

Before the

**INTER-AMERICAN COMMISSION ON
HUMAN RIGHTS**

Family Members of Anastasio Hernández Rojas,
Petitioners

– v. –

United States,
Respondent.

RESPONSE BRIEF

March 1, 2018

Submitted on Behalf of Petitioners by

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I. INTRODUCTION

On March 30, 2016, the family members of Anastasio Hernández Rojas (“Petitioners”) filed a petition against the United States (“Petition”) before the Inter-American Commission on Human Rights (“Commission” or “Inter-American Commission”) alleging multiple violations of the American Declaration on the Rights and Duties of Man (“American Declaration”). The Petition argues that the United States is responsible for torturing and arbitrarily depriving Anastasio Hernández Rojas of his life; failing to conduct an independent, impartial, or prompt criminal investigation of Mr. Hernández Rojas’s death; failing to provide his family members full reparations or clarify the facts and punish those responsible; and implementing ineffective policies and procedures that discriminatorily impact undocumented migrants at the U.S.-Mexico border.

On September 12, 2017, the United States responded to the Petition and requested that the Inter-American Commission dismiss the case.¹ The United States argues that Mr. Hernández Rojas’s family received “adequate and effective remedies for the actions surrounding [his] death, in the form of significant monetary compensation.”² The United States also claims that Petitioners are barred from bringing a petition before the Inter-American Commission against the United States because they “have [] obligated themselves under U.S. law not to further pursue the claims in the Petition against the United States.”³

The response by the United States disregards the obvious and consequential differences between the civil suit brought by Mr. Hernández Rojas’s children and the Petition pending before the Commission: the civil action and the Petition involve different parties bringing different claims in pursuit of different remedies. Moreover, the United States’ position contradicts well-established Inter-American law that unequivocally rejects the proposition that monetary compensation alone constitutes adequate and sufficient reparations for the harms suffered by the victim of a summary execution and his family members.⁴ The Petitioners respectfully request that the Commission declare the Petition admissible and find that the United States violated the rights provided to Mr. Hernández Rojas and his relatives under Articles I, II, XVIII, XXV, and XXVI of the American Declaration.

¹ U.S. Resp. 4 (Sept. 12, 2017).

² *Id.*

³ *Id.*

⁴ Christian Daniel Domínguez Domenichetti v. Argentina, Petition 11.819, Inter-Am. Comm’n H.R., Report No. 51/03, ¶ 46 (2003); Michael Gayle v. Jamaica, Petition 191/02, Inter-Am. Comm’n H.R., Report No. 8/03, ¶ 41 (2003); Arturo Ribón Avila v. Colombia, Case 11.142, Inter-Am. Comm’n H.R., Report No. 26/97, OEA/Ser.L/V/II.98 doc 6, ¶ 190 (1997).

II. FACTUAL AND PROCEDURAL HISTORY

Mr. Hernández Rojas died on May 31, 2010, as a result of injuries sustained when he was brutally beaten by U.S. Customs and Border Protection (CBP) agents.⁵ On May 28, 2010, Mr. Hernández Rojas, a long-time resident of San Diego and father of five, was detained by border patrol agents.⁶ He was taken to a detention center at the U.S.-Mexico border where CBP agents kicked and struck him repeatedly with a baton and administered multiple Taser shocks to his body while he lay face-down on the ground pleading for his life with his hands handcuffed behind his back.⁷

On March 23, 2011, Mr. Hernández Rojas's children filed a civil suit in the United States District Court for the Southern District of California, alleging that U.S. federal agents caused Mr. Hernández Rojas's death in violation of his constitutional rights.⁸ On November 6, 2015, more than five years after the incident, DOJ announced its decision not to pursue criminal charges related to the death of Anastasio Hernández Rojas and to close the criminal investigation.⁹ On March 30, 2016, the Petitioners, María Puga (Mr. Hernández Rojas's partner), María de la Luz Rojas (Mr. Hernández Rojas's mother), Porfirio Hernández (Mr. Hernández Rojas's father), Bernardo Hernández Rojas (Mr. Hernández Rojas's brother), Martín Hernández Rojas (Mr. Hernández Rojas's brother), and Daisy Alejandra Hernández Rojas (Mr. Hernández Rojas's daughter), filed the Petition before the Commission.¹⁰

