasio made no attempt to harm the officers.<sup>112</sup>

56. Subsequently, officer Vales warned the others that he intended to use his X26 taser –a weapon that was, in fact, deployed.<sup>113</sup> Video footage taken by witnesses captured multiple taser X26 discharges as Anastasio Hernández Rojas lay on the ground in a foetal position with his hands cuffed behind his back.<sup>114</sup> Vales activated the X26 taser at least four times, according to the device log<sup>115</sup> and witness depositions.<sup>116</sup> As noted internally, the first two administrations were recorded as lasting five seconds each; the third, thirteen seconds; and the fourth, twelve seconds.<sup>117</sup>

57. It has been proven that, for the last discharge, and without Mr. Hernandez having taken any action against the agent<sup>118</sup> –Officer Vales set the X26 taser to "drive stun" mode and applied the twelve-second discharge directly to the chest of Mr. Anastasio Hernandez Rojas<sup>119</sup>, an action that immediately generated convulsions in Mr. Hernandez that lasted until the weapon was removed.<sup>120</sup> An eyewitness recorded Anastasio's cries for help as he was beaten and subjected to electric shocks.<sup>121</sup>

58. This Commission notes that one of the officer witnesses reported seeing that, after the taser was removed, Mr. Hernández exhaled, his body went limp, and he was seen not breathing.<sup>122</sup> After the final use of the taser, witnesses stated that the officers surrounded Mr. Anastasio Hernández Rojas and again pressed him face down with their knees on his head and back, limiting his ability to breathe.<sup>123</sup> One witness noted that he observed the officers punching Anastasio repeatedly in the ribs for "10- to 15-second sessions".<sup>124</sup>

59. According to witness depositions, when the officers noticed that Mr. Hernandez was unconscious, they turned him over onto his side<sup>125</sup> and noticed that he had no pulse.<sup>126</sup> They subsequently called the Border Patrol's

<sup>108</sup> Annex 22. Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>109</sup> Annex 23. Exh. 15, video taken by Humberto Navarrete on May 28, 2010, file "Vid 00004.AVI", beginning at 00:03; see also Exh. 18, transcript of video taken by Humberto Navarrete, file "Vid 00004.AVI". Cfr. Plaintiff's response in opposition to all defendants' motions for summary judgment. September 10, 2013. Pages 294-295. Annex to the applicants' submission of March 30, 2016.

<sup>110</sup> Annex 24. Videotaped deposition of Gabriel Ducoing. December 19, 2012. Page 475. Annex to the applicants' submission of March 30, 2016. Annex 22. Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>111</sup> Annex 22. Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>112</sup> Annex 22. Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>113</sup> Annex 19. Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 625. Annex to the applicants' submission of March 30, 2016.

<sup>114</sup> Annex 25. Videotaped deposition of Ashley Young. January 24, 2013. Pages 160 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>115</sup> Annex 26. Taser. Protect life. Taser information. Jerry Vales. Annex to the applicants' submission of March 30, 2016. Page 68.

<sup>116</sup> Annex 27. Videotaped deposition of supervisor I199. January 25, 2013. Pages 159-60. Annex to the applicants' submission of March 30, 2016.

<sup>117</sup> Annex 28. Plaintiff's reply in opposition to all defendants' motions for summary judgment. Page 22. Annex to the applicants' submission of March 30, 2016.

<sup>118</sup> Annex 29. Videotaped deposition of Edward Caliri. January 25, 2013. Page 670. Annex to the applicants' submission of March 30, 2016.

<sup>119</sup> Annex 19. Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 598. Annex to the applicants' submission of March 30, 2016.

<sup>120</sup> Annex 30. Videotaped deposition of Guillermo Avila. January 25, 2013. Page 663. Annex to the applicants' submission of March 30, 2016.

<sup>121</sup> Annex 22. Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 598. Annex to the applicants' submission of March 30, 2016.

<sup>122</sup> Annex 19. Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>123</sup> Annex 31. San Diego Police Department Investigator Report. Alan Robert Boutwell. May 28, 2010. Page 496. Annex to the applicants' submission of March 30, 2016.

<sup>124</sup> Annex 32 San Diego Police Department Investigator Report. Navarrete Humberto Mendoza. May 28, 2010. Page 293. Annex to the applicants' submission of March 30, 2016.

<sup>125</sup> Annex 17. Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016.

<sup>126</sup> Annex 17. Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016.

Emergency Medical Technical Team EMT for assistance.<sup>127</sup> The Border Patrol team did indeed attempt to perform CPR, without a favourable outcome.<sup>128</sup>

60. In this regard, it is essential to point out that State agents indicate that the EMT service arrived "seconds" after verifying that Mr. Hernández was unresponsive<sup>129</sup>, while the medical examiner indicated that the resuscitation was performed in a "delayed" manner.<sup>130</sup> When the ambulance arrived, an attempt was also made to provide CPR.<sup>131</sup> After a heart rhythm was obtained, Mr. Hernandez was transported to Sharp Chula Vista Hospital.<sup>132</sup>

61. This Commission notes that the international file contains testimony and depositions indicating that police officers present at the scene confiscated, removed, or destroyed mobile devices with which some of the witnesses documented what happened to Mr. Anastasio Hernández.<sup>133</sup>

62. Mr. Anastasio Hernández was diagnosed with an anoxic brain injury as a sequel to a cardiac arrest<sup>134</sup> and was declared brain dead by doctors when he was admitted to hospital on the night of May 29, 2010.<sup>135</sup> He remained briefly on life support until he went into asystole or cardiac arrest and was pronounced dead on 31 May 2010 at 4:30 p.m.<sup>136</sup>

## 5. Cause of death of Mr. Anastasio Hernández

63. This Commission notes that there are two autopsies in the international case file: the first was performed on June 1, 2010, by the chief medical examiner of San Diego County. The second was conducted by Dr. Marvin Pietruszka, a board-certified anatomical and clinical pathologist and medical expert for civil plaintiffs, on June 4, 2010.

64. The first autopsy identified: (i) abrasions and contusions on the forehead and right side of Mr. Hernandez's face, lips, hands and lower legs, compatible with physical struggle; (ii) bludgeon injury to the abdomen; (iii) indication of at least two taser shots; (iv) absence of evidence of neck restraint or chest compression; (v) pre-existing dilated heart; (vi) epicardial, left ventricular, and papillary muscle haemorrhages consistent with an evolving acute myocardial infarction; (vi) positive toxicology screen for amphetamines, presumably methamphetamine; and (vii) undiagnosed hypertension.

65. The medical examiner in charge of this first autopsy stated, in turn, that: (i) Mr Hernández received delayed resuscitation, which also generated irreversible brain damage; (ii) the pre-existing coronary heart disease identified was not significant enough to be the cause of death; (iii) the infarction suffered was very acute and was the result of a lack of oxygen to the whole heart, not to a coronary artery; (iv) the only event that could have caused this situation is the increase in norepinephrine or a blow to the chest; and (v) as a consequence of the above, "there is no other choice but to determine the manner of death as homicide". However, this Commission notes that, in the context of the doctor's deposition, he stated that methamphetamine use played a key role in the outcome of the events.

66. In the second autopsy, the medical examiner indicated that Mr. Hernández Rojas: (i) was subjected to trauma that affected the body, head, and extremities; (ii) suffered some trauma from the use of the taser; (iii) suffered hypoxia and finally anoxia –lack of oxygen to the brain, which resulted in the final development of anoxic encephalopathy and cardiac arrest; (iv) did not die from the effects of methamphetamine –which tested positive in

<sup>127</sup> Annex 33. Plaintiff's response in opposition to all defendants' motions for summary judgment. September 10, 2013. Pages 294-295. Annex to the applicants' submission of March 30, 2016.

<sup>128</sup> Annex 33. Plaintiff's response in opposition to all defendants' motions for summary judgment. September 10, 2013. Pages 294-295. Annex to the applicants' submission of March 30, 2016.

<sup>129</sup> Annex 7. Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>130</sup> Annex 34. Deposition of Glenn N. Wagner. O.J. October 4, 2012. Pages 162-171. Annex to the applicants' submission of March 30, 2016.

<sup>131</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' March 30, 2016 submission.

<sup>132</sup> Annex 8. Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' March 30, 2016 submission.

<sup>133</sup> Annex 25. Videotaped deposition of Ashley Young. January 24, 2013. Pages 160 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>134</sup> Annex 35. County of San Diego. Office of the medical examiner. Autopsy report. June 1, 2010. Page 103. Annex to the applicants' submission of March 30, 2016.

<sup>135</sup> Annex 36. Sharp Health Care. Hernández Rojas, Anastasio. Chula Vista Medical Center. Printed on May 31, 2010. Annex to the applicants' submission of March 30, 2016. Page 590

<sup>136</sup> Annex 36. Sharp Health Care. Hernández Rojas, Anastasio. Chula Vista Medical Center. Printed on May 31, 2010. Annex to the applicants' submission of March 30, 2016. Page 590



the toxicology test; and (v) died from the "trauma to which he was subjected". In fact, the doctor emphasised –in response to questions regarding a possible link between Mr Hernández's death and the use of methamphetamines– that there is no evidence of such a connection and that, on the contrary, what is proven is that: Mr Hernández was calling for help and was alive when he suffered abrasions and injuries to his body.<sup>137</sup>

## E. Internment proceedings

### 1. Criminal investigation

67. Although the ambulance picked up Mr Hernández on May 28, 2010, at 21:48:30<sup>138</sup>, the officers did not report the incident to the appropriate authorities until May 29, 2010, at 2:12 a.m., that is, more than four hours later.<sup>139</sup> In this context, it is noted that in the Significant Incident Report (SIR), the officers noted that Mr. Hernandez (i) was "actively fighting and resisting" and (ii) repeatedly struck officer Vales –who responded by using the taser– in the chest, without elaborating on the background or the involvement of several State agents.<sup>140</sup>

68. In turn, as stated in the official reports, the San Diego Police Department (SDPD) was notified of the facts on May 29, 2010, at 12:00, and only after this did the SDPD send its investigation team to the crime scene.<sup>141</sup> In this context, it is established that: (i) at 13:52, the day after the incident, the Whiskey-2 area was prosecuted; (ii) at 14:10, photographic records were taken of the Chula Vista Station; (iii) at 14:25, the taser reports were collected, and (iv) at 20:10 the vehicle in which officers attempted to board Mr. Hernández the night before was searched, among other actions carried out.<sup>142</sup> In turn, in this timeframe, the depositions of 17 officers were collected, without contacting all of the participating officers and witnesses.<sup>143</sup>

69. This Commission takes note of four aspects of vital relevance to the early stages of the investigation process. First, the US Border Patrol's Critical Incident Investigation Team (CIIT), whose jurisdiction is in dispute<sup>144</sup>, was the first investigative team to be present at the crime scene and collect key evidence for the case.<sup>145</sup> In fact, this Commission notes that it was reported that the CIIT: (i) issued an administrative subpoena to Sharp Chula Vista Hospital to obtain medical records related to Mr. Hernandez in advance<sup>146</sup>; (ii) failed to provide these reports to the SDPD team<sup>147</sup>, and (iii) participated in the formulation of witness interviews.<sup>148</sup>

70. Second, on May 29, 2010, the San Diego Police Department issued a press release in which it referred to Mr. Hernandez as the "subject" and attributed violent and combative behaviour to him.<sup>149</sup> Third, the investigation reports formulated at this stage identify the Police officers as the Victims and Mr. Anastasio Hernández Rojas as the suspect.<sup>150</sup> Indeed, some of these documents highlighted Mr. Jerry Vales –the officer credited with using the taser on Mr. Hernandez– as a Victim of the incident.<sup>151</sup> This Commission notes that this characterization of Mr Hernández as the "victimizer" was replicated in several newspaper articles.<sup>152</sup>

<sup>137</sup> Annex 20. Videotaped deposition of Marvin Pietruszka. M.D. J.D., March 21, 2013. Pages 173-193. Annex to the applicants' submission of March 30, 2016.

<sup>138</sup> Annex 37. San Diego Medical Services Enterprise. Billing report. M229. Annex to the applicants' submission of March 30, 2016. Page 562

<sup>139</sup> Annex 38. U.S. Department of Homeland Security. U.S. Customs and Border Protection. Stands for Incident Report. Annex to the applicants' submission of March 30, 2016. Page 549

<sup>140</sup> Annex 38. U.S. Department of Homeland Security. U.S. Customs and Border Protection. Stands for Incident Report. Annex to the applicants' submission of March 30, 2016. Page 550

<sup>141</sup> Annex 38. U.S. Department of Homeland Security. U.S. Customs and Border Protection. Stands for Incident Report. Annex to the applicants' submission of March 30, 2016. Page 18

<sup>142</sup> Annex 39. San Diego Police Department. Investigator's Report. Annex to the applicants' submission of March 30, 2016. Pages 25 et seq

<sup>143</sup> Annex 39. San Diego Police Department. Investigator's Report. Annex to the applicants' submission of March 30, 2016. Pages 25 et seq

<sup>144</sup> Annex 40. Additional Observations on Merits. January 27, 2021. Page 24.

<sup>145</sup> Annex 41. Crime scene unit. Evidence List Case #10-027149 June 8, 2010. Annex to the applicants' submission of March 30, 2016. Page 116

<sup>146</sup> Annex 42. San Diego Police Department. Investigative Personnel. Annex to the applicants' submission of March 30, 2016. Page 15

<sup>147</sup> Annex 42. San Diego Police Department. Investigative Personnel. Annex to the applicants' submission of March 30, 2016. Page 15

<sup>148</sup> Annex 43. San Diego Police Department. Investigator's report. Subjected interviewed: Vales, Jerry. Annex to the applicants' submission of March 30, 2016. Page 15.

<sup>149</sup> Annex 44. San Diego Police Department. Incident Federal Agents Leeaves one man in critical condition. Annex to the applicants' submission of March 30, 2016. Page 20

<sup>150</sup> Annex 45. San Diego Police Department. Homicide Section Callout Sheet. Annex to the applicants' submission of March 30, 2016. Page 7. Annex 42. San Diego Police Department. Investigative Personnel. Annex to the applicants' submission of March 30, 2016. Page 19

<sup>151</sup> Annex 46. San Diego Police Department. Crime Case Cancellation. Annex to the applicants' submission of March 30, 2016. Page 12 Annex 44. San Diego Police Department. Crime/Incident report. Annex to the applicants' submission of March 30, 2016. Page 24

<sup>152</sup> Annex 47. Kristina Davis, Man Who Was Shot with Taser at Border Dies, UNION-TRIBUNE (June 1, 2010), <http://www.sandiegouniontribune.com/news/2010/jun/01/man-who-was-shot-with-taser-at-border-dies/>; Mexican Detainee Death Ruled A Homicide, CNN (June 2, 2010), <http://www.cnn.com/2010/US/06/02/california.detainee.death/>

71. Finally, although it has been proven that several bystanders witnessed what happened to Mr. Hernandez in the Whiskey-2 area<sup>153</sup>, it was not until 10 June 2010 that officials began interviewing possible civilian witnesses<sup>154</sup> after it was made public that Mr. Humberto Navarrete had recorded the events related to the alleged aggressions perpetrated against Mr. Anastasio Hernandez.<sup>155</sup>

72. On July 9, 2010, the SDPD referred the case to the United States Prosecutor's Office in San Diego<sup>156</sup>. From the evidence in the proceedings, it appears that in 2012, without a specific date being recorded, the Civil Rights Division of the Department of Justice (DOJ) formally opened the investigation.<sup>157</sup> This Commission notes that the applicants claim to have encountered obstacles in accessing information on the progress of the three-year DOJ and grand jury investigation.<sup>158</sup>

73. Uncontroversially, it is on the international record that on November 6, 2015, more than five years after the incident, the DOJ announced its decision to close the investigation into the death of Mr. Anastasio Hernández Rojas and not to bring federal criminal charges against the federal agents involved.<sup>159</sup>

74. The press release states that: (i) the department "devoted a significant amount of time and remedies to investigate the facts associated with Hernandez-Rojas' death"; (ii) "when Hernandez-Rojas' handcuffs were removed at the San Ysidro Port of Entry, Hernandez-Rojas began to struggle with two Border Patrol agents"; (iii) "acute methamphetamine intoxication, pre-existing heart disease, the level of physical exertion during the physical resistance, and the taser shocks and restraint were contributing factors to Hernandez-Rojas' death"; (iv) "the federal government failed to prove beyond a reasonable doubt that the subjects acted deliberately"; (v) "while the taser restraint and the restraint were not a 'deliberate act', the federal government failed to prove that the subjects acted deliberately; (v) "while the restraint of Hernandez-Rojas and the electric shocks from the taser were contributing factors in causing his death, there is no indication that any of the federal agents used the taser or restrained Hernandez-Rojas with malice"; and (v) "the restraint and use of the taser by the federal agents against Hernandez-Rojas, during his resistance and when he was in an aggressive state, was not unlawful and, based on evidence gathered regarding the federal agents' use of force training, the federal agents' actions were not carried out without due care and circumspection."<sup>160</sup>

## 2. Civil Procedure and Settlement

75. On 23 March 2011, Anastasio's family filed a civil lawsuit in the United States District Court for the Southern District of California, seeking damages for the arbitrary deprivation of Mr. Hernandez's life, including an injunction requiring oversight of the use of force by police officers and prohibiting the unjustified use of force.<sup>161</sup>

76. In this framework, the defendant requested, inter alia: (i) the conduction of summary judgment, inasmuch as, in their view, the plaintiffs' claims were unsubstantiated and the depositions provided were unauthenticated and misleading; and (ii) the application of qualified immunity doctrine, which protects government officials from civil liability as long as their conduct does not violate clearly established constitutional rights.<sup>162</sup>

77. In this regard, on September 29, 2014, the United States District Court, Southern District of California, denied the motions filed and stated that: (i) "Anastasio did not assault any of the officers, but was reacting to unwarranted and severe pain"; (ii) the "number of officers present at the scene demonstrates quite convincingly

<sup>153</sup> Annex 48. San Diego Police Department. Subject interviewed: Chavez, Osvaldo. Annex to the applicants' submission of March 30, 2016. Page 207

<sup>154</sup> Annex 48. San Diego Police Department. Subject interviewed: Chavez, Osvaldo. Annex to the applicants' submission of March 30, 2016. Page 207

<sup>155</sup> Annex 39. San Diego Police Department. Investigative personnel. Homicide personnel. Annex to the applicants' submission of March 30, 2016. Page 18

<sup>156</sup> Annex 49. Remarks by the United States of America. September 12, 2017. Page 2.

