



HISPANIC NATIONAL BAR ASSOCIATION

The National Voice of the Hispanic Legal Community

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Hon. Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Hon. Loretta Lynch
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

July 14, 2015

Re: Anastasio Hernández-Rojas, Deceased, June 2010

Dear President Obama and Attorney General Lynch:

I write on behalf of the Hispanic National Bar Association (HNBA) to express our concerns over the inexplicable delay in the criminal prosecution of the federal agents who killed Anastasio Hernández-Rojas in 2010. On May 28, 2010, Mr. Hernández-Rojas was arrested for unauthorized entry, surrounded by a dozen agents of the U.S. Department of Homeland Security, and beat and tased as he and bystanders begged for mercy. He died a few days later. This incident was recorded on video and received national attention. Five years have passed, and after convening a grand jury in 2012, the federal government has still failed to take action. The Latino community seeks answers for this inexplicable delay.

The HNBA, founded in 1972, is an incorporated, not-for-profit, national membership association that represents the interests of Hispanic attorneys, judges, law professors, legal assistants, law students, and legal professionals in the United States and its territories. The HNBA advocates on issues of importance to the national Hispanic community. While we are proud of our accomplishments, we are mindful that our mission is as vital today as it was four decades ago, especially as the U.S. Hispanic population continues to grow and prejudices continue to impact our lives.

Five years have come and gone, and yet nothing has been heard from Washington regarding the brutality suffered by Mr. Hernández-Rojas, or, for that matter, by Latinas and Latinos throughout the nation. We have patiently waited for action to be taken, yet ultimately have concluded that five years is a long time for our justice system to act. During that time, the U.S. Department of Justice has been quite visible in cases of brutality against African American victims. We Hispanics have joined in protesting those abuses by law enforcement. We marched alongside our black brothers and sisters in Baltimore, New York, Ferguson, and other cities. But the Department of Justice has not responded to officer shootings of unarmed Latinos in Pasco, WA, Grapevine, TX, and Denver, CO, as it has to other incidents involving African Americans. The Hispanic community stands up for all



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The National Voice of the Hispanic Legal Community

victims of summary punishment, regardless of ethnicity, color, language, or immigration status, and we ask that the federal government do the same.

Mr. Hernández-Rojas was an undocumented father of five U.S. citizen children. A May 12, 2014 *New York Times* editorial entitled “Impunity and the Border Patrol” listed 809 complaints against U.S. Border Patrol Agents in three years, and concluded: “But in nearly every case, the outcome was the same: inaction or a lack of a resolution.” This apparent impunity has reinforced the mistaken belief held by many that undocumented persons like Mr. Hernández-Rojas do not possess constitutional rights. Of course, we know that all persons, including undocumented individuals, have the right to equal protection under the U.S. Constitution and the right not to be deprived of life or liberty without due process of law.

Mr. Hernández-Rojas suffered egregious violations of his constitutional rights, and the shocking conduct leading to his death warrants criminal prosecution. This conduct was captured on video recorded by several citizens from a pedestrian walkway near the bridge where Mr. Hernández-Rojas was assaulted. The video shows that a large group of agents circled around him while a few beat him and pulled his pants off, and another sadistically applied several Taser shocks, one of them apparently a direct application to the skin. As documented in the summary judgment opinion in the pending civil case brought by Mr. Hernández-Rojas’s estate, among the twelve agents were four supervisors. *Estate of Hernandez-Rojas v. United States*, 62 F. Supp. 3d 1169 (S.D. Cal. 2014).

U.S. Customs and Border Protection (CBP) insisted that Mr. Hernández-Rojas’s “combative” behavior necessitated the use of a baton and stun gun to “subdue the individual and maintain officer safety.” “Anastasio Hernández-Rojas Death: Border Patrol Tasing Incident Complicated by New Footage” (VIDEO), 04/20/2012, available at http://www.huffingtonpost.com/2012/04/20/anastasio-Hernández-rojas-death-border-patrol-tasing-footage_n_1441124.html. However, witnesses to the attack did not observe a confrontational person. Instead, they observed about a dozen agents overtake Mr. Hernández-Rojas as he lay, as some claim, handcuffed. The sounds of Mr. Hernández-Rojas crying out in pain for those 2½ minutes in the first video suffice to move any person concerned about human dignity to agree to hold anyone, including law enforcement officials, accountable.