The Commission forwarded the Petition to the U.S. government on May 12, 2017 (in a letter dated May 10, 2017).¹¹ On May 18, 2017, Mr. Hernández Rojas's children, Daisy Alejandra, Fabian Anastasio, Daniel, and Daniela, signed a settlement agreement with the U.S. government.¹² The settlement included a clause that required the plaintiffs

⁵ See Compl. 3–7.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*; Third Amended Complaint, *Estate of Hernández Rojas v. United States*, No. 3:11-CV-0522-POR-DHB (S.D. Cal. Mar. 23, 2012) [hereinafter “Third Amended Complaint Ex. 1”].

⁹ *Federal Officials Close the Investigation into the Death of Anastasio Hernandez-Rojas*, U.S. DEPARTMENT OF JUSTICE (Nov. 6, 2015), <https://www.justice.gov/opa/pr/federal-officials-close-investigation-death-anastasio-hernandez-rojas>.

¹⁰ See Compl. 1.

¹¹ U.S. Resp. 1; Inter-Am. Comm. H.R. R. P. 30 requires a state to submit a response within three months unless an extension is granted.

¹² See Stipulation for Compromise Settlement and Release of Federal Tort Claims Act, Claims Pursuant to 28 U.S.C. § 2677, *Estate of Hernández Rojas v. United States*, No. 3:11-CV-0522-POR-DHB (S.D. Cal. Mar. 23, 2012) [hereinafter “Stipulation”] (enclosed as Exhibit 2).

waive any and all future claims related to wrongful death.¹³ The district court dismissed the civil suit on May 30, 2017.¹⁴

The United States submitted its response to the Petition on September 12, 2017.

On February 14, 2018, more than seven years after the incident, CBP's National Use of Force Review Board issued its findings in its internal review of this incident. The Board determined that the CBP officers involved acted in compliance with CBP's Use of Force policy in effect at the time.¹⁵

III. ARGUMENT

A. The Civil Action Brought by Mr. Hernández Rojas's Children in Domestic Court Does Not Preclude Petitioners from Pursuing Relief Before the Inter-American Commission.

With the exception of Mr. Hernández Rojas's daughter, Daisy Alejandra Hernández, the plaintiffs in the civil case and the Petitioners who filed suit against the United States before the Inter-America Commission are different individuals. Four of Mr. Hernández Rojas's children brought the wrongful death civil action¹⁶ and Mr. Hernández Rojas's parents, siblings, long-term partner, and daughter filed the Petition before the Inter-American Commission.¹⁷ Neither Mr. Hernández Rojas's parents, nor his siblings or long-term partner, María Puga, were real parties of interest in the civil suit.¹⁸

¹³ *Id.* Ex. 2, 7:16-21 (“plaintiffs. . . do hereby accept the cash sum. . . in full settlement, satisfaction, and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including any future claims for wrongful death.”).

¹⁴ Order Granting the Parties' Joint Motion and Dismissing the Entire Action with Prejudice, U.S. Resp. Annex 2.

¹⁵ *May 28, 2010, Use of Force Incident at the San Ysidro Port of Entry San Ysidro, California*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries/may-28-2010-use-force-incident-san-ysidro-port-entry-san> (last visited Feb. 28, 2018).

¹⁶ Third Amended Complaint Ex. 1, *supra* note 8.

¹⁷ The petitioners in the complaint before the Inter-American Commission were María Puga (Anastasio Hernández Rojas's partner); María de la Luz Rojas (Anastasio Hernández Rojas's mother); Porfirio Hernández (Anastasio Hernández Rojas's father); Bernardo Hernández Rojas (Anastasio Hernández Rojas's brother); Martín Hernández Rojas (Anastasio Hernández Rojas's brother); and Daisy Alejandra Hernández (Anastasio Hernández Rojas's daughter). On April 30, 2017, Porfirio Hernández, Anastasio Hernández Rojas's father, passed away. On December 22, 2017, María de la Luz Rojas, Anastasio Hernández Rojas's mother, was involved in a tragic car accident and died as a result of her injuries. María Puga, Martín Hernández Rojas, Bernardo Hernández Rojas, and Daisy Alejandra Hernández are the surviving Petitioners.