<sup>157</sup> Annex 49. Remarks by the United States of America. September 12, 2017. Page 2.

<sup>158</sup> Communication of March 30, 2016. Page 7]

<sup>159</sup> Available at: <https://www.justice.gov/es/opa/pr/autoridades-federales-cierran-la-investigaci-n-de-la-muerte-de-anastasio-hern-ndez-rojas>

<sup>160</sup> Available at: <https://www.justice.gov/es/opa/pr/autoridades-federales-cierran-la-investigaci-n-de-la-muerte-de-anastasio-hern-ndez-rojas>

<sup>161</sup> Third amended complaint. United States District Court in and for the Southern District of California. Case No. 11CV-0522-L. NLS. March 23, 2012. Pages 1-27. [558583]-[Annex] Annex to the applicants' March 30, 2016 submission.

<sup>162</sup> Annex 50. Anastasio Hernández Rojas v. United States of America. Order denying motions for summary judgment. September 29, 2014. Pages 2-22. Annex to the applicants' March 30, 2016 submission.

that there was no objectively reasonable threat to the safety of anyone other than Anastasio"; and (iii) "the actions of the defendants were a substantial factor in causing Anastasio's injuries and death."<sup>163</sup>

78. On November 24, 2014, the defendant filed an appeal against the decision denying the district court's Summary Proceeding before the Court of Appeals for the Ninth Circuit.<sup>164</sup> Subsequently, the district court stayed the trial proceedings pending the outcome of the appeal.<sup>165</sup> The Commission notes that there were no procedural actions in the international file between 2015 and May 2017.

79. The Commission was informed that on May 30, 2017, the district court, based on a joint motion by the Applicants and the United States government, dismissed the entire complaint, inasmuch as the parties had settled the case.<sup>166</sup> In particular, the State informed the Commission that, as a result of this agreement, it paid \$1 million to the plaintiff.<sup>167</sup>

80. In turn, it was noted that the plaintiffs accepted the merits as "complete resolution, satisfaction, and release of any and all claims, demands, rights, and causes of action of any kind and nature, including any future claims for wrongful death and any claims for fees, costs, and expenses, arising out of and by reason of, any and all known and unknown, foreseeable and unforeseeable bodily and personal injury, death, or property damage, and the consequences thereof, which the plaintiffs or their heirs, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants, and employees".<sup>168</sup> This Commission notes that the agreement was not provided by any of the parties.<sup>169</sup>

#### IV. THE LAW

##### A. Preliminary issues: On the Agreement endorsed by the parties

81. The State has indicated that this Commission does not have jurisdiction to hear this case, by virtue of the agreement it reached with the family of Mr. Anastasio Hernández Rojas. In particular, it noted that, with the aforementioned agreement, the applicants expressly agreed to release "any and all claims, demands, rights and causes of action of any kind and nature whatsoever."<sup>170</sup>

82. In this regard, the Commission would like to make three clarifications. First, the Charter of the Organization of American States attributes to the Commission a role of observance and defence of human rights<sup>171</sup>. Thus, it is from the same international treaty –duly ratified by the State<sup>172</sup>– that the competence of this body to hear the petitions submitted derives.

83. Second, the Commission's Rules of Procedure –as the source that gives concrete expression to the mandate assigned by the OAS Charter– make the Commission's competence subject to compliance with certain admissibility requirements, which do not include the signing of an agreement between the applicants and the State, within the framework of national procedures.<sup>173</sup> Thus, there are no provisions limiting the competence of this Commission by the Agreement invoked by the State.

84. Finally, it is important to make two observations regarding the argument that this Commission cannot act against the will of the parties, as reflected in the Agreement. On the one hand, the passages cited by the State concerning the Agreement above do not reveal an express intention and will on the part of the applicants to terminate the proceedings before this Commission.<sup>174</sup> On the other hand, and even if there is such a deposition, it

<sup>163</sup> Annex 50. Anastasio Hernández Rojas v. United States of America. Order denying motions for summary judgment. September 29, 2014. Pages 2-22. Annex to the applicants' March 30, 2016 submission.

<sup>164</sup> Communication of March 30, 2016. Page 7

<sup>165</sup> Communication of March 30, 2016. Page 7

<sup>166</sup> United States District Court Southern District of California. Case No. 11-cv-00522-POR-DHB. Available at: <https://cases.justia.com/federal/district-courts/california/casdce/3:2011cv00522/346683/402/0.pdf>

<sup>167</sup> Further observations of the United States. December 15, 2022.

<sup>168</sup> Further observations of the United States. December 15, 2022.

<sup>169</sup> Further observations of the United States. December 15, 2022.

<sup>170</sup> Further observations of the United States. December 15, 2022.

<sup>171</sup> OAS Charter. Article 106.

<sup>172</sup> Deposit on June 19, 1951.

<sup>173</sup> IACHR Rules. Article 27 et seq.

<sup>174</sup> Further observations of the United States. December 15, 2022.

should be noted that the competence of this body applies to petitions concerning violations of human rights recognised, among others, in the American Declaration of the Rights and Duties of Man.<sup>175</sup>

85. Within this framework and given the imperative mandate to protect these fundamental rights, it has been foreseen that this body's competence will extend beyond the will of the parties. It is not for nothing that the Commission's code provides for its power to process *motu proprio* petitions.<sup>176</sup>

86. In this sense, the Agreement between the parties, beyond the legal effects it may have at the national level, does not have the capacity to limit the competence of this Commission. However, this Commission recognises that the payments granted by States to victims in the framework of national procedures have an impact on reparations before international bodies.<sup>177</sup> These amounts will, therefore, be taken into account in any recommendations.

**B. Right to humane treatment, the prohibition of Torture and other cruel, inhuman and degrading treatment (Article I of the American Declaration of the Rights and Duties of Man)<sup>178</sup>, humane treatment during arrest (Article XXV of the American Declaration)<sup>179</sup>, and the right to health (Article XI of the American Declaration)<sup>180</sup>**

## **1. Considerations on the right to humane treatment, the right to health and the prohibition of torture**

### **1.1. Right to humane treatment and the right to health of persons deprived of freedom in relation to the duty to ensure adequate medical care**

87. The American Declaration of the Rights and Duties of Man, Article I, provides for the right of every human being to humane treatment and security.<sup>181</sup> Article XXV provides for the right of persons deprived of their freedom to receive humane treatment by the state while in detention.<sup>182</sup>

88. In this context, as this Commission has pointed out, when a person is detained, the State puts them in a condition in which different aspects of their life are subject to a fixed regulation, and there is: (i) a distancing from their natural and social environment; (ii) a loss of privacy; (iii) a limitation of living space; and (iv) a radical reduction in the possibilities of self-protection.<sup>183</sup>

89. Within this framework, this Commission<sup>184</sup> and the I/A Court H.R.<sup>185</sup> have stated that all persons deprived of their liberty have the right to be in detention conditions compatible with their personal dignity and that the State must guarantee their rights, including the right to life and humane treatment.<sup>186</sup> By virtue of its role as guarantor, the State must: (i) ensure appropriate medical examination, with the least possible delay, after the admission of persons deprived of their liberty, and (ii) adopt the necessary measures in case a disease or illness is identified.<sup>187</sup>

<sup>175</sup> IACHR Rules. Article 27 et seq.

<sup>176</sup> IACHR Rules. Article 24.

<sup>177</sup> I/A Court H.R. Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. Para 206.

<sup>178</sup> Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person.

<sup>179</sup> Article XXV of the American Declaration provides: "[...] Every individual who has been deprived of his liberty has the right [...] to humane treatment during the time he is in custody".

<sup>180</sup> Article XI. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

<sup>181</sup> Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person.

<sup>182</sup> Article XXV of the American Declaration provides: "[...] Every individual who has been deprived of his liberty has the right [...] to humane treatment during the time he is in custody".

<sup>183</sup> IACHR. Report No. 41/99. Merits. Minors in detention. Honduras, March 10, 1999, para. 135; IACHR. Report No. 297/21. Case 13.639. Yoani María Sánchez Cordero. Cuba. October 30, 2021, para. 117.

<sup>184</sup> IACHR. Report No. 41/99. Merits. Juvenile Detainees. March 10, 1999, para. 135; IACHR. Report No. 459/21. Case 12.071. Cuban and Haitian nationals detained at the Carmichael Road Detention Centre. Bahamas, December 31, 2021. Párr.54.

<sup>185</sup> I/A Court H.R. Case of Neira Alegría et al., Peru. Merits, Judgment of 19 January 1995. Series C No. 20, para. 60; I/A Court H.R. Case of Lopez Sosa v. Paraguay. Merits, Reparations and Costs. Judgment of May 17, 2023. Series C No. 489, para. 93

<sup>186</sup> IACHR. Report No. 41/99. Case 11.491. Merits. Minors in Detention. Honduras. March 10, 1999, para. 13; IACHR. Report No. 297/21. Case 13.639. Yoani María Sánchez Cordero. Cuba, October 30, 2021, para. 117; I/A Court H.R. Case of Neira Alegría et al. v. Peru. Merits. Judgment of January 19, 1995. Series C No. 20, para. 60; I/A Court H.R. Case of Dial et al. v. Trinidad and Tobago. Merits and Reparations. Judgment of November 21, 2022. Series C No. 476, para. 65.

<sup>187</sup> Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, Rule 24.

90. Health is a human right essential to the full exercise and enjoyment of all other human rights.<sup>188</sup> Given the particular condition of persons deprived of their liberty, the guarantee of the right to health is exclusively the responsibility of the State.<sup>189</sup> In this sense, the State must guarantee to persons deprived of their liberty the existence of conditions that safeguard their rights.<sup>190</sup>

91. In accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and in the light of the principle of humane treatment, States must guarantee qualified medical care to persons deprived of their liberty, both in emergency situations and for the purposes of regular care, either in the place of detention or penitentiary centre itself or, in cases where this is not available, in hospitals or health care centres where this service should be provided.<sup>191</sup>

## **1.2. The Prohibition of Torture in the American Declaration, its Constitutive Elements and the State's Duties of Prevention**

92. In view of the content of Article I of the American Declaration and in accordance with the development that has been generated on the subject, it is understood that the recognition of the right to humane treatment also implies the prohibition of all acts of torture, taking into account that this conduct represents the most serious affront to the right in question<sup>192</sup>.

93. In this regard, this Commission<sup>193</sup>, the I/A Court H.R.<sup>194</sup>, as well as different bodies of the European System<sup>195</sup> and the Universal System<sup>196</sup>, have agreed that torture represents a serious violation of rights. By virtue of the above, this Commission stresses that there is now a broad international consensus –reflected in the pronouncements of the Inter-American System<sup>197</sup>, the Universal System<sup>198</sup>, the European Human Rights System<sup>199</sup> and the sources of International Humanitarian Law<sup>200</sup>– which places the absolute prohibition of Torture as a norm of jus cogens.

94. Under this framework, and also in the light of an international consensus on the matter<sup>201</sup>, conduct may be characterized as an act of torture when (i) it is intentional; (ii) causes intense physical or mental suffering; and (iii) is committed seeking a definite purpose.

<sup>188</sup> I/A Court H.R. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, para. 118; I/A Court H.R. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, para. 84.

<sup>189</sup> I/A Court H.R. Differentiated approaches to certain groups of persons deprived of their freedom (Interpretation and scope of articles 1.1, 4.1, 5, 11.2, 12, 13, 17.1, 19, 24, and 26 of the American Convention on Human Rights and other instruments concerning the protection of human rights). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, para. 84.

<sup>190</sup> I/A Court H.R. Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 150; I/A Court H.R. Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395, para. 87.

<sup>191</sup> I/A Court H.R. Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395, para. 88.

<sup>192</sup> IACHR. Report No. 27/18, Case No. 12.127. Merits. Vladimiro Roca Antunez et al. Cuba. February 24, 2018; IACHR. Report No. 453/21. Case 13.339. Admissibility and merits. Manuel Valle. United States of America. December 31, 2021, para. 64.

<sup>193</sup> IACHR. Report No. 457/21. Case 11.444. Merits. Amparo Constante Merizalde. Ecuador. December 31, 2021, para. 103.

<sup>194</sup> I/A Court H.R. Case of Barrios Altos v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75, para. 41; I/A Court H.R. Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 12, 2020. Series C No. 402, para. 221.

<sup>195</sup> ECtHR. Al-Adsani Vs. United Kingdom. Judgment of November 21, 2001. Application No. 35763/97, para. 145; ECtHR. Mocanu et al. Vs. Romania. Judgment of September 17, 2014. Application Nos. 10865/09, 45886/07 and 32431/08, para. 311; ECtHR. Khasanov and Rakhmanov v. Russia. Judgment of April 29, 2022. Application No. 28492/15 and 49975/15, para. 122.

<sup>196</sup> Committee Against Torture. General Comment No. 2. CAT/C/GC/2. January 29, 2008, para. 5; Special Rapporteurship on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thematic Report No. 19. A/65/273. August 10, 2010, para. 87; Working Group on Arbitrary Detention. General Opinion No. 32/2023. A/HRC/WGAD/2023/32. June 14, 2023, para. 119.

<sup>197</sup> IACHR. Report No. 172/10. Case 12.561. César Alberto Mendoza et al. Argentina. November 2, 2010, para. 293; IACHR. Report No. 457/21. Case 11.444. Merits. Amparo Constante Merizalde. Ecuador. December 31, 2021, para. 58; I/A Court H.R. Case of "Instituto de Reeducación del Menor" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 157; I/A Court H.R. Case of Integrantes y Militantes de la Unión Patriótica Vs. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 27, 2022. Series C No. 455, para. 371.

<sup>198</sup> Committee Against Torture. General Comment No. 2. CAT/C/GC/2. January 29, 2008, para. 1; Special Rapporteurship on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thematic Report No. 19. A/65/273. August 10, 2010, para. 88; Working Group on Arbitrary Detention. General Opinion No. 32/2023. A/HRC/WGAD/2023/32. June 14, 2023, para. 118.

<sup>199</sup> ECtHR. Othman (Abu Qatada) v. United Kingdom. Judgment of May 9, 2012. Application No. 8139/09, para. 253; ECtHR. Margus Vs. Croatia. Judgment of May 27, 2014. Application No. 4455/10, para. 55.

<sup>200</sup> Customary Rule 90; Article 28 of the 1906 Geneva Convention; Common Article 3 of the 1949 Geneva Conventions; Geneva Convention I. Article 12; Geneva Convention II. Article 12; Geneva Convention III. Articles 17 and 87; Article 32 of the 1949 Geneva Convention IV,

<sup>201</sup> IACHR. Report No. 12/14. Case 12.231. Bottom. Peter Cash. Commonwealth of the Bahamas. April 2, 2014, para. 101; Report No. 457/21. Case 11.444. Bottom. Amparo Constante Merizalde. Ecuador. December 31, 2021, para. 59; Inter-American Court of Human Rights. Case of



95. First, proving intentionality in order to qualify a conduct as torture requires the identification of evidence of deliberate acts.<sup>202</sup> Second, as has been widely reiterated by this Commission<sup>203</sup> and by the I/A Court H.R.<sup>204</sup>, the specific circumstances of each case must be taken into account and, in particular, the endogenous factors –specifics of the aggressions– and exogenous factors –particularities of the Victims– in order to assess the severity or intensity of the suffering endured by the victim of alleged acts of torture.

