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U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, D.C. 20510
Durbin_Testimony@Judiciary-dem.Senate.gov

RE: The State of Civil and Human Rights in the United States

Dear Chairman Durbin, Ranking Minority Member Cruz, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

On behalf of my family, I want to thank you for hosting the Dec. 9, 2014 hearing on the State of Civil and Human Rights in the United States.

My 18-year-old son, Israel “Reefa” Hernandez Llach was shot by police officers from the Miami Beach Police Department on August 6, 2013. This took place in the area of Collins Avenue and 71st Street in Miami Beach during early morning hours while my son was engaged in urban art with two friends on a vacant property that contained prior graffiti. At no time was my son neither armed nor suspected of carrying a weapon and he was not under the influence of any known drugs, as toxicology tests eventually revealed. Although the alleged offense was in all likelihood a second degree misdemeanor under Florida law and that the officers had no reasonable basis to fear for their own safety or the safety of the public or that my son was a danger to them or anyone else, multiple police officers aggressively pursued my son and used a weapon known as an electronic control device or “Taser” to apprehend him.

After a foot chase, police officer Jorge Mercado “taser” zapped my son in the chest. He immediately collapsed and subsequently was pronounced dead when taken to Mt. Sinai Hospital. Witnesses at the scene have come forward to inform that the police officers were celebrating and “high-fiving” one another while my son was lying on the ground mortally injured or while in medical duress or near death. I have reason to believe that the police officers recklessly disregarded the life and safety of my son by not diligently seeking medical treatment after reviewing the time it took to inform emergency medical services from the moment he was “tased.”

The loss of my son has been devastating for me, my wife, and daughter. We cannot feel any consolation while the perpetrators of our son’s death remain unpunished. The least we seek is a thorough and objective investigation. The Miami Beach police and the State Attorney’s Office are too cozy with each other and are not willing or capable of processing one of their own. The Florida American Civil Liberties Union has called on

local police to reform their policies and reduce the “accidental deaths” due to the use of “tasers.” But the Miami Beach Police, Miami Police and Miami-Dade Police have publicly stated they have no plans to alter their policies as to the use of “tasers.”

The surrounding circumstances of my son’s death together with the recent Miami-Dade County Medical Examiner’s report concluding that my son’s cause of death was from the use of “taser,” should provoke an independent investigation as to excessive force by means of this device by the police in Miami-Dade County and cities within, and by all law enforcement agencies around the Nation. Therefore, I respectfully request your assistance in promoting an investigation by the Department of Justice on this matter.

In November 2014, we submitted a report on our son’s case to the United Nations Committee Against Torture, highlighting the egregious violations of Articles 1, 12 and 16 of the Convention Against Torture. In their concluding remarks, the Committee specifically named our son’s case:

*27. The Committee is concerned about numerous, consistent reports that police have used electrical discharge weapons against unarmed individuals who resist arrest or fail to comply immediately with commands, suspects fleeing minor crime scenes or even minors. Moreover, the Committee is appalled at the number of reported deaths after the use of electrical discharge weapons, **including the recent cases of Israel “Reefa” Hernandez Llach in Miami Beach, Florida, and Dominique Franklin Jr. in Sauk Village, Illinois.** While taking note of the information provided by the State party on the relevant guidelines and available training for law-enforcement officers, the Committee observes the need to introduce more stringent regulations governing their use (arts. 11, 12, 13, 14 and 16).*

A selection from our submission is below:

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

a. Background

Israel came to the United States from his native Colombia at the age of thirteen, along with his parents and older sister. The family was forced to flee their home after threats by guerilla forces and state-

sanctioned violence left them no other choice. After being granted asylum, they believed they had found refuge from violence in the United States.