¹⁸ *See* Stipulation, *supra* note 12, Ex. 2 at 1. During the civil litigation, Ms. Puga, acted as a guardian *ad litem* to represent the interests of her two minor children. Third Amended

It is inaccurate and misleading for the United States to claim that “Petitioners and the U.S. government reached a settlement”¹⁹ according to which the Petitioners are “legally prohibited from ever again raising the claims [related to Mr. Hernández’s death]”²⁰ when the Petitioners, with one exception, were not party to the civil action or the settlement agreement.²¹

The Inter-American Commission on Human Rights affords Mr. Hernández Rojas’s daughter, siblings, and long-term partner standing to initiate litigation, vindicate their rights, and seek reparations for the harms they have suffered. Inter-American Court jurisprudence recognizes that family members of victims of summary executions, including “the[ir] direct ascendants and descendants, siblings, spouses or permanent companions[,]”²² are direct and indirect victims of human rights abuses.²³

With regards to Daisy Alejandra Hernández, the only overlapping petitioner, her participation in the civil settlement does not undermine her standing to submit a petition before the Inter-American Commission. The Rules of Procedure of the Inter-American Commission on Human Rights (“Rules of Procedure”) permits “any person or group of

Complaint Ex. 1, *supra* note 8. *See* Requirements Regarding Representation by Guardian Ad Litem, *California Judges Benchbook: Civil Proceedings—Before Trial* §10.6 (“A guardian ad litem is not a party to the action, but is the ward’s agent and representative of record”).

¹⁹ U.S. Resp. 3.

²⁰ *Id.* 4.

²¹ By settling with less than all of the known heirs, the defendant in a wrongful death action waives the right to face only a single wrongful death action, and no settling heirs have right to pursue the action against the defendant. Heirs who were not party to the action are not barred from bringing suit. *See* Schwarzer v. United States, 974 F.2d 1118 (9th Cir. 1992) (concluding that a settlement agreement by one claimant does not bar other claimants from bringing action against the defendant and that state law applies in considering whether a particular claim is a “derivative claim”); *Gonzales v. Southern Cal. Edison Co.*, 77 Cal. App. 4th 485, 489–492 (1999); *Smith v. Premier Alliance Ins. Co.*, 41 Cal. App. 4th 691, 699–700 (1995); *see also* *Johnson v. Bay Area Rapid Transit District*, 2014 WL 2568458 (N.D. Cal.) (referring to *Smith v. Premier* in concluding that “single action exception” does not apply).

²² Inter-Am. Ct. H.R. R. P., Preliminary Provisions Art. 2, ¶ 15 (2000); *see e.g.*, “Street Children” (Villagrán-Morales) v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 63 ¶ 238 (Nov. 19, 1999) [hereinafter “Street Children”].

²³ *See* Alcides Torres Arias v. Colombia, Case 12.414, Inter-Am. Comm’n H.R., Report No. 101/17, ¶ 180 (2017); Gilberto Jiménez Hernandes v. Mexico, Case 11.564, Inter-Am. Comm’n H.R., Report No. 51/16, ¶¶ 185-87 (2016); Case of Bámaca Velásquez v. Guatemala, Inter-Am. Ct. H.R., (ser. C) No. 70, ¶ 160 (Nov. 25, 2000); *Kawas-Fernández v. Honduras*, Inter-Am. Ct. H.R., (ser. C) No. 196, ¶¶ 118-20 (Apr. 3, 2009); “Street Children,” *supra* note 22, ¶ 175.

persons” to submit a petition.²⁴ The United States’ request that the Commission dismiss her claim solely because she was a party to a civil action and settlement directly contradicts this liberal standing requirement. The Inter-American Commission should only dismiss Ms. Hernández’s claim if she received adequate and effective reparations in accordance with the standard established by the American Declaration. She has not. As Section C, below, demonstrates monetary compensation alone does not constitute full reparations in accordance with the American Declaration.