96. On the one hand, endogenous factors refer to the characteristics of the treatment of the alleged victim. This framework takes into account elements such as the type of aggression inflicted, the duration, the method implemented, the way it was executed, and the physical and mental effects it tends to cause.<sup>205</sup> On the other hand, and in relation to exogenous factors, the Commission and the I/A Court H.R. have pointed out that suffering is an experience specific to each individual.<sup>206</sup> It is, therefore, valuable to consider factors such as age, sex, gender, specific vulnerability status or any other relevant personal circumstances.<sup>207</sup>

97. In this regard, it is important to bear in mind that the UN Special Rapporteur on Torture and other cruel, inhuman<sup>208</sup> and degrading treatment or punishment and the European Court of Human Rights<sup>209</sup> have pointed out that "the threshold of prohibited ill-treatment will be reached earlier" with regard to migrants; in particular, when they are in a situation of irregularity, due to their special degree of vulnerability.

98. Finally, the definition of torture is conditional on the establishment of an intended purpose within the framework of the deployment of aggression.<sup>210</sup> This Inter-American commission stresses that the Inter-American system has an open clause by virtue of which any purpose can satisfy the present element of torture.<sup>211</sup>

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Cantoral Benavides v. Peru. Bottom. Judgment of August 18, 2000. Series C No. 69, paras. 97-99; Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 27, 2022. Series C No. 455, para. 371; Committee against Torture. General Comment No. 2. CAT/C/GC/2. January 24, 2008, para. 1; Office of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Thematic Report No. 19. A/65/273. August 10, 2010, para. 88; ECtHR. Othman (Abu Qatada) vs. United Kingdom. Judgment of May 9, 2012. Application No. 8139/09, para. 253; ECtHR. Margus vs. Croatia. Judgment of May 27, 2014. Application 4455/10, para. 55.

<sup>202</sup> IACHR. Report No. 2/99. Case 11.509. Manuel Manríque. Mexico. February 23, 1999, para. 51; IACHR. Report No. 459/21. Case 12.071. Merits. Cuban and Haitian nationals detained at the Carmichael Road Detention Centre. Bahamas. December 31, 2021, para. 56; I/A Court H.R. Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 81; I/A Court H.R. Case of Fernández Ortega et al. v. Mexico. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of May 15, 2011. Series C No. 224, para. 121.

<sup>203</sup> IACHR. Report No. 12/14. Case 12.231. Merits. Peter Cash. Commonwealth of the Bahamas. April 2, 2014, paras. 103 and 104; IACHR. Report No. 264/23. Case 12.446. Merits. Tracy Lee Housel. United States of America. May 12, 2023, para. 57.

<sup>204</sup> I/A Court H.R. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 57; I/A Court H.R. Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 25, 2023. Series C No. 482, para. 193.

<sup>205</sup> I/A Court H.R. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 57; I/A Court H.R. Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 25, 2023. Series C No. 482, para. 193; ECtHR. Mouisel Vs. France. Judgment of May 21, 2003. Application No. 67263/01, para. 37; ECtHR. Ramirez Sanchez Vs. France. July 4, 2006. Application No. 59450/00, para. 177; ECtHR. Enea Vs. Italy. Judgment of September 17, 2009. Application No. 74912/01, para. 55; ECtHR. Fenech Vs. Malta. Judgment of June 1, 2022. Application No. 19090/20, para. 62.

<sup>206</sup> I/A Court H.R. Case I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 267; I/A Court H.R. Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 5, 2018. Series C No. 346, para. 171; IACHR. Report 26/09. Case 12.440. Admissibility and Merits. Wallace de Almeida. Brazil. March 20, 2009, para. 116; IACHR. Report No. 24/17. Case 12.254. Merits. Vícor Saldaño. United States. March 18, 2017, para. 241.

<sup>207</sup> I/A Court H.R. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 57; I/A Court H.R. Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 83; I/A Court H.R. Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 25, 2023. Series C No. 482, para. 193; IACHR. Report No. 29/20. Case 12.865. Merits. Djamel Ameziiane. United States of America, April 22, 2020, para. 140; IACHR. Report No. 459/21. Case 12.071. Merits. Cuban and Haitian nationals detained at the Carmichael Road Detention Centre. Bahamas. December 31, 2021, para. 57; ECtHR. Price v. United Kingdom. Judgment of October 10, 2001. Application No. 33394/96, para. 24; ECtHR. Gennadi Naoumenko v. Ukraine. Judgment of December 12, 2004. Application No. 42023/98, para. 108; ECtHR. Fenech Vs. Malta. Judgment of June 1, 2022. Application No. 19090/20, para. 62.

<sup>208</sup> UN Special Rapporteurship on Torture and other cruel, inhuman or degrading treatment or punishment. Interim Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer. Migration-Related Torture and Ill Treatment. November 23, 2018. A/HRC/37/50, para. 19.

<sup>209</sup> ECtHR. Tarakhel v. Switzerland. Application 29217/12. Judgment of November 4, 2014, paras. 118 and 119.

<sup>210</sup> I/A Court H.R. Case Cantoral Benavides Vs. Peru. Merits. Judgment of August 18, 2000. Series C No. 69, para. 97; I/A Court H.R. Case of Herrera Espinoza et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2016. Series C No. 316, para. 87; Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 12, 2020. Series C No. 402, para. 163.

<sup>211</sup> I/A Court H.R. Case of Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 116; I/A Court H.R. Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 12, 2020. Series C No. 402, para. 207.



99. However, this Commission has emphasised that States have a special duty towards migrants because of the risk of torture or ill-treatment.<sup>212</sup> States are therefore obliged to: (i) avoid adopting deterrent measures or policies –such as detention in poor conditions for indefinite periods of time–; (ii) not hinder asylum applications or unduly prolong procedures; (iii) maintain close coordination during deportation proceedings –particularly forced returns–; and (iv) prevent practices such as electric shocks during detention processes.<sup>213</sup>

### 1.3. The special features of tasers in the assessment of acts of torture

100. This Commission takes note of the recent findings of the UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment in its thematic report of 2023 regarding the increasing worldwide misuse of single projectile electric shock weapons, commonly known as tasers.<sup>214</sup> As the Rapporteurship has noted, single projectile electric shock weapons, commonly known as tasers, are small weapons in which darts connected by electrical wires emit an incapacitating high-voltage electric shock at a distance, often causing the person to lose muscle control and fall to the ground.<sup>215</sup>

101. In this context, the Rapporteurship<sup>216</sup>, the Committee against Torture<sup>217</sup>, and the European Court of Human Rights<sup>218</sup> have all agreed that such weapons often cause severe pain and cruel suffering to the victims. In fact, the European Court of Human Rights has indicated that this type of weapon can generate cruel, inhuman, or degrading treatment<sup>219</sup> or even represent acts of torture<sup>220</sup>, without it being relevant in the analysis (i) their qualification as less lethal weapons, (ii) the alleged "short duration" of their supply, and (iii) in some cases, the absence of permanent sequelae.<sup>221</sup>

102. As has been warned by the European Court of Human Rights and the UN Rapporteurship, the severity of suffering caused by taser weapons is considerably increased when the "drive-stun" mode is used, which allows the device to be used as an electric shock weapon by direct contact and causes severe pain and temporary disability.<sup>222</sup>

103. This Commission stresses that: (i) the use of taser weapons in stun mode has been recognised as an act of torture by the European Court; and (ii) the UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment has referred to the proscription in international law of electric shock weapons by direct contact.<sup>223</sup>

<sup>212</sup> IACHR. Human mobility and protection obligations Towards a sub-regional perspective. OEA/Ser.L/V/II.21 July 2023, paras. 98, 159, and 182; IACHR. Refugees and migrants from Venezuela. OEA/Ser.L/V/II. July 20, 2023, para. 43 and 44.

<sup>213</sup> IACHR. Human mobility and protection obligations Towards a sub-regional perspective. OEA/Ser.L/V/II.21 July 2023, paras. 98, 159, and 182; IACHR. Refugees and migrants from Venezuela. OEA/Ser.L/V/II. July 20, 2023, para. 43 and 44.

<sup>214</sup> UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment. Interim report of the Special Rapporteurship on Torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards. Global trade in weapons. August 24, 2023. A/78/324, para. 60; Cfr. Amnesty International and Omega Research Foundation, "Combating Torture: the need for comprehensive regulation of law enforcement equipment", September 24, 2018, pp. 8.

<sup>215</sup> UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment. Interim report of the Special Rapporteurship on Torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards. Global trade in weapons. August 24, 2023. A/78/324, para. 60.

<sup>216</sup> UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment. Interim report of the Special Rapporteurship on Torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards. Global trade in weapons. August 24, 2023. A/78/324, para. 54.

<sup>217</sup> Committee against Torture, concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/CO/6), June 7, 2019, para. 29.

<sup>218</sup> ECTHR. Case of V. v. The Czech Republic. Application no. 26074/18. March 7, 2024, para. 98; ECTHR. Case of Grigoryev v. Ukraine. Application no. 51671/07. May 15, 2012, para. 64; Cfr. Anzhelo Georgiev and Others v. Bulgaria, no. 51284/09, §§ 75-76, September 30, 2014; Kanciał v. Poland, no. 37023/13, § 78, May 23, 2019; and Znakovas v. Lithuania [Committee], no. 32715/17, § 46, November 19, 2019.

<sup>219</sup> ECTHR. Case of V. v. The Czech Republic. Application no. 26074/18. March 7, 2024, para. 98; ECTHR. Case of Grigoryev v. Ukraine. Application no. 51671/07. May 15, 2012, para. 64; Cfr. Anzhelo Georgiev and Others v. Bulgaria, no. 51284/09, §§ 75-76, September 30, 2014; Kanciał v. Poland, no. 37023/13, § 78, May 23, 2019; and Znakovas v. Lithuania [Committee], no. 32715/17, § 46, November 19, 2019.

<sup>220</sup> ECTHR. Grigoryev v. Ukraine. Application no. 51671/07. August 15, 2012, para. 64; ECTHR. Case of Poloskiy v. Russia. Application no. 30033/05, para. 124.

<sup>221</sup> ECTHR. Case of V. v. The Czech Republic. Application no. 26074/18. March 7, 2024, para. 98; Cfr. Anzhelo Georgiev and Others v. Bulgaria, no. 51284/09, §§ 75-76, September 30, 2014; Kanciał v. Poland, no. 37023/13, § 78, May 23, 2019; and Znakovas v. Lithuania [Committee], no. 32715/17, § 46, November 19, 2019.

<sup>222</sup> ECTHR. Anzhelo Georgiev and others v. Bulgaria. Application no. 51284/09. December 30, 2013, para. 75.

<sup>223</sup> UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment. Interim report of the Special Rapporteurship on Torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards. Global trade in weapons. August 24, 2023. A/78/324, para. 54.

## 2. Case analysis

104. This Commission will analyze whether the State is internationally responsible for violating the right to humane treatment –Article I of the American Declaration– and to humane treatment in the context of the deprivation of freedom –Article XXV of the Declaration– of Mr. Anastasio Hernández Rojas. In particular, it will address compliance with its obligation (i) to ensure access to medical care when required at the Chula Vista Station and (ii) not to engage in acts of torture.

### 2.1. Regarding the lack of medical care at Chula Vista Station

105. In relation to the State's obligation to ensure medical attention to Mr. Hernández, this Commission finds three facts that could be contrary to the right to humane treatment –Article I of the American Declaration–, the right to health –Article XI of the American Declaration– and the right to humane treatment in the context of the deprivation of liberty –Article XXV of the Declaration–.

106. First, Mr. Anastasio Hernández Rojas was never given a Medical examination before being transferred to the San Ysidro Port of Entry –even though he was arrested as early as 4 p.m.–<sup>224</sup> Second, although there are testimonies that indicate that Mr. Hernández expressly requested medical attention –even from police officers–<sup>225</sup> and others that seek to refute this<sup>226</sup>, there is no dispute that Mr. Hernández complained persistently of pain in his lower extremity –in fact, due to alleged injuries caused during the inspection–<sup>227</sup> and, despite this, he was not given medical attention<sup>228</sup>. Furthermore, there is also no dispute that a police officer examined the ankle of Mr. Anastasio Hernández Rojas<sup>229</sup> and, by mere visual comparison of the two ankles, concluded that "Anastasio Hernández' complaints were not of such a nature as to require medical attention."<sup>230</sup>

107. Thus, and accepting that Mr. Hernández did not expressly request medical attention, it is duly accredited that: (i) Mr. Hernández insistently manifested an ailment that would have required medical attention; and (ii) on the contrary, there was a deliberate decision, although not sufficiently justified –by limiting the analysis to a mere ocular comparison– not to provide such attention to Mr. Hernández Rojas.

108. Finally, this Commission cannot overlook the fact that, in turn, officials justified their failure to provide such care to Mr. Hernández on the grounds that, in the past, "detainees falsely exaggerated the need for medical care in order to delay the process."<sup>231</sup> In this regard, this Commission is concerned that State agents, based on stereotypes or preconceptions, deny access to medical care to migrants deprived of their freedom.

109. For these reasons, the Commission concludes that the State's deliberate refusal to ensure Mr. Anastasio Hernández Rojas a medical examination and medical attention, even though it exercised a position of guarantor, violated the rights to humane treatment –Article I of the American Declaration–, to health –Article XI of the Declaration– and to humane treatment in the context of the deprivation of liberty –Article XXV of the Declaration–.

<sup>224</sup> Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of border patrol agent. Nicholas Austin. Pages 78-79. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]

<sup>225</sup> Witness Statement. Robinson Ramirez. May 29, 2010. Page 534. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>226</sup> Videotaped deposition of Ishmael P. Finn. January 10, 2013. Page 554. Annex to the applicants' submission of March 30, 2016. [558581]-[Incoming Correspondence]; Communication of March 30, 2016. Page 6. [558581]-[Incoming Correspondence]

<sup>227</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Witness Statement. Robinson Ramirez. May 29, 2010. Page 534. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Ishmael P. Finn. January 10, 2013. Page 553. Annex to the applicants' submission of March 30, 2016. [558581]-[Incoming Correspondence]; Communication of March 30, 2016. Page 6. [558581]-[Incoming Correspondence].

<sup>228</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Witness Statement. Robinson Ramirez. May 29, 2010. Page 534. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Ishmael P. Finn. January 10, 2013. Page 553. Annex to the applicants' submission of March 30, 2016. [558581]-[Incoming Correspondence]; Communication of March 30, 2016. Page 6. [558581]-[Incoming Correspondence].

<sup>229</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of border patrol agent Sandra Cárdenas. May 16, 2013. Pages 118-120. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>230</sup> Declaration of border patrol agent Sandra Cárdenas. May 16, 2013. Pages 118-120. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>231</sup> Declaration of border patrol supervisor V61. Pages 122-125. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

## 2.2. Regarding the configuration of acts of torture at the San Ysidro Port of Entry

110. This Commission proceeds to analyze whether the instant case involves acts of torture. In particular, it will address the three requirements previously referred to in order to prove the commission of acts of torture, namely: (i) the existence of an intentional act (ii) that causes severe physical or mental suffering, and (iii) that it is committed with a specific aim or purpose. The analysis in this section will focus, in particular, on the use of force by police officers against Mr. Anastasio Hernández Rojas at the San Ysidro Port of Entry.

### 2.2.1. Intentional nature of the acts characterised as torture

111. This Commission notes that the acts perpetrated by the police officers were intentional. This conclusion is reached first in light of the context in which the events occurred. In this regard, it is noted that the actions of the police officers deployed at the San Ysidro Gate of Entry occurred in the context of the alleged deportation of Mr. Hernandez<sup>232</sup>, and after his handcuffs were removed in the Whiskey-2 area<sup>233</sup>, at which time, according to State agents, Mr. Hernandez began to move agitatedly.<sup>234</sup>

112. In this regard, the international case file contains multiple depositions of police officers who participated in the events and who claim to have intervened to neutralise Mr. Hernández or to support the police officers involved in the operation.<sup>235</sup> Although there are witnesses who maintain that Mr. Hernandez did not strike the officers<sup>236</sup>, did not attempt to knock them down<sup>237</sup>, assault them<sup>238</sup> or cause them harm<sup>239</sup>, the fact is that the above-mentioned depositions, reflecting an attempt by the police officers to control the situation, indicate an intentional use of force.

113. Second, such a deliberate character is apparent from the very nature of the conduct at issue in this analysis. In particular, testimonies reflect that police officers: (i) beat Mr. Hernandez with an extendable steel baton<sup>240</sup>, (ii) knelt on the back of his neck and lower back<sup>241</sup>, (iii) repeatedly kicked and stepped on his head and body<sup>242</sup>, and (iv) applied four electric shocks<sup>243</sup>, through the taser X26 device, deploying the last shock in "drive stun" mode.<sup>244</sup>

<sup>232</sup> Communication of March 30, 2016. Page 6. [558581]-[Incoming Correspondence]; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of border patrol supervisor V61. Pages 122-125. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>233</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Communication of March 30, 2016. Page 7 [558581]-[Incoming Correspondence].

<sup>234</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>235</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 610. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>236</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>237</sup> Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>238</sup> Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>239</sup> Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>240</sup> Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>241</sup> Videotaped deposition of Sergio Gonzalez Gomez. January 10, 2013. Page 743. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>242</sup> Videotaped deposition of Sergio Gonzalez Gomez. January 10, 2013. Page 743. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>243</sup> Videotaped deposition of supervisor I199. January 25, 2013. Pages 159-60. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Taser. Protect life. Taser information. Jerry Vales. Annex to the applicants' submission of March 30, 2016. Page 68. [711866]-[Annexes].