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

The offense for which Israel was targeted was minor under Florida law. Florida Statutes cover graffiti under its criminal mischief section punishable as a misdemeanor unless the property damage exceeds \$1,000.ⁱⁱ A related local ordinance instructs officers to “issue a notice of violation” when confronted with graffiti violations.ⁱⁱⁱ

b. The Killing of Israel “Reefa” Hernandez Llach

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

Despite the relative insignificance of Israel’s acts, backup officers continued their pursuit for seven minutes and eventually found Israel. At this point, his two friends had found their way back to him and witnessed the next few tragic moments. Witness statements reported by *Fusion* describe the officers grabbing him from behind and pushing Israel forcefully into a wall as soon as they caught up to him.^v He sank to the ground, motionless and without making a sound. As he lay there, Officer Jorge Mercado removed his electroshock device, pointed it at Israel’s chest and released a powerful volt of energy onto his helpless body. According to witnesses interviewed for the report, the officers proceeded to laugh, make jokes about Israel and give each other jovial high-fives over his seemingly unconscious body as the electricity coursed through him.^{vi}

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

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

c. Mistreatment of Family and Witnesses by Law Enforcement

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

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

d. Public Pressure to Respond to Case by Civil Society

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

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

Attorney, and the U.S. Department of Justice.

- April 28, 2014 – A second letter from the father of Israel Hernandez to U.S. President Barack Obama.
- May 6, 2014 – A letter from the father of Israel Hernandez to the U.S. Attorney General.
- July 10, 2014 - A letter from the Ambassador Luis Carlos Villegas to a U.S. Deputy Assistant Attorney General urging a prompt investigation.

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

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

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

e. Persistent Lack of Accountability

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

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

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

e. Use of Electroshock Devices in Florida

While the United States maintains that electroshock devices are "non-lethal" weapons, medical researchers have described the risk of sudden cardiac arrest as a "scientific fact"^{xv} and found significant bias in previous research studies to the contrary.^{xvi} The problem became so acute in South Florida, in particular, that medical professionals provided guidelines on managing injuries resulting from the devices.^{xvii}

In its most recent study of deaths from electroshock devices, Amnesty International found that Florida had the second highest number in the United States with 65 deaths between 2001-2012.^{xviii} Nearby Orange County, was an early adopter of the technology and has equipped every frontline officer with a device.^{xix} Just over a year after their release, they had already become the most used method of force by officers. During that same period, the overall use of force increased by 37%.^{xx} Their report noted numerous incidents of excessive use of these devices across the state, including two incidents where students were subjected to these devices on school grounds or school buses.

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

- Mar. 2012: Nehemiah Dillard dies after Alachua County Sherriff used an electroshock device to subdue him while under the care of a mental health facility.^{xxi}
- Mar. 2012: James Barnes dies after being shocked three times by Pinellas County Police as family looks on, begging them to stop.^{xxii}

- April 2012: 21-year old George Salgado dies after West Miami Police Department uses an electroshock device on him multiple times.^{xxiii}
- July 2012: 21-year old Joshua Savanto is killed by Marion County Sherriff's officers as he retreated from officers.^{xxiv}
- Sept. 2013: 20-year old Danielle Maudsley dies after living in an extended vegetative state. Two years earlier, a Florida Highway Patrol trooper had used an electroshock device while Danielle was handcuffed and running away from the trooper, she fell and suffered severe brain damage.^{xxv}
- Sept. 2013: Nelson Mandela's former bodyguard, Norman Oosterbroek, is killed by Miami-Dade Police.^{xxvi}
- July 2013: Gerald Altamore is killed by St. Cloud Police after a car accident.^{xxvii}
- Feb. 2014: Just six months after Israel's death, 21-year old Willie Sams is killed by Pinecrest Police.^{xxviii}
- Feb. 2014: Maykel Antonio Barrera is killed by Miami-Dade Police.^{xxix}
- Feb. 2014: Treon Johnson is killed by Hialeah Police after fighting off a neighbor's dog that had bitten him.^{xxx}
- Aug. 24, 2014: Timothy Griffis is killed by police in Lake City.^{xxxi}

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

As you turn to examine the state of civil and human rights, we ask that you encourage the Department of Justice to start an immediate investigation into our son's death and the use of "taser" devices by law enforcement. Thank you for the opportunity to submit written testimony for the record and for your attention to our son's case.

Most respectfully,

Israel Hernandez

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- ^x ACLU of Florida *Statement on Death of Teen Tasered by Miami Beach Police*, August 8, 2013 <https://aclufl.org/2013/08/08/aclu-of-florida-statement-on-death-of-teen-tasered-by-miami-beach-police/>
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