B. The Civil Settlement Reached by Mr. Hernández Rojas’s Children Does Not Address the Violations of International State Responsibility Alleged by Petitioners Before the Inter-American Commission.

The Petition aims to hold the State, and not individual state actors, accountable for violations of international law and obtain full reparations for the harm suffered in accordance with Inter-American Commission standards. The nature and scope of claims before the Inter-American Commission, as well as the body of law and procedure that guides its decision-making, differs significantly from the tort action brought by the Plaintiffs before a U.S. district court. The civil settlement reached by Mr. Hernández Rojas’s children does not address the violations of international law alleged by the Petition or provide access to justice as defined by Inter-American standards.

The Commission has adopted the Inter-American Court’s view of the substantive difference between domestic and international jurisdictions. Citing to the Inter-American Court, the Commission has held:

International Human Rights Law purports to provide individuals with the means to protect their internationally recognized human rights vis-à-vis the State. In the international jurisdiction the parties and the subject matter of the dispute are, by definition, different from those under domestic venue.”²⁵

²⁴ Inter-Am. Comm. H.R. R. P. 23 (The Inter-American Commission does not require third parties to obtain authorization from victims before filing a petition to ensure greater accessibility in a region where poverty, lack of resources, intimidation, and threats may prevent victims from seeking accountability).

²⁵ James Zapata Valencia & José Heriberto Ramírez Llanos v. Colombia, Inter-Am. Comm’n H.R., Report No. 79/11, ¶ 172 (2011) (citing Case of the Gómez Paquiyauri Brothers v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 73 (July 8, 2004); Case of “Cinco Pensionistas” v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 98, ¶ 163 (Feb. 28, 2003); The Mayagma (Sumo) Awas Tingi Community v. Nicaragua, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 154 (Aug. 31, 2001); Case of Ivcher-Bronstein v. Peru, Inter-Am. Ct. H.R., (ser. C) No. 74 ¶ 168 (Feb. 6, 2001); Case of the Constitutional Tribunal v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 71, ¶ 109 (Jan. 31, 2001); Case of Bámaca Velásquez v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶ 210 (Nov. 25, 2000); “Street Children,” *supra* note 22, ¶ 220; *see also*, Case of Maripirán Massacre v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 122, ¶ 211 (Sept. 15, 2005); Serrano Cruz Sisters v. Colombia, Inter-Am. Ct. H.R. (ser. C)

According to rulings issued by the Commission, its analysis of state international human rights obligations differs from domestic cases “because the object of the analysis is [] the determination of ... international responsibility of the State for the actions and omissions of its authorities.”²⁶ In this case, the Commission has jurisdiction to determine international state responsibility to protect, respect, and ensure the rights established by the American Declaration and not individual civil or criminal liability.²⁷ The Inter-American Commission should determine whether the United States is responsible for the summary execution of Mr. Hernández in violation of his right to life, liberty, and personal integrity but also violations of the rights to personal integrity, equality before the law, judicial protection, and truth of his family members.²⁸

The Petition raises claims that are different in kind and scope from the civil action brought in domestic court. Plaintiffs to the civil complaint sought to establish legal liability for breaches of the law of torts: a body of law that provides relief for persons who have suffered harm from the wrongful act of others. Unlike criminal prosecutions which are brought by the State, tort actions must be brought by private individuals. The vast majority of successful tort actions result in monetary compensation for the injured party. By definition, a civil suit does not address the rights of the victim or his family members under international law or provide access to full reparations for the harms they suffered.

The Commission has emphasized “the obligation of States to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence.”²⁹ At the heart of the Inter-American Commission’s inquiry into whether the civil settlement satisfies the United States’ international obligations is whether the civil settlement provided “true access to justice[.]”³⁰ The Inter-American

No. 120, ¶ 56 (Mar. 1, 2005); *Case of 19 Merchants v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 181 (July 5, 2004); *Case of Cesti Hurtado*, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 49, ¶ 47 (Jan. 26, 1999).