<sup>244</sup> Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 598. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Guillermo Avila. January 25, 2013. Page 663. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

114. These acts, taken together and due to their own characteristics –in particular, their repetitive and massive nature, given the participation of up to seven police officers at the same time<sup>245</sup>– can hardly be associated with an accidental situation, but rather, they show the existence of intentional and preconceived conduct.

115. Finally, the existence of intentional acts is reinforced if we bear in mind that, as was shown in the context section, a pattern of discrimination against migrants of Latin American origin has been identified in the United States of America<sup>246</sup>, which has taken the form of excessive use of force<sup>247</sup>, excessive levels of violence<sup>248</sup>, and the application of tactics that threaten life and integrity by police officers, such as positional asphyxiation and the use of electric shock devices.<sup>249</sup>

### 2.2.2. Intensity of suffering caused

116. Secondly, in the instant case, intense physical suffering was caused to Mr. Anastasio Hernández Rojas as a result of: (i) the multiple blows to which he was subjected in the Whiskey-2 area and (ii) the deployment of electric shocks against him, including one in direct contact and in "drive stun" mode –endogenous factors–. Added to this scenario was the special condition of vulnerability in which the victim found himself, being a Latino migrant –an exogenous factor– subjected to the direct action of up to seven police officers at the same time.

117. In this regard, and as is accredited in the factual platform, the level of violence deployed against Mr. Hernández occurred in an incremental manner, to the point that witnesses, in addition to confirming the active presence of multiple State agents at a single moment<sup>250</sup>, indicated that Mr. Anastasio Hernández Rojas was beaten, kicked, and repeatedly trampled on his head, ribs<sup>251</sup> and other body parts.<sup>252</sup>

118. In fact, in this context, it is also established that Mr. Hernández, on several occasions, shouted<sup>253</sup> and desperately asked for help.<sup>254</sup> Not surprisingly, several passers-by positioned themselves around a pedestrian bridge near the site and recorded these scenes with their mobile devices.<sup>255</sup>

119. This Commission notes that the injuries reported by witnesses were supported by the two autopsies carried out. The first, in particular, identified: (i) abrasions and contusions on Mr. Hernandez's forehead and right

<sup>245</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes] Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>246</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, paras. 47 and 95.

<sup>247</sup> Human Rights Committee. Concluding Observations 2014, April 23, 2014, para. 11.

<sup>248</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, paras. 47 and 95.

<sup>249</sup> Nigel S. Rodley (Special Rapporteur on Torture and cruel, inhuman or degrading treatment or punishment), Summary of communications transmitted to Governments and replies received, Para, 786, U.N. Doc. E/CN.4/1996/35/Add.1 (Jan. 16, 1996); Press Release, Committee against Torture, Committee against Torture Concludes Thirty-Ninth Session (Nov. 23, 2007); Concluding Observations of the Committee Against Torture: United States of America, para. 27.

<sup>250</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes] Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>251</sup> San Diego Police Department Investigator Report. Navarrete Humberto Mendoza. May 28, 2010. Page 293. Annex to the applicants' submission of March 30, 2016. [711866]-[Annexes].

<sup>252</sup> Videotaped deposition of Gabriel Ducoing. December 19, 2012. Page 475. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes], Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>253</sup> Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>254</sup> Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 583. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 610. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>255</sup> Exh. 15, video taken by Humberto Navarrete on May 28, 2010, file "Vid 00004.AVI", beginning at 00:03; see also Exh. 18, transcript of video taken by Humberto Navarrete, file "Vid 00004.AVI". Cfr. Plaintiff's response in opposition to all defendants' motions for summary judgment. September 10, 2013. Pages 294-295. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].



side of his face, lips, hands, and lower legs; and (ii) a truncheon injury to his abdomen.<sup>256</sup> The second autopsy concluded that Mr. Anastasio was subjected to trauma to his body, head, and limbs<sup>257</sup>, including a rib fracture.<sup>258</sup>

120. In turn, as already noted, the UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment, the Committee against Torture and the European Court of Human Rights have pointed out that taser-type weapons often cause severe pain and cruel suffering to Victims (supra para. 130). In turn, the ECtHR and the aforementioned Rapporteurship have indicated that pain is increased when this weapon is used in drive-stun mode (supra para. 131).

121. In this regard, this Commission reiterates that, as evidenced by the registration of the device<sup>259</sup> and the depositions of witnesses<sup>260</sup>, a police officer activated the taser X26 at least four times against Mr. Anastasio Hernández Rojas. The first two administrations lasted five seconds each; the third, thirteen seconds; and the fourth, in "drive stun" mode, twelve seconds, causing convulsions.<sup>261</sup>

122. It cannot be overlooked that Mr. Anastasio Hernández Rojas was a migrant of Latin origin, in a condition of human mobility and in an irregular situation, and that, in addition to this context of vulnerability, he was subjected to the deployment of force in which multiple official agents intervened, who, in addition to striking him, used taser-type weapons and extendable steel batons.<sup>262</sup>

123. For this Commission, it is possible to infer that this scenario generated a special feeling of anguish in Mr. Hernández, which, moreover, was externalised and captured by witnesses.<sup>263</sup> Thus, the particularities of Mr. Hernández and, especially, his condition of vulnerability, reinforce the conclusion reached in this section in relation to the configuration of intense suffering caused to Mr. Anastasio Hernández derived from the blows and electric shocks of which he was a victim (supra para. 123).

### **2.2.3. Purpose underlying the acts characterised as torture in the instant case**

124. The depositions of the police officers directly involved in the events at Whiskey-2 concur that their intervention was carried out with the purpose of neutralising Mr. Hernández.<sup>264</sup> In turn, this Commission notes that the officer who used the taser previously urged the Victim to stop resisting, even though he was handcuffed.<sup>265</sup> By virtue of the above and the nature of the suffering caused to Mr. Hernández –as previously described– under this framework, it can, therefore, be deduced that the actions deployed had an intimidating, controlling and even punitive purpose.

125. Thus, the Commission considers that the acts of police violence against Mr. Hernández at the San Ysidro Port of Entry were perpetrated intentionally, with the aim of intimidating, controlling and punishing, and that they caused intense suffering to the Victim, and concludes that they constituted acts of torture contrary to Article I of the American Declaration of the Rights and Duties of Man.

<sup>256</sup> Deposition of Glenn N. Wagner. O.J. October 4, 2012. Pages 162-171. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>257</sup> Videotaped deposition of Marvin Pietruszka. M.D. J.D., March 21, 2013. Pages 173-193. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>258</sup> Videotaped deposition of Marvin Pietruszka. M.D. J.D., March 21, 2013. Pages 173-193. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>259</sup> Taser. Protect life. Taser information. Jerry Vales. Annex to the applicants' submission of March 30, 2016. Page 68. [711866]-[Annexes].

<sup>260</sup> Videotaped deposition of supervisor I199. January 25, 2013. Pages 159-60. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>261</sup> Plaintiff's reply in opposition to all defendants' motions for summary judgment. Page 22. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>262</sup> Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>263</sup> Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>264</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 610. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

<sup>265</sup> Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes].

## C. Right to Life (Article I of the American Declaration of the Rights and Duties of Man)<sup>266</sup>

### 1. General considerations on the scope and content of the right to life

126. The right to life, contemplated in Article I of the American Declaration of the Rights and Duties of Man<sup>267</sup>, is a fundamental and supreme right<sup>268</sup> of the human being, which includes, among others, both the right not to be arbitrarily deprived of life<sup>269</sup> and to be free from any obstacle that prevents access to the conditions that guarantee a dignified existence.<sup>270</sup>

127. Within this framework, and considering that the American Declaration is a source of legal obligations based on the commitment of the States to promote the defence of human rights<sup>271</sup>, a duty of integral protection arises for the States<sup>272</sup> by virtue of which they must abstain from any arbitrary deprivation of life (negative obligation)<sup>273</sup> and adopt the necessary measures to preserve this legal right specially protected by the Declaration (positive obligation).<sup>274</sup>

### 2. Considerations on the use of force by State agents

128. As has been widely pointed out by the organs of the Inter-American System, the use of force by the State must be exceptional, planned and proportionally limited by the authorities.<sup>275</sup> The Inter-American Court has indicated that force or instruments of coercion may only be deployed "when all other means of control have been exhausted and have failed."<sup>276</sup>

129. Specifically, in relation to the circumstances of the prosecution of migrants, the Commission stresses that security at immigration posts must always be geared towards the protection of the migrant and his or her rights. The exceptional circumstances in which the use of force is permitted must be specifically set out in law and must be strictly interpreted to minimise the use of force.<sup>277</sup> Furthermore, the lethal use of force is only permitted in response to circumstances that pose an objective and imminent threat to life. In no case may lethal force be used

<sup>266</sup> Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person.

<sup>267</sup> American Declaration of the Rights and Duties of Man. Article 1: "Every human has the right to life, liberty and the security of his person."

<sup>268</sup> IACHR. Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, para. 77; IACHR. Report No. 264/23. Case 12.446. Merits. Tracy Lee Housel. May 12, 2023, para. 77; I/A Court H.R. Case of Dial et al. v. Trinidad and Tobago. Merits and Reparations. Judgment of November 21, 2022. Series C No. 476, para. 34.

<sup>269</sup> IACHR. Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, para. 117; IACHR. Report No. 12/14. Case 12.231. Peter Cash. April 2, 2014, para. 83; IACHR. Report No. 458/21. Case 12.280. Merits. Edmundo Alex Lemun Saavedra et al., Chile. December 31, 2021, para. 100; I/A Court H.R. The case of "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 144; I/A Court H.R. Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs. Judgment of August 22, 2018. Series C No. 356, para. 107.

<sup>270</sup> IACHR. Report No. 172/10. Case 12.561. César Alberto Mendoza et al. - Perpetual imprisonment and confinement of adolescents. Argentina. November 2, 2010, para. 257; IACHR. Report No. 19/19. Case 12.991. Los Josefinos Village Massacre. Guatemala. February 12, 2019, para. 53; I/A Court H.R. The case of "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 144; I/A Court H.R. Case of Cruz Sanchez et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 260.

<sup>271</sup> IACHR. Report No. 86/99. Case 11.589. Armando Alejandro Jr, Carlos Costa, Mario de la Peña and Pablo Morales. September 29, 1999, para. 18; IACHR. Report No. 83/23. Case 14.196. Oswaldo José Payá Sardiñas et al. June 9, 2023, para. 53.

<sup>272</sup> I/A Court H.R. Case of Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 129; IACHR, Report No. 33/13. Case 11.576. José Luis García Ibarra and family. Ecuador. July 10, 2013, para. 129; IACHR. Report No. 83/23. Case 14.196. Oswaldo José Payas Sardiñas et al. Cuba. June 9, 2023, para. 60.

<sup>273</sup> IACHR. Report No. 80/07. Case 11.658. Merits. Martín Pelico Coxic. Guatemala. October 15, 2007, para. 90; IACHR. IACHR Digest of Admissibility Decisions and Jurisdiction. March 4, 2020, para. 330; I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 65; I/A Court H.R. Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs. Judgment of August 22, 2018. Series C No. 356, para. 107.

<sup>274</sup> IACHR. Report No. 80/07. Case 11.658. Merits. Martín Pelico Coxic. Guatemala. October 15, 2007, para. 90; IACHR. IACHR Digest of Admissibility Decisions and Jurisdiction. March 4, 2020, para. 330; I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 65; I/A Court H.R. Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs. Judgment of August 22, 2018. Series C No. 356, para. 107.

<sup>275</sup> IACHR. Report on Citizen Security and Human Rights. December 31, 2009, para. 120; IACHR. Report No. 173/20. Case 12.809. Aníbal Alonso Aguas Acosta and family. Ecuador. June 14, 2020, para. 46; I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 67; I/A Court H.R. Case of Casiera Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 11, 2022. Series C No. 450, para. 104;

<sup>276</sup> I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 67; I/A Court H.R. Case of Casiera Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 11, 2022. Series C No. 450, para. 104.

<sup>277</sup> Inter-american principles on the human rights of all migrants, refugees, stateless persons and victims of human trafficking, Resolution 04/19 approved by the Commission on December 7, 2019, Principle 65: Proportionate and granted use of force



for the purpose of arrest or detention of migrants, including in cases of irregular entry into the territory or on suspicion of violation of migration laws.<sup>278</sup>

130. In this context, and in accordance with the constant practice of the bodies of the Inter-American system, when violations of conventional rights are alleged in the context of the use of force by state security agents, it is necessary to analyse: (i) preventive actions, (ii) actions that occurred prior to the events, and (iii) subsequent actions.<sup>279</sup>

## 2.1. Preventive actions

131. In relation to **preventive actions**, first, States must have a regulatory framework that regulates the use of force in a clear and precise manner, guarantees the protection of the right to life in such a context, and defines clear parameters for the use of firearms or weapons with lethal effects.<sup>280</sup>

132. Second, it is incumbent on the state to provide adequate equipment to State agents charged with deploying force.<sup>281</sup> In particular, they should be equipped with different types of weapons, ammunition and protective equipment to enable them to react materially and proportionately to the events in which they are involved and to restrict as far as possible the use of weapons that can cause injury or death.<sup>282</sup>

133. Third, states must properly select and train State agents involved in force deployment.<sup>283</sup> The Commission has stressed that State agents must be properly trained and instructed to always use non-violent means first, before resorting to the use of physical force, coercion or firearms. This training should, therefore, enable them to discern the severity of the threat and weigh different response options, including the type and amount of force that can be applied.<sup>284</sup>

## 2.2. Concomitant actions

134. Secondly, given the irreversible effects that could result from the use of force by State agents, this Commission has reiterated the importance of limiting it quantitatively and qualitatively.<sup>285</sup> In this context, the organs of the Inter-American System have agreed that the use of force is justified to the extent that: (i) it is established by law, (ii) it pursues a legitimate aim, (iii) it is absolutely necessary, and (iv) it is proportional.<sup>286</sup>

<sup>278</sup> Inter-american principles on the human rights of all migrants, refugees, stateless persons and victims of human trafficking, Resolution 04/19 approved by the Commission on December 7, 2019, Principle 65: Proportionate and granted use of force

<sup>279</sup> IACHR. Report No. 90/14. Case 11.442. Luis Jorge Valencia Hinojosa. Ecuador. 4 November 2014, para. 189; IACHR. Report No. 458/21. Case 12.880, Edmundo Alex Lemun Saavedra et al. Chile. December 31, 2021, para. 79; I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 78; I/A Court H.R. Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 109.

<sup>280</sup> IACHR. Protest and human rights report. September 2019, paras. 100 and 113; IACHR. Observations and recommendations: working visit to Colombia. June 2021, para. 119, I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 75; I/A Court H.R. Case of Casier Sierra Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 11, 2022. Series C No. 450, para. 114.

<sup>281</sup> IACHR. Report No. 6/20. Case 12.880. Antonio Tavare Pereira et al., Brazil. March 3, 2020, para. 57; I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 8; I/A Court H.R. Case of Hermanos Landaeta Mejías et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 126.

<sup>282</sup> IACHR. Report No. 47/16. Case 12.659. Mirey Trueba Arciniega et al., Mexico. November 9, 2016, para. 63; IACHR. Report No. 458/21. Case 12.880. Edmundo Alex Lemun Saavedra et al. v. Chile. December 31, 2021, para. 81; I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, para. 80; I/A Court H.R. Case of Hermanos Landaeta Mejías et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 126.

<sup>283</sup> IACHR. Report on the Situation of Human Rights Defenders in the Americas. 2006, paras. 115, 120, and 193; IACHR. Protest and human rights report. September 2019, para. 169.

<sup>284</sup> IACHR. Report on Citizen Security and Human Rights. 2009, para. 117.

<sup>285</sup> IACHR. Report on the situation of human rights defenders in the Americas. March 7, 2006, para. 64; IACHR. Annual Report 2015. Chapter IV A, para. 7; IACHR. Protest and Human Rights Report, September 2019, para. 102; IACHR. Observations and recommendations of the IACHR working visit to Colombia from June 8 to 10, 2021, para. 55.

<sup>286</sup> IACHR. Report on Terrorism and Human Rights. October 22, 2002, para. 87; IACHR. Report No. 26/14. Luis Jorge Valencia Hinojosa. Ecuador. November 4, 2014, para. 181; I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 67-68 and 75; I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85; I/A Court H.R. Case of Roche Azaña et al. v. Nicaragua. Merits and Reparations. Judgment of June 3, 2020. Series C No. 403, para. 53.

135. First, under the Principle of **Legality**, it must be verified whether the exceptional use of force is duly formulated by law and its deployment has been regulated at the national level.<sup>287</sup> As the Commission<sup>288</sup> and the Inter-American Court<sup>289</sup> have stated, respect for the Principle of Legality implies that the aforementioned norms: (i) have the force of law, and (ii) are sufficiently clear and consistent with each other.