In the video, Hernández-Rojas can be heard in apparent pain crying out for help in Spanish. For 20 seconds, he cries out “Nooo.” He then pleads with the agents: “Ayúdenme, por favor, señores, por favor” (Help me, please, sirs, please). One can only imagine his hope that someone among the crowd of señores (the male federal agents) would stop those who are beating and shocking him. These federal agents in general, and the supervisors in particular, had a legal duty to stop the assault, but they did not intervene. They even stepped back so the shocks could be administered. See John Carlos Frey, “What’s going on with the Border Patrol?” *L.A. Times*, Apr. 20, 2012, available at <http://articles.latimes.com/2012/apr/20/opinion/la-oe-frey-border-patrol-violence-20120420>. If supervisor Stacey Koon was held accountable for not preventing officers under his command from beating Rodney King, why would the supervisors in the beating of Mr. Hernández-Rojas not have to answer for their similar failure? See *United States v. Koon*, 833 F. Supp. 769 (C.D. Cal. 1993).

During the video, a voice (apparently a civilian witness) is heard yelling, “Ya, déjenlo,” which means, “Enough! Leave him alone.” Then a voice, probably of another civilian, yells in English, “Hey! He’s not resisting!” Still yet, a voice exclaims: “Why you guys keep pushing on him? He’s not even resisting!”



HISPANIC NATIONAL BAR ASSOCIATION

The National Voice of the Hispanic Legal Community

Additional footage later discovered by investigative reporter John Carlos Frey further undermines the notion that the agents' force was somehow necessitated by Mr. Hernández-Rojas's conduct. The video, taken by Seattle resident Ashley Young as she crossed the bridge from Mexico to the United States, shows the crowd of border patrol agents standing around Mr. Hernández-Rojas, who does not appear to be moving. She heard an agent yelling for him to "quit resisting," though she saw no signs of resistance from Mr. Hernández-Rojas. "Anastasio Hernández-Rojas Death: Border Patrol Tasing Incident Complicated By New Footage" (VIDEO), 04/20/2012, available at http://www.huffingtonpost.com/2012/04/20/anastasio-Hernández-rojas-death-border-patrol-tasing-footage_n_1441124.html. Another agent tased him five times. *Id.* Ms. Young stated in a PBS documentary that she felt like she had witnessed a man being "murdered." Philip Caulfield, "PBS airs new footage in case of illegal immigrant killed at border" (VIDEO), *New York Daily News*, Apr. 23, 2012. Mr. Hernández-Rojas died a few days after the assault.

The video evidence and eyewitness accounts only underscore what should have been evident from the circumstances of the attack on Mr. Hernández-Rojas. One man lying on the ground in pain, handcuffed according to some witnesses, could not have constituted a real threat to 12 armed federal agents. If he was resisting (a claim that is contradicted by evidence), then the mob-type beating he received is akin to the hate crime homicides that other defenseless Latinos suffered in 2008, one of which the Criminal Section of the Department of Justice's Civil Rights Division admirably prosecuted on behalf of Luis Ramirez of Shenandoah, PA.

Mr. Hernández-Rojas's widow and five children filed a civil lawsuit for violation of his constitutional rights under 42 U.S.C. § 1983. According to Eugene Iredale, the attorney who represents the family, the Civil Rights Division began presenting evidence to a federal grand jury. A family friend said two eyewitnesses to the incident were called to testify in July 2012. The continuing silence regarding the federal grand jury investigation, three years later and five years after the incident, is quite disturbing to our community.

The HNBA has a duty to speak out on behalf of the Latino community and respectfully demands that federal prosecutors bring the agents who killed Mr. Hernández-Rojas to justice. The government should reaffirm the principle that all persons, including undocumented persons, are entitled to equal protection under the U.S. Constitution and have the right not to be deprived of life without due process of law. If the government decides not to prosecute the agents involved, the Latino community and all Americans are entitled to an explanation for its reasoning. Far too much time has passed since Mr. Hernández-Rojas's tragic death without any answers. We ask for these answers, and for justice, without further delay.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Mares", is positioned above the typed name.

Cynthia D. Mares
National President
Hispanic National Bar Association