²⁶ *Clarence Lackey v. United States*, Case 11.575, Inter-Am. Comm’n H.R., Report No. 52/13, ¶ 127 (2013); *Rocha Diaz v. United States*, Case 12.833 Inter-Am. Comm’n H.R., Report No. 11/15, OEA/Ser.L/V/II.154 doc. 5, ¶ 47 (2015).

²⁷ Inter-Am. Comm. H.R. R. P. 51-52. *See also* *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, ¶ 117 (2011) (holding that the United States owes a duty to individuals within their border in accordance with certain provisions of the American Declaration).

²⁸ *Hernández Rojas v. United States*, Petition No. P-524-16, Inter-Am. Comm’n H.R., Complaint 19–57 (2016).

²⁹ *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, ¶ 127 (2011).

³⁰ *Case of Maripirán Massacre v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 122, ¶¶ 210–11 (Sept. 15, 2005); The American Convention “may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.” *Solidarity Statehood Comm. v. United States*, Case 11.204, Inter-Am.

Court has stated that “true access to justice” for next of kin victims includes the removal of all obstacles that impede proper investigation of the violation, full access to proceedings, clarification of the facts, expeditious proceedings, and the punishment of those responsible.³¹

The civil settlement reached by Mr. Hernández Rojas’s children and the U.S. government does not approximate “true access to justice” for Petitioners. The Commission has concluded that there is “virtually no[] true access to justice” when victims are left indefinitely in a “legal vacuum” without meaningful review of their case.³² The United States closed the criminal investigation without pursuing criminal charges and the domestic civil court did not make a determination about state or individual liability for the killing.³³ Indeed, the civil settlement establishes that it “is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants or employees.”³⁴ The purpose of the settlement is not to clarify the facts related to Mr. Hernández Rojas’s death or punish those responsible, but to “avoid[] the expenses and risks of further litigation.”³⁵ Thus, the aim of the civil settlement was not justice but judicial efficiency.

C. Monetary Compensation Does Not Fully Redress the Harms Suffered by the Victim and Petitioners in Accordance with the Obligations Established by the American Declaration.

International human rights law obligates a state to provide “adequate, effective and prompt reparation” in proportion “to the gravity of the violations and the harm suffered.”³⁶ The Commission has held that remedies must “be adequate, in the sense that

Comm’n H.R., Report No. 98/03, OEA/Ser./L/V/II.114, doc. 70 rev. 1, ¶ 87 n.79 (2003) (citing *Juan Raúl Garza v. United States*, Case 12.243, Inter-Am. Comm’n H.R., Report No. 52/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 1255, ¶¶ 88-89 (2001)); *see also* Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.106, doc. 40 rev. ¶ 38 (2000).

³¹ *See e.g.*, *Cantoral-Huamaní & García-Santa Cruz v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 167, ¶¶ 189–91 (July 10, 2007); *Kawas-Fernández v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 189 (Apr. 3, 2009).

³² *Moath al-Alwi v. United States*, Resolution 10/2015, Inter-Am. Comm’n H.R., Precautionary Measure No. 46-15, 3.F. (2015).

³³ *See* Stipulation, *supra* note 12, Ex. 2, 2:13–16.

³⁴ *Id.* Ex. 2, 2:13–16.

³⁵ *Id.* Ex. 2, 2:16–19.

³⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147, ¶¶ 12–15 (Mar. 21, 2006).

they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed.”³⁷ Although monetary settlement may form a part of an effective remedy for an extrajudicial killing, money alone does not fulfill the State’s obligation to provide full reparations under the American Declaration.³⁸

The Commission has held that civil lawsuits do not provide an adequate or effective remedy for “crimes of public action” such as killings perpetrated by state agents.³⁹ The Inter-American Court has held that domestic remedies must “in fact contribute[] to ending impunity, to insuring non-recidivism of injurious acts, and to guaranteeing free and full exercise of the rights protected by the Convention.”⁴⁰ Thus, the “comprehensive reparation of the abridgement of a right protected by the Convention cannot be restricted to payment of compensation to the next of kin of the victim.”⁴¹ According to Inter-American case law, a criminal investigation and prosecution is the

³⁷ *Undocumented Workers v. United States*, Petition 1190-06, Inter-Am. Comm’n H.R., Report No. 134/11, OEA/Ser.L/V/II.143, doc. 18, ¶ 27 (2011); *Medellín, Ramírez Cardena & Leal García v. United States*, Case 12.644, Inter-Am. Comm’n H.R., Report No. 90/09, ¶ 108 (2009).