136. Second, in relation to the principle of **legitimate aim**, the use of force by state security agents must be directed towards the pursuit of a conventionally legitimate aim.<sup>290</sup> Third, the **principle of absolute necessity** relates to the duty of states to resort to “defensive or offensive security measures used should be those strictly necessary to carry out the lawful orders of a competent authority in the event of acts of violence or crime that imperil the right to life or the rights to personal security.”<sup>291</sup>

137. Finally, under the **principle of proportionality**, the level of force used must be commensurate with the level of resistance, aggression, or cooperation offered. Thus, “a balance must be ensured between the situation faced by the official and his or her response, considering the potential harm that could be caused.”<sup>292</sup> As has been held by this Commission<sup>293</sup>, the I/A Court H.R.<sup>294</sup> and the European Court of Human Rights<sup>295</sup>, the assessment of the use of force must address and take into account all the circumstances and the context in which the events under scrutiny took place.

### 2.3. Subsequent actions

138. Finally, as is derived from the Basic Principles on the Use of Force<sup>296</sup> and as has been reiterated by the Inter-American Court<sup>297</sup>, bodies of the Universal Human Rights System<sup>298</sup>, and this Commission<sup>299</sup>, in the event of injuries in the context of the deployment of force, it is the State’s responsibility: (i) to provide and facilitate the corresponding medical services, and (ii) to provide accurate, detailed, and timely information about what happened to the families and relatives of the affected persons.

139. Likewise, once it is known that security agents have used force, by means of firearms or with lethal consequences, it is up to the State to initiate an ex officio investigation, without delay, serious, impartial, and

<sup>287</sup> IACHR. Report on citizen security and human rights. December 31, 2009, para. 97; IACHR. Protest and Human Rights Report. September 2019, para. 103; I/A Court H.R. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 86; I/A Court H.R. Case of Casierri Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 11, 2022. Series C No. 450, para. 105.

<sup>288</sup> IACHR. Report on citizen security and human rights. December 31, 2009, para. 57; IACHR. Report No. 458/21. Case 12.880. Edmundo Alex Lemun Saavedra et al., Chile. December 31, 2021, para. 148.

<sup>289</sup> I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits, Reparations and Costs. Judgment of July 5, 2006, Series C No. 150, para. 75; I/A Court H.R. Case of Olivares Muñoz et al. v. Venezuela. Merits, Reparations and Costs. Judgment of November 10, 2020. Series C No. 415, para. 92.

<sup>290</sup> IACHR. Report on citizen security and human rights. OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 228; IACHR. Report No. 458/21. Case 12.880. Edmundo Alex Lemun Saavedra et al. Chile. December 31, 2021, para. 89; I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85; I/A Court H.R. Case of Casierri Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 11, 2022. Series C No. 450, para. 105.

<sup>291</sup> IACHR. Report on citizen security and human rights. December 31, 2009, para. 116; IACHR. Report No. 6/20. Case 12.727. Antonio Tavares Pereira et al., Brazil. March 3, 2020; I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 53; I/A Court H.R. Case of Casierri Quiñonez et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 11, 2022. Series C No. 450, para. 105.

<sup>292</sup> Report No. 132/17. Case 12.452. Tirso Román Valenzuela Ávila. Guatemala. October 25, 2017, para. 159; IACHR. Report No. 458/21. Case 12.880. Edmundo Alex Lemun Saavedra et al. Chile. December 31, 2021, para. 89; I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 84; I/A Court H.R. Case of Roche Azaña et al. v. Nicaragua. Merits and Reparations. Judgment of June 3, 2020. Series C No. 403, para. 53.

<sup>293</sup> IACHR. Report No. 26/09. Case 12.440. Wallace de Almeida. March 20, 2009, para. 105; IACHR. Report No. 458/21. Case 12.880. Edmundo Alex Lemun Saavedra et al. Chile, December 31, 2021, para. 82 and 90.

<sup>294</sup> I/A Court H.R. Case of Cruz Sanchez et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 266; I/A Court H.R. Case of Díaz Loreto et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 19, 2019. Series C No. 392, para. 63.

<sup>295</sup> ECHR. Makaratzis Vs. Greece. Judgment of December 20, 2004. Application No. 50385/99/95, para. 59.

<sup>296</sup> Office of the High Commissioner for Human Rights. Basic principles on the use of force and firearms by law enforcement officials. Principle 5.

<sup>297</sup> I/A Court H.R. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 100; I/A Court H.R. Case of Hermanos Landaeta Mejías et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 146; I/A Court H.R. Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338, para. 119.

<sup>298</sup> Human Rights Council, Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66. February 4, 2016, para. 40.

<sup>299</sup> IACHR. Report on citizen security and human rights. December 31, 2009, para. 119; IACHR. Protest and human rights report. September 2019, para. 162; IACHR. Report No. 458/21. Case 12.880. Edmundo Alex Lemun Saavedra et al. v. Chile. December 31, 2021, para. 103.

effective, aimed at clarifying the facts, assessing the possible consummation of an arbitrary deprivation of the right to life and determining the alleged perpetrators and their degrees of responsibility.<sup>300</sup>

### 3. Case analysis

#### 3.1. Previous actions: Inadequacy of the US legal framework regarding the use of force

140. As previously noted, the United States of America has a diffuse regulatory system on the use of force, essentially made up of jurisprudence from the Supreme Court of Justice<sup>301</sup>, Directives<sup>302</sup>, Guidelines<sup>303</sup>, or Department of Homeland Security Policies<sup>304</sup> and federal state regulations.<sup>305</sup>

141. Despite the existing complex legal framework on the matter, the fact is that the applicable norms – particularly at the time of the events– were insufficient and contrary to the standards of the Inter-American system, derived from Article I of the American Declaration, which provides strict protection of the right to life.<sup>306</sup>

142. In particular, and in general, the jurisprudence of the Supreme Court of Justice<sup>307</sup>, Directive 4510-029 of 2009<sup>308</sup>, the CBP Interim Guidelines on the Use of Force and Firearms of 2004<sup>309</sup>, the Department of Homeland Security's Use of Lethal Force Policy<sup>310</sup>, and much of the legislation of the federal states<sup>311</sup>, including the state of California<sup>312</sup> –where the events of the instant case took place– subject the use of force, including lethal force, to a broad and unclear concept: "reasonable belief".

143. Second, they do not require an assessment of proportionality in the use of force. Third, they do not differentiate precisely between the circumstances in which the use of force is generally appropriate and the use of lethal force. Fourth, they do not contemplate differentiated standards for persons deprived of their liberty and concerning those to whom the State has a position of guarantee.

144. Fifth, while it is true that the Use of Lethal Force Policy provides for a range of actions –from the lowest to the highest level of intensity– it also does not clearly, expressly, and unambiguously define the conditions required to exceed the degree and intensity of intervention by police officers.<sup>313</sup>

145. Finally, and in relation to Directive 4510-029 of 2009, the Commission's attention is drawn to the fact that: (i) although it considers that the use of devices is not a substitute for lethal force, it does not exclude the use of these tools for this purpose –without providing any additional parameters–; (ii) it does not define a limit to the application of this type of weapon and only states that the number of cycles reasonably necessary to control and secure a resistant subject may be applied –indicating broadly, in turn, the scenarios in which this type of device could be implemented–, and (iii) it does not require prior announcement or communication of its use to the recipient of the action, but only to the other officers present.<sup>314</sup>

146. In this context, this Commission notes that the Human Rights Committee, from 1995 to 2023, has repeatedly urged the United States to review its federal and state regulations, standards and operating procedures

<sup>300</sup> IACHR. Report on Citizen Security and Human Rights, December 31, 2009, para. 119; I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 79; I/A Court H.R. Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 98.

<sup>301</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>302</sup> CBP Directive 4510-029 [1242206]-[Annexes]. P. 246 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>303</sup> 2004 Interim CBP Use of Force and Firearms Guidelines [1242206]-[Annexes]. P. 185 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>304</sup> Use of deadly force policy 2004. [1242206]-[Annexes]. P. 242 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>305</sup> *Supra* footnote 28.

<sup>306</sup> IACHR. Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, para. 77; IACHR. Report No. 333/21. Case 12.871. Virgilio Maldonado Rodríguez. November 22, 2021, para. 29; IACHR. Report No. 264/23. Case 12.446. Merits. Tracy Lee Housel. May 12, 2023, para. 77; I/A Court H.R. Case of Dial et al. v. Trinidad and Tobago. Merits and Reparations. Judgment of November 21, 2022. Series C No. 476, para. 34.

<sup>307</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>308</sup> CBP Directive 4510-029 [1242206]-[Annexes]. P. 246 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>309</sup> 2004 Interim CBP Use of Force and Firearms Guidelines [1242206]-[Annexes]. P. 185 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>310</sup> Use of deadly force policy 2004. [1242206]-[Annexes]. P. 242 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>311</sup> *Supra* footnote 28.

<sup>312</sup> Gov't Code § 7286.5; Penal Code § 196, § 835a, § 843.

<sup>313</sup> Use of deadly force policy 2004. [1242206]-[Annexes]. P. 242 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>314</sup> CBP Directive 4510-029 [1242206]-[Annexes]. P. 246 et seq. Annex to the applicants' submission of March 30, 2016.

governing the use of force to ensure compliance with the Basic Principles on the Use of Force and Firearms and the United Nations Human Rights Guidance on the Use of Less-Lethal Weapons in Law Enforcement.<sup>315</sup>

147. In the same vein, this Commission has expressed concern that several US laws do not require the use of non-violent means before resorting to the use of force, do not provide for the use of lethal force as a last resort, do not require a warning to be given prior to the use of lethal force, or do not clearly and objectively define the situations in which the use of lethal force is authorised, thus leaving a wide margin of discretion for interpretation by police officers.<sup>316</sup>

148. In this regard, the State, in its observations of December 17, 2021, referred to the regulatory reforms developed in 2014; in particular, the new CBP Use of Force Policy, Guidelines, and Procedures Handbook, which incorporates best practices and recommendations for the use of force by police officers.<sup>317</sup>

149. Although this Commission appreciates all the proceedings to review internal practices and regulations carried out by the State in order to ensure a cross-cutting human rights approach to the actions of police officers, it stresses that such frameworks issued subsequently do not blur the incompatibility of the national framework applicable to the events of Mr. Anastasio Hernández Rojas and, in any case, urges the State to ensure that its policies on the use of force are in line with inter-American standards.

150. Thus, for the reasons outlined above, this Commission concludes that the State failed in its duty to have a clear, robust and coherent framework for the purpose of safeguarding the right to life in the context of the deployment of force by State agents. For this reason, it finds a violation of Article I of the American Declaration, which refers to the right to life.

### **3.2. Concomitant actions: Disproportionate nature of the use of force against Mr. Anastasio Hernandez Rojas**

151. This Commission will address, on the one hand, the intrinsic relationship between the deployment of State force and the deprivation of Mr. Hernández's right to life and, on the other hand, it will analyze the proportionality of the reaction of the police officers in charge of the victim's transfer, in the context of his intended deportation.

#### **3.2.1. Relationship between the actions of State agents at the San Ysidro Gate and the death of Mr. Anastasio Hernández Rojas**

152. While it is true that it is not necessary to determine the cause of death of a person for the purposes of attributing international responsibility to a State<sup>318</sup>, this Commission emphasises that the two autopsies carried out in the instant case classified the death of Mr. Anastasio Hernández Rojas as a homicide<sup>319</sup>, due to the "trauma to which he was subjected".<sup>320</sup>

153. This is highly relevant if we bear in mind that, at the national level, the criminal investigation was closed on the grounds, among others, that the acute intoxication with methamphetamine, the pre-existing heart disease, the level of physical exertion during physical resistance, among others, were factors that contributed to the death of Mr. Hernández Rojas.

154. While it is true that the San Diego County Chief Medical Examiner noted that methamphetamine use may have played a role in the outcome<sup>321</sup>, he stressed that the trigger was actually a blow to the chest and ruled out a

<sup>315</sup> Human Rights Committee, Observations of the Human Rights Committee: United States, CCPR/C/79/Add.50, 3 October 1995, para. 297; Human Rights Committee, Concluding Observations of the Human Rights Committee: United States, CCPR/C/USA/CO/3, 15 September 2006, para. 30; Human Rights Committee, Concluding Observations 2014, April 23, 2014, para. 11(a); Human Rights Committee. Concluding observations on the fifth periodic report of the United States of America. December 7, 2023. CCPR/C/USA/CO/5, para. 36.

<sup>316</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, para. 211.

<sup>317</sup> Comments by the United States of America of December 17, 2021

<sup>318</sup> IACHR. Report No 1/16. Case 12.695. Merits. Vinicio Antonio Poblete Vilches and family members. Chile. April 13, 2016, para. 135; IACHR. Report No. 153/18. Case 13.069. Merits. Manuela and Family. El Salvador. December 7, 2018, para. 133

<sup>319</sup> Deposition of Glenn N. Wagner. O.J. October 4, 2012. Pages 162-171. Annex to the applicants' submission of March 30, 2016.

<sup>320</sup> Videotaped deposition of Marvin Pietruszka. M.D. J.D., March 21, 2013. Pages 173-193. Annex to the applicants' submission of March 30, 2016.

<sup>321</sup> County of San Diego. Office of the medical examiner. Autopsy report. June 1, 2010. Page 103. Annex to the applicants' submission of March 30, 2016.



significant impact of the identified pre-existing coronary artery disease, as the heart attack suffered was very acute and was the result of lack of oxygen to the whole heart and not to a coronary artery.<sup>322</sup>

155. In a similar vein, Dr. Marvin Pietruszka stressed –in response to questions regarding a possible link between Mr. Hernandez's death and the use of methamphetamine– that there is no evidence of such a connection and that, on the contrary, what was established was that Mr. Hernandez was calling for help and was alive when he suffered abrasions and injuries to his body.<sup>323</sup>

156. These scientific opinions, therefore, unanimously show the inescapable link between the death of Mr. Anastasio Hernández Rojas and the injuries caused –derived from the blows and electric shocks with a taser-type weapon– of which he was the victim by police officers.

### 3.2.2. Disproportionate nature of the use of force against Mr. Anastasio Hernandez Rojas

157. For the purposes of analyzing the use of force in relation to the events that occurred at the San Ysidro Port of Entry, this Commission considers it highly relevant to take into account four moments, which, when analyzed together, show an incremental exposure of the degree of violence deployed against the Victim: first, two police officers took Mr. Hernández to the area known as Whiskey-2<sup>324</sup> and, according to the testimony of the officers<sup>325</sup>, when they removed the handcuffs, he began to move in an agitated manner<sup>326</sup> –moment I–.

158. Second, following these events, two more police officers intervened, and one used an extendable baton against Mr. Hernández.<sup>327</sup> In this context, they knocked the Victim down<sup>328</sup> and, with the participation of another officer, put him in handcuffs<sup>329</sup> –moment II–. Third, seven State agents tried to get Mr. Hernández into a vehicle and, upon his alleged resistance, placed him on the ground again, face down.<sup>330</sup> This Commission notes that witnesses reported that some police officers knelt on the back of Anastasio's neck and lower back while others repeatedly beat, kicked, and stepped on his head and body.<sup>331</sup> In this scenario, two State agents withdrew –moment III–.<sup>332</sup>

159. Finally, and bearing in mind that Mr. Hernandez was with at least five State agents and handcuffed, agent Vales finally arrived on the scene, who, according to witnesses, kicked Mr. Hernández<sup>333</sup>, and delivered four electric shocks, including one in "drive stun" mode for 12 seconds<sup>334</sup> in the victim's chest<sup>335</sup> –moment IV–.

160. Under such a factual delimitation, this Commission will proceed to analyze whether the measures deployed –in particular, the beatings and electric shocks, under the conditions in which they occurred and with the presence of at least nine police officers– (i) fulfil a legitimate aim, and (ii) are necessary and (iii) proportional.

<sup>322</sup> County of San Diego. Office of the medical examiner. Autopsy report. June 1, 2010. Page 103. Annex to the applicants' submission of March 30, 2016.

<sup>323</sup> Videotaped deposition of Marvin Pietruszka. M.D. J.D., March 21, 2013. Pages 173-193. Annex to the applicants' submission of March 30, 2016.

<sup>324</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016; Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016; Communication of March 30, 2016. Page 7.

<sup>325</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>326</sup> Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>327</sup> Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 577. Annex to the applicants' submission of March 30, 2016.

<sup>328</sup> Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Videotaped deposition of Harinzo R. Narainesingh. December 18, 2012. Page 582. Annex to the applicants' submission of March 30, 2016.

<sup>329</sup> Memorandum of points and authorities in support of the Motion for Summary Judgment. May 31, 2013. Pages 41-76. Annex to the applicants' submission of March 30, 2016; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>330</sup> Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016. [558583]-[Annexes]; Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>331</sup> Videotaped deposition of Sergio Gonzalez Gomez. January 10, 2013. Page 743. Annex to the applicants' submission of March 30, 2016.

<sup>332</sup> Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>333</sup> Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>334</sup> Taser. Protect life. Taser information. Jerry Vales. Annex to the applicants' submission of March 30, 2016. Page 68.

<sup>335</sup> Videotaped deposition of supervisor I199. January 25, 2013. Pages 159-60. Annex to the applicants' submission of March 30, 2016.