³⁸ *See e.g.*, *Michael Gayle v. Jamaica*, Petition 191/02, Inter-Am. Comm’n H.R., Report No. 8/03, ¶ 41 (2003) (the Commission held that petitioners need only exhaust criminal remedies in cases involving “non-derogable rights, including the right to life and the right to humane treatment, which under domestic law are offenses that can be prosecuted by the State on its own initiative [...], as opposed to, for example, civil remedies for monetary and other damages.”); *Christian Daniel Domínguez Domenichetti v. Argentina*, Petition 11.819, Inter-Am. Comm’n H.R., Report No. 51/03, ¶ 46 (2003) (holding that the state failed to demonstrate that a civil action would address the scope of petitioners claims regarding the investigation of torture and death, although civil damages is “one of several aspects” of reparations.); *Case 10/912 Colombia*, Inter-Am. Comm’n H.R., Report No. 2/94, Sec. 3.b (1994) (holding that administrative claims against that State for monetary damages are inadequate because an administrative court “does not declare the responsibility of the perpetrators of a punishable crime and imposes neither an administrative nor penal sanction on those responsible, which is precisely what the petitioners seek.”).

³⁹ *See Armanda Alejandre, Jr. v. Cuba*, Case 11.589, Inter-Am. Comm’n H.R., Report No. 86/99, ¶¶ 47, 52 (1999) (holding that in cases of dealing with crimes of public action, like summary executions, civil remedies alone are not adequate and effective remedies because a state has a duty to maintain and as such “it is not valid to demand exhaustion of domestic remedies of the victim or the victim’s relatives, for the state has a duty to maintain public order, and therefore it has an obligation to set the criminal law system into motion and to process the matter until the end.”)

⁴⁰ *Case of Maripirán Massacre v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 122, ¶ 210 (Sept. 15, 2005).

⁴¹ *Id.* ¶ 214.

only adequate and effective avenue to establish criminal responsibility for torture and murder committed by state agents.⁴²

Mr. Hernández Rojas's children have only received monetary compensation for the extrajudicial killing of their father. His parents, siblings, and partner have received no form of reparation. The agents involved in Mr. Hernández Rojas's murder have not been criminally sanctioned or disciplined.⁴³ Since Mr. Hernández Rojas's death in 2010, there have been more than fifty homicides at the hands of CBP agents, yet none of the individuals involved have been held criminally responsible.⁴⁴ The domestic settlement does nothing to address impunity for summary executions and thus fails to fulfill the State's obligation to ensure non-repetition of harm and respect for human rights.

IV. CONCLUSION AND PETITION

The Petition is admissible in its entirety under the Rules of Procedure.

The Commission has jurisdiction to consider Petitioners' allegations that the United States violated Articles I, II, XVIII, XXV, and XXVI of the American

⁴² See *Armanda Alejandre, Jr. v. Cuba*, Case 11.589, Inter-Am. Comm'n H.R., Report No. 86/99 ¶ 47 (1999) (holding that in cases of crimes of public action the State has an "obligation to set the criminal law system into motion and to process the matter until the end. In other words, the obligation to investigate, prosecute, and punish the persons liable for human rights violations is a non-delegable duty of the state."); *Maria del Consuelo Ibarguen Reengifo v. Colombia*, Case 475/03, Inter-Am. Comm'n H.R., Report No. 55/04, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 227, ¶¶ 25–26 (2004) (holding that an adequate and effective remedy must be able to address the legal right infringed, so when a crime of public action is committed, the State must mobilize the criminal system "to process that matter until the end and that this constitutes the ideal forum for clarifying the facts, prosecuting those responsible, and establishing the appropriate criminal penalties, in addition to opening up the possibility of other types of monetary compensation."); Report on the Demobilization Process in Colombia, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.120, doc. 60 (2004) (asserting that for crimes of public action "it is up to the State to bring criminal action, and it is responsible for taking the initiative to set the procedure in motion, in compliance with its obligation to guarantee the right to justice for the victims and their next-of-kin, seriously and not as a mere formality condemned ex ante to be fruitless.").

⁴³ See *May 28, 2010, Use of Force Incident at the San Ysidro Port of Entry San Ysidro, California*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries/may-28-2010-use-force-incident-san-ysidro-port-entry-san> (last visited Feb. 28, 2018) (findings of CBP's National Use of Force Review Board in this incident).

⁴⁴ *Deaths by Border Patrol Since 2010 (as of September 2017)*, SOUTHERN BORDER COMMUNITIES COALITION, http://www.southernborder.org/deaths_by_border_patrol (last visited Dec. 4, 2017) (website tracks news reports of deaths at the border related to CBP action).

Declaration.⁴⁵ The United States has violated Petitioners' rights and denied Petitioners an effective remedy for the harms that they have suffered. On November 6, 2015, more than five years after Mr. Hernández Rojas's death, prosecutors issued a decision not to pursue federal criminal civil rights or other charges and closed the criminal investigation.⁴⁶ The Petitioners have exhausted domestic remedies.

Petitioners respectfully request that the Inter-American Commission on Human Rights:

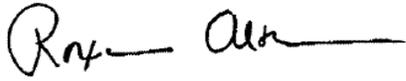
1. Declare this Petition admissible;
2. Investigate, with hearings and witnesses as necessary, the facts alleged in this Petition;
3. Declare that the United States is responsible for the violation of Anastasio Hernández Rojas's and his relatives' rights under the American Declaration, including, *inter alia*, the right to be free from torture, to life, and to equal protection under the law guaranteed under Articles I, II, XXV, and XXVI as well as their rights to truth and to a remedy protected under Articles I and XVIII;
4. Recommend such other remedies as the Commission considers adequate and effective for addressing the violations of the Petitioners' fundamental human rights, including, *inter alia*, requesting that the United States publicly acknowledge responsibility and publicly apologize to the Petitioners for the violation of their rights; adopt measures of satisfaction; and implement the structural, legal, and policy reforms necessary to ensure non-repetition of the violations, including the full and exhaustive investigation of the human rights violations suffered by Anastasio Hernández Rojas.

⁴⁵ The Commission has consistently held that the American Declaration constitutes a source of binding international obligations for the United States. Organization of American States Charter (Apr. 30, 1948), 2 U.S.T. 2394, 119 U.N.T.S. 48, entered into force Dec. 13, 1951 [ratified by the United States, June 15, 1951]; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, entered into force Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, entered into force Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, entered into force Sept. 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, entered into force Jan. 29, 1996. *See also* Roach v. United States, Case 9647, Inter-Am. Comm'n H.R., Report No. 3/87, OEA/Ser.L/V/II.71, doc. 9 rev. 1, ¶ 46 (1987); Smith v. United States, Petition 8-03, Inter-Am. Comm'n H.R., Report No. 56/06, OEA/Ser.L/VII.127, doc. 4 rev. 1, ¶¶ 32–33 (2006).

⁴⁶ *Federal Officials Close the Investigation into the Death of Anastasio Hernandez-Rojas*, U.S. DEPARTMENT OF JUSTICE (Nov. 6, 2015), <https://www.justice.gov/opa/pr/federal-officials-close-investigation-death-anastasio-hernandez-rojas>.

Dated: March 1, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roxanna Altholz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Roxanna Altholz
Associate Director
International Human Rights Law Clinic
Berkeley Law

A handwritten signature in blue ink, appearing to read "Andrea Guerrero". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrea Guerrero
Executive Director
Alliance San Diego