161. **First**, this Commission finds that at the domestic level –in particular, in the Civil Procedure– it was attempted to prove that the State agents had acted in the manner they did in order to safeguard the integrity of the police officers and of Mr. Hernández himself<sup>336</sup>, while there is testimony from the same agents indicating that the victim hit his head against the pavement after he desisted from entering the vehicle.<sup>337</sup> Accepting for the sake of argument that these were indeed the aims pursued, it could be concluded that they are legitimate and conventionally protected.

162. However, the Commission cannot fail to point out, on the one hand, that although on several occasions State agents have tried to portray Mr. Hernández as a danger to the officers<sup>338</sup>, the truth is that depositions of witnesses<sup>339</sup>, including some officers, state that Mr. Hernández did not intend to harm them.<sup>340</sup> On the other hand, and again accepting the existence of the aforementioned purposes, it can hardly be considered that blows, kicks, or four electric shocks would be conducive to guaranteeing the protection of the integrity of Mr. Anastasio Hernández Rojas.

163. **Secondly**, and assuming that Mr. Hernandez was required to be immobilised –at the moment I, that is, when he allegedly starts to move in an accelerated manner after being taken to Whiskey-2– and once Mr. Hernandez was handcuffed and accompanied by five or seven officers –moment II and III respectively–, the kicks, blows, and electric shocks that the international record shows were inflicted on the victim<sup>341</sup> do not exceed the standard of strict necessity.

164. In fact, the Commission notes that, at the moment IV and prior to the taser shocks, (i) two State agents – those in charge of transferring the Victim from the Chula Vista Station to the San Ysidro Port of Entry– had left the scene, which would reflect that the situation was under control<sup>342</sup>; and (ii) Mr. Hernandez was handcuffed, with his hands behind his back and in a foetal position.<sup>343</sup> In this context, there is no element, nor has the State alleged one, to demonstrate the need for the use of this weapon, and even less so on four occasions.

165. **Finally**, this deployment of force by State agents does not comply with proportionality in the strict sense, if one takes into account that: (i) the level of intensity and danger of the threat posed by Mr. Hernández could not be precisely determined, bearing in mind that there are multiple witnesses who indicate that Mr. Hernández did not attempt to shoot down<sup>344</sup>, assault<sup>345</sup>, or cause harm to the State agents<sup>346</sup>; (ii) at least nine police officers intervened directly; (iii) the surrounding area was controlled by multiple State agents; and (iv) the officers had batons and a taser gun, which were also used to subdue the victim.

166. Therefore, bearing in mind that the actions of the State agents that caused the deprivation of life of Mr. Anastasio Hernández Rojas were neither necessary nor strictly speaking proportional, this Commission concludes that the State violated Article I of the American Declaration of the Rights and Duties of Man.

### 3.2.3. Subsequent actions: Delayed medical care

167. As noted above, following the deployment of force and in the case of injuries, it is incumbent on the state to ensure timely medical care. In fact, Directive 4510-029 of 2009 states that after the use of electronic devices, such care must be ensured immediately.<sup>347</sup>

<sup>336</sup> Anastasio Hernández Rojas v. United States of America. Order denying motions for summary judgment. September 29, 2014. Pages 2-22.

<sup>337</sup> Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>338</sup> Available at: <https://www.justice.gov/es/opa/pr/autoridades-federales-cierran-la-investigaci-n-de-la-muerte-de-anastasio-hernandez-rojas>

<sup>339</sup> Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>340</sup> Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016.

<sup>341</sup> Videotaped deposition of supervisor I199. January 25, 2013. Pages 159-60. Annex to the applicants' submission of March 30, 2016.

<sup>342</sup> Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016; Declaration of Agent V325. December 19, 2013. Pages 89-96. Annex to the applicants' submission of March 30, 2016.

<sup>343</sup> Videotaped deposition of Ashley Young. January 24, 2013. Pages 160 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>344</sup> Declaration of BPA V315 in support of motion for summary judgment. Pages 98-106. April 18, 2013. Annex to the applicants' submission of March 30, 2016.

<sup>345</sup> Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016.

<sup>346</sup> Videotaped deposition of Humberto Navarrete. January 9, 2013. Page 723. Annex to the applicants' submission of March 30, 2016.

<sup>347</sup> CBP Directive 4510-029. P. 246 et seq.



168. Notwithstanding the foregoing, it is established that, after the four shocks with the Taser, and even though Mr. Hernández suffered convulsions<sup>348</sup>, and an officer stopped perceiving his breathing<sup>349</sup>, witnesses stated that the officers surrounded Mr. Anastasio Hernández Rojas and again pressed his face down with their knees on his head and back, limiting his ability to breathe.<sup>350</sup> Only after that they really noticed that Mr. Hernández was unconscious<sup>351</sup> and turned him over on his side.<sup>352</sup>

169. In this context, the Commission finds that, by not taking immediate notice, even after the first shock, of Mr. Hernández's health condition, not only was time lost that was relevant to his stabilization, but his situation could have been aggravated by inducing body postures that prevented him from breathing normally. In fact, the San Diego County Chief Medical Examiner noted that Mr. Hernandez did not **receive timely resuscitation**, which also resulted in irreversible brain damage.<sup>353</sup>

170. Therefore, this Commission concludes that the State was also insufficiently diligent in failing to ensure the immediate emergency medical attention that Mr. Anastasio Hernández Roja required and, therefore, failed to comply with its duty of prevention in relation to the right to life contemplated in Article I of the American Declaration.

171. From all of the above, it can be inferred that: (i) the facts under analysis occurred in a context of discrimination against migrants; (ii) after his arrest, Mr. Anastasio did not receive medical attention despite having requested it; (iii) the alleged victim suffered acts of torture by border agents in the context of an arbitrary use of force; (iv) the normative framework on the use of force in the State is incompatible with the effective guarantee of human rights; (v) the taser was used unnecessarily and disproportionately; (vii) Mr. Hernández did not receive timely resuscitation despite the fact that his condition required it. The Commission considers that these facts constitute an arbitrary deprivation of the life of Mr. Anastasio Hernández contrary to international law.

#### **D. Right to justice (Article XVIII of the American Declaration of the Rights and Duties of Man)<sup>354</sup>**

##### **1. Due diligence considerations in criminal investigation, and investigation of alleged acts of torture and arbitrary deprivation of liberty**

##### **1.1. Content of the due diligence obligation**

172. In the framework of a systematic reading of Articles I and XVIII of the American Declaration, this Commission<sup>355</sup> has reiterated the obligation of States to carry out an effective investigation in cases where there are indications of the alleged arbitrary deprivation of the right to life, or the commission of acts of torture.<sup>356</sup> The investigation shall be aimed at establishing the truth, and at the prosecution, trial, and eventual sanction of the perpetrators. This duty, as has also been upheld by the organs of the Inter-American System, is reinforced when State agents are involved.<sup>357</sup>

<sup>348</sup> Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 598. Annex to the applicants' submission of March 30, 2016.

<sup>349</sup> Videotaped deposition of Andre T. Piligrino. December 18, 2012. Page 599. Annex to the applicants' submission of March 30, 2016.

<sup>350</sup> San Diego Police Department Investigator Report. Alan Robert Boutwell. May 28, 2010. Page 496. Annex to the applicants' submission of March 30, 2016.

<sup>351</sup> Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016.

<sup>352</sup> Videotaped deposition of Derrick M. Llewellyn. Page 638. Annex to the applicants' submission of March 30, 2016.

<sup>353</sup> Deposition of Glenn N. Wagner. O.J. October 4, 2012. Pages 162-171. Annex to the applicants' submission of March 30, 2016.

<sup>354</sup> Article XVIII of the American Declaration establishes: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights"

<sup>355</sup> IACHR. Report No. 121/18. Case 10.573. José Isabel Salas Galindo et al. October 5, 2018. Para. 410; IACHR. Report No. 31/20. Case 12.332. Margarida Maria Alves and family. April 26, 2020, para. 126.

<sup>356</sup> IACHR. Report No. 121/18. Case 10.573. José Isabel Salas Galindo et al. October 5, 2018. Para. 410; IACHR. Report No. 31/20. Case 12.332. Margarida Maria Alves and family. April 26, 2020, para. 126.

<sup>357</sup> IACHR. Report No. 43/2014. Case 12.492. Carlos Escaleras Mejía and family. July 17, 2014, para. 192; IACHR. Report No. 31/20. Case 12.332, Margarida Maria Alves and family. April 26, 2020, para. 125; I/A Court H.R. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156; I/A Court H.R. Case of Integrantes y Militantes de la Unión Patriótica Vs. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 27, 2022. Series C No. 455, para. 264.

173. In order to guarantee the effectiveness of the investigation of facts related to the violation of the right to life or humane treatment. It is up to the States and, in particular, to the appropriate authorities, to act diligently and to follow up on the logical lines of investigation.<sup>358</sup>

174. In light of the reiterated position of the organs of the Inter-American System, the relatives of the direct Victims have the right (i) to know the truth - which implies clarifying the facts, determining those responsible and the motives behind the violations<sup>359</sup>; (ii) to have full access and capacity to act in all stages of the investigation and trial and (iii) to have access to the necessary protection measures.<sup>360</sup>

175. The Inter-American Court<sup>361</sup>, the IACHR<sup>362</sup> and this Commission<sup>363</sup> have stressed that investigations into excessive use of force must be open to public scrutiny because of the public interest derived from the facts and "in order to ensure the responsibility of State agents both in theory and in practice".<sup>364</sup>

176. By virtue of the right to access to justice, it is incumbent upon the state, once it becomes aware of an alleged violation of the right to life, to conduct an *ex officio*, prompt, serious, independent, impartial, effective and proactive investigation.<sup>365</sup> In this framework, and in light of the pronouncements of this Commission<sup>366</sup>, the jurisprudence of the I/A Court H.R.<sup>367</sup> and the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions<sup>368</sup>, the appropriate authorities of the States, in the first stages of investigating violent deaths, shall: (i) collect and preserve relevant evidence; (ii) identify possible witnesses and obtain their statements; and (iii) formulate possible hypotheses regarding the procedures or practices that may have led to the death.

177. On the other hand, in accordance with the Minnesota Protocol, the authorities conducting the crime scene investigation must take the necessary measures to preserve the scene and prevent the contamination of evidence. Therefore, it shall be necessary, among other measures, to cordon off the scene, close off the area adjacent to the body and restrict entry thereto to the investigator and their team members only.<sup>369</sup>

<sup>358</sup> IACHR. Report 136/99. Case 10.488. Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López Y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos; and Celina Mariceth Ramos. December 22, 1999, para. 196; IACHR. Report No. 83/23. Case 14.196. Oswaldo José Payá Sardiñas et al. June 9, 2023, para. 69; I/A Court H.R. Case of García Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 153; I/A Court H.R. Case of Tabares Toro et al. v. Colombia. Merits, Reparations and Costs. Judgment of May 23, 2023. Series C No. 491, para. 132.

<sup>359</sup> IACHR. Report No. 77/16. Case 12.602. Walter Munárriz Escobar. Peru. December 10, 1996, paras. 131-133; IACHR. Report No. 3/16. Merits. Nitz Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera, Mexico. April 13, 2016, para. 245; I/A Court H.R. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C. No. 4, para. 181; I/A Court H.R. Case of Flores Bedregal et al. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 17, 2022. Series C No. 467, para. 103.

<sup>360</sup> IACHR. Report No. 51/13. Case 12.551. Paloma Angelica Escobar Ledezma et al. Mexico. July 12, 2013, para. 73; IACHR. Report No. 56/19. Case 13.392. Julien Grisonas family. Argentina. May 4, 2019, para. 159; I/A Court H.R. Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R. Case of Tabares Toro et al. v. Colombia. Merits, Reparations and Costs. Judgment of May 23, 2023. Series C No. 491, para. 133.

<sup>361</sup> I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 82; I/A Court H.R. Case of Hermanos Landaeta Mejías et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 28, para. 254.

<sup>362</sup> ECtHR. Case of Isayeva v. Russia. Judgment of February 24, 2005. Application No. 57950/00, para. 214; ECtHR. Case of Nachova et al. v. Bulgaria. Judgment of July 6, 2005. Application No. 43577/98 and 43579/98, para. 119; ECtHR. Case McKerr v. United Kingdom. Judgment of May 4, 2001. Application No. 28883/95, para. 115.

<sup>363</sup> IACHR. Protest and human rights report. September 2019, paras. 161 and 170.

<sup>364</sup> I/A Court H.R. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 82; I/A Court H.R. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 89.

<sup>365</sup> IACHR. Report No. 92/19. Case 11.624. Jorge Darwin García and family. June 14, 2019, para. 95; IACHR. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 88; I/A Court H.R. Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 98.

<sup>366</sup> IACHR. Report No. 37/00. Case 11.481. Monsignor Oscar Arnulfo Romero y Galdámez. El Salvador. April 13, 2000, para. 85; IACHR. Report No. 35/17. Case 12.713. Jose Rusbel Lara et al. March 21, 2017, para. 201; IACHR. Report No. 92/19. Case 11.624. Jorge Darwin García and family. June 14, 2019, para. 97.

<sup>367</sup> I/A Court H.R. Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 127; I/A Court H.R. Case of Olivares Muñoz et al. v. Venezuela. Merits, Reparations and Costs. Judgment of November 10, 2020. Series C No. 415, para. 121.

<sup>368</sup> Minnesota Protocol on the Investigation of Potentially Unlawful Deaths (2016). Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 2017. II. International legal framework. D. Elements and Principles of Investigations. 1. 1. Elements of the Duty of Investigation. ii. Effectiveness and Comprehensiveness, para. 25.

<sup>369</sup> Office of the United Nations High Commissioner for Human Rights. Minnesota Protocol on the Investigation of Potentially Unlawful Death. 2016, para. 59. See also: IACHR. Report No. 170/11. Case 12.578. María Isabel Véliz Franco et al. Guatemala. November 3, 2011, para. 105; IACHR. Report No. 35/17. Case 12.713. José Rusbel Lara et al. Colombia. March 21, 2017, para. 202; I/A Court H.R. Case of Gonzalez et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 300; I/A Court H.R. Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338, para. 158.

178. Finally, due diligence in an investigation involves preserving the chain of custody of any forensic evidence.<sup>370</sup> In this regard, the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ("Minnesota Protocol"), applicable to any investigation of violent, sudden, unexpected and suspicious deaths, states that, in order to ensure evidence integrity, it is incumbent upon the appropriate authorities: (i) document the identity and sequence of the persons who have handled potential evidence; (ii) ensure traceability of all stages of the evidence from the time of its collection; (iii) restrict access to the place where evidence is identified; and (iv) prevent contamination of the evidence, among other measures.<sup>371</sup>

179. As stated on multiple occasions by this Commission<sup>372</sup> and the Inter-American Court<sup>373</sup>, the lack of diligence in the investigation constitutes a significant barrier to accessing justice. In particular, the undue passage of time affects the possibility of safeguarding, obtaining and presenting relevant and reliable evidence to clarify the facts and determine responsibilities.<sup>374</sup>

## 1.2. Guarantees of Impartiality, Independence and the Overcoming of Stereotypes and Biases

180. Article XVIII of the American Declaration guarantees the impartiality and independence of the administration of justice. Thus, individuals have the right to have their disputes heard by an independent court, in order to prevent the judicial system in general and its members in particular from being subjected to undue restrictions in the exercise of their functions by bodies outside the judiciary.<sup>375</sup>

181. As indicated by this Commission, the I/A Court H.R., and the ECtHR<sup>376</sup>, States have the obligation to ensure that individuals in charge of conducting an investigation, within the framework of the criminal process, are independent, both hierarchically and institutionally in order to ensure the effectiveness and efficiency of their prosecutorial power.<sup>377</sup>

182. In turn, ensuring impartiality implies that judicial operators must approach the case before them without preconceived opinions and refrain from presuming the defendant guilty.<sup>378</sup> States must thus ensure that the authority is objective and instils the necessary confidence –to the litigant and to society itself– that it is exercising judicial powers in accordance with the domestic legal system.<sup>379</sup>

<sup>370</sup> IACHR. Report No.66/11. Case 12.444. Eduardo Nicolas Cruz Sánchez et al. Peru. March 31, 2011, para. 178; IACHR. Report No. 33/17. Case 11.639. Alejandro Yovany Gómez Virula and Family. Guatemala. March 21, 2017, para. 104; I/A Court H.R. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 207 and 305; I/A Court H.R. Case of Ortiz Hernández et al. v. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338, para. 161.

<sup>371</sup> Office of the United Nations High Commissioner for Human Rights. Minnesota Protocol on the Investigation of Potentially Unlawful Death. 2016, para. 65.

<sup>372</sup> IACHR. Report No. 7/16. Case 12.213. Aristeu Guida da Silva and family. April 13, 2016, para. 183-185; IACHR. Report No. 297/21. Case 13.639. Admissibility and Merits. Yoani María Sánchez Cordero. Cuba. October 30, 2021, para. 219;

<sup>373</sup> I/A Court H.R. Case of Hermanos Landaeta Mejías et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 236; I/A Court H.R. Case of Leguizamón Zaván et al. v. Paraguay. Merits, Reparations and Costs. Judgment of November 15, 2022. Series C No. 473, para. 68.

<sup>374</sup> IACHR. Report No. 96/19. Case 11.726. Norberto Javier Restrepo. June 14, 2019, para. 139; IACHR. Report No. 333/21. Case 12.871. Virgilio Maldonado Rodríguez. November 22, 2021, para. 37; I/A Court H.R. Case of Osorio Rivera and family v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, para. 185; I/A Court H.R. Case of Angulo Losada v. Bolivia. Preliminary Objections, Merits and Reparations. Judgment of November 18, 2022. Series C No. 475, para. 183.

<sup>375</sup> IACHR. Report No. 99/11. Case 12.597. Miguel Camba Campos et al. ("Vocales del Tribunal Constitucional") Ecuador. July 22, 2011, para. 72; IACHR. Report No. 74/21. Case 13.638. Merits. José Antonio Gutiérrez Navas et al. Honduras. April 16 2021, para. 81; I/A Court H.R. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 171; I/A Court H.R. Case of Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2020. Series C No. 409, paras. 107 and 108.

<sup>376</sup> ECtHR. Case of Rantsev v. Cyprus and Russia. Judgment of January 7, 2010, para. 233.

<sup>377</sup> IACHR. Report on the Human Rights of individuals arrested in the Americas. OEA/Ser.L/V/II. Doc. 64 December 31, 2011, para. 324; IACHR. Report No. 297/21. Case 13.639. Admissibility and Merits. Yoani María Sánchez Cordero. Cuba. October 30, 2021, para. 62; I/A Court H.R. Case of Baldeón García v. Peru. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147. Para. 95; I/A Court H.R. Case of Martínez Esquivia v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of October 6, 2020. Series C No. 412, para. 87.

<sup>378</sup> IACHR. Corruption and Human Rights: Inter-American Standards. OEA/Ser.L/V/II. Doc. 236. December 6, 2019, para. 311; I/A Court H.R. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paras. 70 and 71; I/A Court H.R. Case of Olivera Fuentes v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 4, 2023. Series C No. 484, para. 123. Also see: ECtHR. Piersack v. Belgium. Application No. 8692/79. Judgment of October 1, 1982, para. 30.

<sup>379</sup> IACHR. Report No. 78/02. Case 11.335. Chico Malaria. Haiti. December 27, 2002, paras. 74-76; IACHR. Report No. 99/17. Case No. 11.782. Admissibility and Merits. Ángel Rodríguez Revolorio, Miguel Ángel López Calo and Aníbal Archila Pérez. Guatemala. September 5, 2017, para. 113; I/A Court H.R. Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 8, 2018.

183. Any investigation or prosecution of alleged acts of torture or arbitrary deprivation of life must be based on the principles of independence, impartiality and transparency.<sup>380</sup> Under this framework, all persons involved in this phase –from investigators and Prosecutors to Expert Witnesses or doctors– should be free from bias and avoid any relationship of subordination, hierarchy, or administrative or financial connection between the appropriate authorities and the alleged perpetrators.<sup>381</sup>

184. As has been affirmed by this Commission<sup>382</sup> and by the I/A Court H.R.<sup>383</sup>, it is incumbent upon the States to adopt positive measures to eliminate stereotypes in the administration of justice insofar as these have the potential to affect the objectivity of the officials responsible for conducting investigations and to influence their perception, including their assessment of whether the reported incident occurred, or the credibility of the victim or witnesses.

### 1.3. Reasonable time

185. According to Article XVIII of the American Declaration, States shall resolve disputes brought before the administration of justice within a reasonable time.<sup>384</sup> In this context, both this Commission and the Court have pointed out that the reasonableness of the timeframe must be analyzed in relation to the total duration of the proceedings. That is, from the time the initial procedural act is carried out until the issuance of the final judgment.<sup>385</sup>

186. The I/A Court H.R. and this Commission have declared that (i) State shall demonstrate why a process or set of proceedings have been extended over time<sup>386</sup>; and (ii) in order to assess the reasonableness of the time elapsed, it is necessary to jointly analyze the complexity of the case, the procedural activity of the interested party, the conduct of judicial authorities, and the impact on the legal situation of the person involved in the process.<sup>387</sup>

187. In order to assess the complexity of the case, this Commission and the Court have taken into account: (i) the probative difficulty, (i) the number of parties involved in the proceedings, (iii) the number of victims, (iv) the

Series C No. 350, para. 239; I/A Court H.R. Case of Olivera Fuentes v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 4, 2023. Series C No. 484, Para. 123.

<sup>380</sup> IACHR. Report No. 46/90. Case 10.483. Clédanor Antoine. Haiti, para.6; IACHR. Report No. 29/20. Case 12.865. Merits. Djamel Ameziane. United States of America, April 22, 2020, para. 22; I/A Court H.R. Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 108; I/A Court H.R. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371. Para. 364; Human Rights Council. Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Nils Melzer. Torture and other cruel, inhuman or degrading treatment or punishment. July 16, 2021. A/76/168. Para 64.

<sup>381</sup> I/A Court H.R. Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C No. 339, para. 173; I/A Court H.R. Case of Olivera Fuentes v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 4, 2023. Series C No. 484, para. 123; IACHR. Report No. 457/21, Case 11.444. Merits. Amparo Constante Merizalde. Ecuador. December 31, 2021, para. 64-66; IACHR. Report No. 29/20. Case 12.865. Merits report. Djamel Ameziane. United States. April 22, 2020. OAS/Ser.L/V/II Doc. 39, para. 158.

<sup>382</sup> IACHR. Violence and Discrimination against Women, Children, and Adolescents: Good practices and challenges in Latin America and the Caribbean. OEA/Ser.L/V/II. Doc. 233. November 14, 2019, para. 28; IACHR. Women arrested in the Americas. OAS/Ser.L/V/II Doc. 91/23. March 8, 2023, para. 203.

<sup>383</sup> I/A Court H.R. Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C No. 339, para. 173; I/A Court H.R. Case of Olivera Fuentes v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 4, 2023. Series C No. 484, para. 123.

<sup>384</sup> IACHR. Report No.83/09. Case 11. 732. Merits. Horacio Anibal Schillizi. Moreno.Argentina. August 6, 2009, paras. 51, 52, 63; IACHR. Report No. 21/17, Case 11.738. Merits. Elba Clotilde Perrone and Juan José Preckel. Argentina, March 18, 2017, para. 77; I/A Court H.R. Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 166; I/A Court H.R. Case of Tzompaxtle Tecpile et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 7, 2022. Series C No. 470, para. 127.

<sup>385</sup> IACHR. Report No. 100/11. Case 12.472. Merits. Carlos Antonio Luna López et al. Honduras. July 22, 2011, para.207; IACHR. Report No. 245/20. Case 11.774. Merits. Héctor Hugo Boleso. Argentina. September 10, 2020, para. 36; I/A Court H.R. Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 168; I/A Court H.R. Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 25, 2023. Series C No. 482, para. 265.

<sup>386</sup> IACHR. Complaint before the Inter-American Court of Human Rights. Case 12.032. Ricardo Canese. Paraguay. June 12, 2002, paras. 88-90; IACHR. Report No. 35/17. Case 12.713. Merits. Jose Rusbel Lara et al. Colombia. March 21, 2017, para. 252; I/A Court H.R. Case of Radilla Pacheco v. United Mexican States. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 244; I/A Court H.R. Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314, para. 239.

<sup>387</sup> IACHR. Report No. 137/11. Case 10.738. Admissibility and merits. Carlos Augusto Rodríguez Vera et al. (Palace of Justice). Colombia. October 31, 2011, para. 462; IACHR. Report No. 96/19. Case 11.726. Merits. Norberto Javier Restrepo. Colombia. June 14, 2019, para. 108; I/A Court H.R. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155; I/A Court H.R. Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 25, 2023. Series C No. 482, Para. 266.



time that has passed since the alleged offence came to light, (v) the characteristics of the remedy under domestic legislation, and (vi) the context in which the events occurred.<sup>388</sup>

188. In relation to the second element, the I/A Court H.R. and this Commission have assessed whether the parties involved actively pursued the proceedings and participated in the corresponding procedural stages in accordance with the opportunities provided for at the national level.<sup>389</sup> Regarding the third element, and, in particular, for the purposes of examining the procedural conduct of the authorities, it is necessary to: (i) analyze the due diligence and speed with which they approached the proceedings; (ii) reasons provided by the officials for extended periods of inaction; and (iii) the actions taken by the authorities procedurally advance the case investigation.<sup>390</sup>

## 2. Case analysis

189. This Commission will examine whether the State has violated the right of access to justice, pursuant to Article XVIII of the American Declaration of the Rights and Duties of Man, to the detriment of Mr. Anastasio Hernández Rojas' family in relation to: (i) the criminal process, and (ii) civil proceedings, arising from the deprivation of his right to life.

### 2.1. Criminal process: obstacles to accessing justice and lack of due diligence in the investigation

190. This Commission will analyze whether the State violated the right of access to justice, in accordance with Article XVIII of the American Declaration, in the criminal process initiated following the deployment of force that resulted in the death of Mr. Anastasio Hernández Rojas. In particular, it will address the allegations relating to: (i) the failure to collect and, in some cases, the destruction of evidence in the first stages; (ii) the biases with which the investigation was initiated; (iii) irregularities in the crime scene analysis and the preservation of the chain of custody; and (iv) the lack of measures aimed at ensuring the participation of the victim's family members.

191. **First**, this Commission notes that some depositions allege that police officers confiscated and destroyed the recordings of witnesses to the assaults against Mr. Anastasio Hernández Rojas, in the area known as Whiskey-2.<sup>391</sup> These events, which have not been denied by the State, would, therefore, reflect the destruction of evidence by State agents. In this regard, it should be noted that the aforementioned evidence would have been crucial in accurately establishing the conditions in which the events occurred, as was indeed the case with the release of Mr. Humberto Navarrete's video in June 2010.<sup>392</sup>

192. In turn, this Commission observes that although on May 29, 2010 - one day after the events occurred - depositions were taken from 17 police officers and witnesses, it is true that not all of the officers who were directly involved in the events were contacted<sup>393</sup>, and the testimonies of bystanders were only collected as of June 10, 2010 - at which time the video of Mr. Navarrete<sup>394</sup> had already been released.

193. The Commission notes that there is no valid reason for prioritising certain State agents and the failure to immediately contact witnesses from outside the institution. Furthermore, it emphasizes that the failure to conduct such actions -especially the collection of third-party testimonies- in the first stage of the investigation would have: (i) allowed for a shift in the investigation's focus -recognizing Mr. Hernández as a victim rather than an aggressor;

<sup>388</sup> IACHR. Report No. 1. Case 12.695. Merits. Vinicio Antonio Poblete Vilches and family. Chile. April 13, 2016, para. 161; IACHR. Report No. 9/20. Case 13.378. Merits. Beatriz. El Salvador. March 3, 2020, para. 188; I/A Court H.R. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 77; I/A Court H.R. Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 25, 2023. Series C No. 482. Para 265.

<sup>389</sup> IACHR. Report No. 36/08. Case 12.487. Rafael Ignacio Cuesta Caputi. Ecuador. July 18, 2008; IACHR. Report No. 74/17, Case 12.656. Merits. Victorio Spoltore. Argentina. July 5, 2017, para. 410; IACHR. Report No. 9/20. Case 13.378. Merits. Beatriz. El Salvador. March 3, 2020, para. 189; I/A Court H.R. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 79; I/A Court H.R. Case of Montesinos Mejía v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 27, 2020. Series C No. 398, para. 184.

<sup>390</sup> IACHR. Report No. 43/2014, Case 12.492. Merits. Carlos Escaleras Mejía and family. Honduras. July 17, 2014, para. 174; IACHR. Report No. 9/20. Case 13.378. Merits. Beatriz. El Salvador. March 3, 2020, para. 196; I/A Court H.R. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 146; I/A Court H.R. Case of Digna Ochoa and family v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2021. Series C No. 447, para. 133.

<sup>391</sup> Videotaped deposition of Ashley Young. January 24, 2013. Pages 160 et seq. Annex to the applicants' submission of March 30, 2016.

<sup>392</sup> San Diego Police Department. Investigative personnel. Homicide personnel. Annex to the applicants' submission of March 30, 2016. Page 18.

<sup>393</sup> San Diego Police Department. Investigative personnel. Homicide personnel. Annex to the applicants' submission of March 30, 2016. Page 18.

<sup>394</sup> San Diego Police Department. Investigative personnel. Homicide personnel. Annex to the applicants' submission of March 30, 2016. Page 18.



(ii) facilitated the identification and location of more witnesses; and (iii) enabled the cross-referencing of information to identify potential inconsistencies or contradictions.

194. **Secondly**, the Commission notes with concern that the early stages of the investigation were conducted under the assumption that Mr. Anastasio Hernández Rojas was the alleged perpetrator. In particular, the investigation reports formulated identify the Police officers, including Mr. Jerry Vales –the officer attributed with the use of the Taser against Mr. Hernandez –as the victims and Mr. Anastasio Hernandez Rojas as the suspect.<sup>395</sup>

195. In light of these circumstances, and with concern, this Commission highlights that portraying Mr. Hernandez as the aggressor was disseminated by the San Diego Police Department itself, which issued a press release on May 29, 2010, referring to Mr. Hernandez as the "subject" –and not the alleged victim– and attributed to him violent and combative behaviour.<sup>396</sup> Such actions are revictimizing and reflect biases, and preconceptions that influence the progress of the criminal investigation into alleged crimes of significant severity.

196. **Thirdly**, this Commission finds that, although Mr. Hernandez was taken to the hospital on May 28, 2010, at 21:48:30<sup>397</sup>: (i) Station officials informed the appropriate authorities on May 29 at 2:12 –more than four hours later–; (ii) the San Diego Police Department was notified at 12:00, and (iii) processing of the Whiskey-2 area began at 13:52.<sup>398</sup>

197. Thus, more than 16 hours passed since the occurrence of the events, and the investigation team went to the crime scene to gather information, without any record in the file that the area had been previously secured in order to safeguard the evidence and prevent contamination.

198. On the contrary, what is established is that prior to this, the United States Border Patrol's Critical Incident Investigation Team (CIIT)<sup>399</sup> arrived at the scene. In this regard, the Commission has four observations to make. First, it is not clear what legal basis could justify the intervention of this body in the investigation of an excessive use of force resulting in the death of a person.<sup>400</sup>

199. Second, there is no basis in the national legal framework to support the CIIT's priority access to the crime scene, and other evidence –such as Mr. Hernández's medical records.<sup>401</sup> Third, the State has not demonstrated compliance by this body with the aforementioned requirements. Finally, it is highlighted with concern that the CIIT refrained from forwarding the collected information to the San Diego Police Department, which could represent an obstacle to the investigation whose jurisdiction is not in dispute.

200. On the other hand, the Commission notes, without being contested by the State, that the victim's representatives claimed significant obstacles in accessing information on the progress of the proceedings. In fact, they indicated that they were only able to access such data by the time the investigation concluded –in 2015.

201. They also pointed out that although, following the initiation of the investigation by the Justice Department, the Grand Jury was convened in 2012 –whose investigation lasted three years, according to media reports<sup>402</sup>– (i) it never allowed the participation of Mr. Hernández's family members, (ii) the inputs on which the case was analyzed were not made public, nor (iii) the result of its investigation communicated.

202. The State, in its observations, confirmed that the matters addressed before the Grand Jury were protected by Federal Rules of Criminal Procedure 6(e), and, therefore, its proceedings were not made public unless specifically authorized by a court order. In this regard, this Commission has previously expressed its concerns about this provision.<sup>403</sup> In particular, it has noted that "the private nature of grand juries and deliberations (...), and the

<sup>395</sup> San Diego Police Department. Homicide Section Callout Sheet. Annex to the applicants' submission of March 30, 2016. Page 7; San Diego Police Department. Investigative Personnel. Annex to the applicants' submission of March 30, 2016. Page 19.

<sup>396</sup> San Diego Police Department. Incident Federal Agents Leeaves one man in critical condition. Annex to the applicants' submission of March 30, 2016. Page 20.

<sup>397</sup> San Diego Medical Services Enterprise. Billing report. M229. Annex to the applicants' submission of March 30, 2016. Page 562.

<sup>398</sup> San Diego Police Department. Investigator's Report. Annex to the applicants' submission of March 30, 2016. Pages 25 et seq.

<sup>399</sup> Crime scene unit. Evidence List Case #10-027149 June 8, 2010. Annex to the applicants' submission of March 30, 2016. Page 116.

<sup>400</sup> 8 U.S.C. § 1357.

<sup>401</sup> San Diego Police Department. Investigative Personnel. Annex to the applicants' submission of March 30, 2016. Page 15.

<sup>402</sup> Samantha Tatro & Omari Fleming, Activists Discuss Trial of Man Allegedly Shot and Tased by CBP, NBC SAN DIEGO <https://www.nbcsandiego.com/news/local/Court-Set-to-Rule-on-Appeal-in-Anastasio-Rojas-That-May-Delay-Trial--299723151.html>.

<sup>403</sup> Remarks of December 17, 2021. Footnote 22.

role of prosecutors in guiding the grand jury proceedings and instructing on the law are factors that may impact the likelihood that a grand jury will decide not to bring criminal charges against police officers"<sup>404</sup>.

203. Thus, it is concluded that the State violated the right of access to justice as provided in Article XVII of the American Declaration, in the criminal investigation opened for the homicide of Mr. Hernández, as a result of (i) the failure to collect, and the destruction of evidence in the early stages; (ii) the biases with which the investigation was initiated; (iii) the irregularities in the preservation of the chain of custody; and (iv) the lack of measures aimed at ensuring the participation of the victim's family members.

## **2.2. Civil proceedings: Violation of the reasonable time frame**

204. As it has been established: (i) on December 23, 2011, Anastasio's family filed a civil lawsuit requesting reparation for the damages resulting from the arbitrary deprivation of Mr. Hernández's life<sup>405</sup>, and (ii) as of May 30, 2017 –the date on which the proceedings were concluded by an agreement between the parties– no decision had been issued.<sup>406</sup>

205. In this case, more than five years have passed since the lawsuit was filed without a final decision on the merits or any justification for this delay. Firstly, the case is not particularly complex since there are no multiple victims, and there was evidence such as depositions, videos, and other documentary evidence –which is also on the international file.

206. Secondly, there is no element that attributes the delay to the actions of the plaintiff, and, finally, the State has not provided the procedural actions carried out by the judicial authorities –different from those that have already been developed previously– that could demonstrate diligence by the appropriate authorities.

207. For these reasons, the Commission considers that the State violated the right to access to justice, as provided in Article XVIII of the American Declaration, by disregarding the reasonable timeframe in the civil proceedings from the time the lawsuit was filed in December 2011 until 30 May 2017.

## **E. Right to equality (Article II of the American Declaration of the Rights and Duties of Man)**

### **1. Considerations on the right to equality and the application of an intersectional approach in light of the American Declaration of the Rights and Duties of Man**

#### **1.1. Equality, the principle of non-discrimination and intersectionality**

208. Article II of the American Declaration of the Rights and Duties of Man provides for the right to equality and the principle of non-discrimination –one of the fundamental principles of the human rights protection system established by the Organization of American States (OAS).<sup>407</sup> In this regard, this Commission and the I/A Court H.R. have stressed that the principle of equality and non-discrimination entails a negative conception, prohibiting unreasonable, capricious or arbitrary differentiated treatment, and a positive conception, which implies the obligation of States to create conditions of real equality for historically excluded groups or groups at greater risk of being discriminated against.<sup>408</sup>

<sup>404</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156 November 26, 2018, para. 111.

<sup>405</sup> Third amended complaint. United States District Court in and for the Southern District of California. Case No. 11CV-0522-L. NLS. March 23, 2012. Pages 1-27.

<sup>406</sup> United States District Court Southern District of California. Case No. 11-cv-00522-POR-DHB. Available at: <https://cases.justia.com/federal/district-courts/california/casdce/3:2011cv00522/346683/402/0.pdf>

<sup>407</sup> IACHR. Report No. 40/04. Case 12.053. Merits. Mayan Indigenous Communities of the Toledo District, Belize. October 12, 2004 ("IACHR. Fondo Comunidades Indígenas Mayas del Distrito de Toledo"), para. 163; IACHR, Indigenous peoples, Afro-descendant communities and natural resources: protection of human rights in the context of extractive, exploitative and development activities, OAS/Ser.L/V/II. Doc. 47/15, December 31, 2015, para. 241.

<sup>408</sup> IACHR. Human Mobility and the Obligation to Protect Toward a Subregional Perspective. OEA/Ser.L/V/II. Doc. 194. July 21, 2023, para. 49; I/A Court H.R. Differentiated approaches to certain groups of persons deprived of their freedom (Interpretation and scope of articles 1.1, 4.1, 5, 11.2, 12, 13, 17.1, 19, 24, and 26 of the American Convention on Human Rights and other instruments concerning the protection of human rights). Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29.

209. By virtue of the above, this Commission has highlighted the interrelationship between intersectionality and the principle of non-discrimination. In this regard, the IACHR<sup>409</sup> and other international bodies<sup>410</sup> have pointed out that intersectionality is an approach that facilitates understanding and addressing the overlap of different levels of discrimination, the impact of their concurrence on the enjoyment and exercise of human rights, and the scope of States' obligations to adapt their responses.

## 1.2. The convergence of vulnerability factors in this case

210. This Commission emphasizes that in this case, four vulnerability factors converge that must necessarily be considered in the analysis: first, Mr. Anastasio Hernández Rojas' status as a migrant; second, his Latino origin; and third, his status as an arrested person.

211. Initially, this Commission has observed that people in the context of human mobility often face interconnected forms of discrimination in countries of origin, transit, destination, and return.<sup>411</sup> These people are discriminated against not only because of their national origin, their migration status, or more broadly because they are foreigners, but also because of other factors associated with their migrant status, such as their age, gender, ethno-racial background, disability status, poverty or poverty, among others.<sup>412</sup> This vulnerability is exacerbated in the case of irregular migrants.<sup>413</sup>

212. Moreover, as this Commission has pointed out, the condition of vulnerability faced by people in situations of human mobility becomes more intense depending on their national origin or mother tongue.<sup>414</sup> In particular, the situation of discrimination against people of Latin American origin in the United States of America has been documented.<sup>415</sup>

213. Lastly, various international bodies have highlighted the special situation of vulnerability and defencelessness caused by Arrest institutions, the interior of which is, in principle, beyond public scrutiny.<sup>416</sup> In this regard, this Commission stresses that, as the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has pointed out, the terms "Arrest" or "Incarceration" refer to the confinement of persons in guarded public or private facilities from which they cannot leave voluntarily.<sup>417</sup>

214. Fourth, as a result of their legal status, irregular migrants are susceptible to expulsion or deportation processes that can result in family separation, affecting their family relationships and the life project of each of the members of the family nucleus.<sup>418</sup>

<sup>409</sup> IACHR, Guidelines for preparation of progress indicators in the area of economic, social and cultural rights, OAS/Ser.L/V/II.132, Doc. 14 rev. 1, July 19, 2008, para. 42; IACHR. Human Mobility and the Obligation to Protect Toward a Subregional Perspective. OEA/Ser.L/V/II. Doc. 194. July 21, 2023, para. 49.

<sup>410</sup> United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights, A/HRC/35/10, April 21, 2017, para. 7.

<sup>411</sup> IACHR, Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and Standards of the inter-American Human Rights system, OAS/Ser.L/V/II. Doc. 46/15, December 31, 2015, para. 9..

<sup>412</sup> IACHR, Due Process in Procedures to Determine Refugee and Stateless Person Status and Grant Complementary Protection, OAS/Ser.L/V/II. Doc. 255, August 5, 2020, para. 94; IACHR. Human Mobility and the Obligation to Protect Toward a Subregional Perspective. OEA/Ser.L/V/II. Doc. 194. July 21, 2023, para. 52.

<sup>413</sup> IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the inter-American Human Rights system, OAS/Ser.L/V/II. Doc. 46/15, December 31, 2015, para. 9. IACHR, Due Process in Procedures to Determine Refugee and Stateless Person Status and Grant Complementary Protection, OAS/Ser.L/V/II. Doc. 255, August 5, 2020, para. 94.

<sup>414</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, para. 81.

<sup>415</sup> IACHR. African Americans, Police Use of Force, and Human Rights in the United States. OEA/Ser.L/V/II. Doc. 156. November 26, 2018, para. 81.

<sup>416</sup> I/A Court H.R. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, para. 61; Human Rights Committee, General Comment No. 21, para. 3; Committee on ESCR, General Comment No. 20, E/C.12/GC/20, July 2, 2009, para. 27.

<sup>417</sup> UN Special Rapporteurship on Torture and other cruel, inhuman and degrading treatment or punishment. Interim Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer. Migration-Related Torture and Ill Treatment. November 23, 2018. A/HRC/37/50, para. 19.

<sup>418</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families; Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on General Principles concerning the Human Rights of Children in the Context of International Migration, para. 8; IACHR. Report on the Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons, and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc. 46/15, December 31, 2015, para. 346.

## 2. Case analysis

215. Based on the aforementioned considerations, this Commission finds a violation of the right to equality derived from: first, the existence of biases related to migrant and arrested persons by State agents that prevented Mr. Anastasio Hernández Rojas from receiving medical attention (*supra* para. 109).

216. Second, this Commission stresses that the acts of violence against Mr. Hernández, which constituted acts of torture and represented an arbitrary deprivation of the right to life, are part of a generalised context of discrimination against migrants manifested, among others, in the excessive use of force against them.<sup>419</sup>

217. Under these circumstances, the events brought to the attention of this Commission not only illustrate this context of structural discrimination but also reflect the lack of measures adopted by the State that take into account the intersection of the different vulnerabilities that Mr. Hernández faced as a migrant, a Latino, and as an arrested individual.

218. Finally, this Commission highlights the discriminatory effects of the lack of access to justice and the lack of sanctions against the agents directly involved in the events. In this context, impunity in such cases not only facilitates its repetition but could also represent a form of social acceptance of these events that continuously fuel the discrimination cycle against migrants. This is reinforced when considering the biases and stereotypes that influenced the investigation and led to Mr. Hernández Rojas being portrayed as the aggressor and not as the victim. For the reasons given, it is concluded that the State violated the right to equality and the principle of non-discrimination provided for in Article II of the American Declaration of the Rights and Duties of Man.

### F. Personal Integrity of family members (Article I of the American Declaration of the Rights and Duties of Man)

#### 1. Considerations on the right to personal integrity

219. The Commission<sup>420</sup> and the I/A Court H.R.<sup>421</sup> have pointed out that deprivation of the right to life causes severe suffering for the relatives of the victim. In this situation, the organs of the Inter-American System have declared the violation of the right to the integrity of the immediate relatives of the victim –that is, mothers and fathers, daughters and sons, husbands and wives, permanent partners– by applying the *iuris tantum* presumption, and taking into account the particularities of the case.<sup>422</sup> In such cases, it is incumbent upon the State to present the relevant evidence to rebut this presumption.<sup>423</sup>

#### 2. Case analysis

220. In this context, this Commission takes note, on the one hand, of the emotional, psychological and economic impact that these events have had on Mr. Hernández's wife and children due to the loss of their family member, the conditions in which the events occurred, the lack of access to justice, and Mr. Hernández's role in financially supporting the household.<sup>424</sup> On the other hand, it should be noted that the State has not refuted this impact.

221. Therefore, the violation of the right to personal integrity, pursuant to Article I of the American Declaration, of María de Jesús Puga Morán (wife), Yeimi Judith Hernández (daughter), Daisy Alejandra Hernández (daughter), Fabián Anastasio Hernández (son); Daniel Hernández (son), and Daniela Hernández (daughter) is hereby declared.

<sup>419</sup> Committee on the Elimination of Racial Discrimination. Concluding observations on the combined seventh to ninth periodic reports of the United States of America. CERD/C/USA/CO/7-9. September 25, 2014, paras. 15, 17 y 18.

<sup>420</sup> IACHR. Report No. 101/17. Case 12.414. Merits. Alcides Torres Arias, Angel David Quintero et al. Colombia. September 5, 2017, para. 180.

<sup>421</sup> I/A Court H.R. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 133; I/A Court H.R. Case of the Massacre of Los Josefinos Village v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 3, 2021. Series C No. 442, para. 121.

<sup>422</sup> I/A Court H.R. Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 12, 2020. Series C No. 402, para. 221; IACHR. Report No. 96/19. Case 11.726. Merits. Norberto Javier Restrepo. Colombia. June 14, 2019, paras. 129-131.

<sup>423</sup> I/A Court H.R. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 119; I/A Court H.R. Case of Integrantes y Militantes de la Unión Patriótica Vs. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 27, 2022. Series C No. 455, para. 52.

<sup>424</sup> Communication of March 30, 2016. Page 5. Annex to the applicants' submission of March 30, 2016.

## **V. REPORT No. 118/24 AND INFORMATION ABOUT COMPLIANCE**

222. On August 23, 2024, the Commission approved Report No. 118/24 on the merits of the instant case, which encompasses paragraphs 1 to 221 *supra*, and issued the following recommendations to the State:

1. Taking into account the aggravating factors outlined in the petition, grant full and exemplary reparation for the violations of rights declared in this report, both in material and non-material terms. Regarding compensation, the Agreement signed between the parties in the Civil Procedure, and the sums paid may be taken into account.
2. Reopen the criminal investigation diligently, effectively, and within a reasonable time in order to establish the facts fully, identify all possible responsibilities, and impose appropriate sanctions for the violations of human rights declared in this report.
3. Adopt the corresponding administrative, disciplinary or penal measures against the state officials for the actions or omissions that contributed to the denial of justice and impunity surrounding this case.
4. Arrange the necessary mental health care measures for the family members of Mr. Anastasio Hernández Rojas, if they so wish and in a concerted manner.
5. Adopt satisfaction measures aimed at reversing the narrative promoted by the State, which categorised Mr. Anastasio Hernández Rojas as an aggressor and not as a victim.
6. Provide non-repetition mechanisms that include: (i) adapting the legal framework related to the use of force in accordance with the standards established in international human rights law described in this report; (ii) adopting legislative or other measures to ensure the active participation of victims in criminal proceedings, including in the context of proceedings before the grand jury; (iii) providing for such measures as may be necessary to promote transparency in the grand jury proceedings; (iv) adopting legislative, administrative, or other measures aimed at guaranteeing the implementation of a differential approach within State detention centers, especially in border centers, in order to ensure adequate conditions of detention in light of the standard of dignified treatment; (v) in the light of the principles of strict necessity and proportionality, delimiting the use of tasers weapons by police officers; (vi) prohibiting the use of Drive-Stun Taser weapons; and (vii) ensuring the training of police officers at border centers on the use of force, human rights, differential approaches, intersectionality and restrictive application of tasers.

223. On December 19, 2024 the IACHR transmitted the report to the State with a time period of one month to inform the Commission on the measures taken to comply with its recommendations. To date, the Commission has not received any response from the United States regarding report No. 118/24.

## **VI. ACTIONS SUBSEQUENT TO REPORT No. 19/25**

224. On March 29, 2025, the Commission approved Final Merits Report No. 19/25, which encompasses paragraphs 1 to 223 *supra*, and issued its final conclusions and recommendations to the State. On March 31, 2025, the Commission transmitted the report to the State with a time period of three weeks to inform the Inter-American Commission on the measures taken to comply with its recommendations. To date, the IACHR has not received any response from the United States regarding Report No. 19/25.

## **VII. FINAL CONCLUSIONS AND RECOMMENDATIONS**

225. Based on the findings of fact and law in this report, the Inter-American Commission concludes that the State is responsible for the violation of the rights to life, personal integrity, health, justice, and humane treatment during the arrest, established in Articles I, XI, XVII and XXV of the American Declaration of the Rights and Duties of Man to the detriment of Mr. Anastasio Hernández Rojas, Mrs. María de Jesús Puga Morán, and their children Yeimi Judith, Daisy Alejandra, Fabián Anastasio, Daniel, and Daniela Hernández.



**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
REITERATES THE UNITED STATES OF AMERICA TO**

1. Taking into account the aggravating factors outlined in the petition, grant full and exemplary reparation for the violations of rights declared in this report, both in material and non-material terms. Regarding compensation, the Agreement signed between the parties in the Civil Procedure, and the sums paid may be taken into account.
2. Reopen the criminal investigation diligently, effectively, and within a reasonable time in order to establish the facts fully, identify all possible responsibilities, and impose appropriate sanctions for the violations of human rights declared in this report.
3. Adopt the corresponding administrative, disciplinary or penal measures against the state officials for the actions or omissions that contributed to the denial of justice and impunity surrounding this case.
4. Arrange the necessary mental health care measures for the family members of Mr. Anastasio Hernández Rojas, if they so wish and in a concerted manner.
5. Adopt satisfaction measures aimed at reversing the narrative promoted by the State, which categorised Mr. Anastasio Hernández Rojas as an aggressor and not as a victim.
6. Provide non-repetition mechanisms that include: (i) adapting the legal framework related to the use of force in accordance with the standards established in international human rights law described in this report; (ii) adopting legislative or other measures to ensure the active participation of victims in criminal proceedings, including in the context of proceedings before the grand jury; (iii) providing for such measures as may be necessary to promote transparency in the grand jury proceedings; (iv) adopting legislative, administrative, or other measures aimed at guaranteeing the implementation of a differential approach within State detention centers, especially in border centers, in order to ensure adequate conditions of detention in light of the standard of dignified treatment; (v) in the light of the principles of strict necessity and proportionality, delimiting the use of tasers weapons by police officers; (vi) prohibiting the use of Drive-Stun Taser weapons; and (vii) ensuring the training of police officers at border centers on the use of force, human rights, differential approaches, intersectionality and restrictive application of tasers.

**VIII. PUBLICATION**

226. In light of the above and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 28th day of the month of April 2025.  
(Signed): José Luis Caballero Ochoa, Chair; Andrea Pochak, First Vice-Chair; Arif Bulkan, Second Vice-Chair; Roberta Clarke and Edgar Stuardo Ralón Orellana, members of the Commission.