

**Submission of the Berkeley Law Human Rights Clinic and Alliance San Diego to
the United Nations Universal Periodic Review of the United States of America
50th Session of the Universal Periodic Review**

April 7, 2025

The Berkeley Law Human Rights Clinic, part of the University of California, and Alliance San Diego, a community nonprofit organization, are pleased to contribute this submission to the Universal Periodic Review (UPR) of the United States. Our two organizations are co-counsel in the landmark case of [*Family Members of Anastasio Hernandez Rojas vs. United States*](#), the first-ever case reviewed by the Inter-American Commission on Human Rights (IACHR) about an extrajudicial killing by U.S. law enforcement. The case raises the issue of deadly and deficient use of force standards in the United States, and is relevant to the UPR.

In 2010, Anastasio, a Mexican national and longtime resident of San Diego, California, was killed by agents of the U.S. Customs and Border Protection (CBP) agency, the largest law enforcement agency in the country. They brutally beat, kicked, electrocuted, and tortured him while he was hogtied and lying face down surrounded by agents until he stopped breathing and eventually died. The actions of the agents were evaluated under the “objectively reasonable” standard, a standard unique to the United States that falls short of the international standard of necessary and proportionate. Consequently, no agent was held accountable. In fact, in the last 100 years, no U.S. federal border agent has *ever* been held accountable for killing someone. Ever.

The deficient standard of “objectively reasonable” has led to increasingly high rates of use of force among law enforcement across the United States. According to [Mapping Police Violence](#), the year 2024 was the deadliest to date with more than 1,300 killed by local, state, and federal law enforcement. Since Anastasio’s death, more than an estimated 15,000 have been killed.

Unlike the international standard for use of force, the U.S. standard does not require de-escalation, the use of the minimum force necessary, or force that is proportionate to the threat. As a result, incidents of excessive force go unanswered, denying justice to families and endangering people in our communities, especially people of color and immigrants, as well as unhoused people, people with disabilities, transgender people, young people, people engaged in peaceful protests, and incarcerated people.

For 30 years, the United Nations (UN) experts reviewing the United States have repeatedly expressed concerns about excessive use of force. In the last five years, the UN Human Rights Council and other UN bodies have urged the United States to alter its use of force standards to bring it into compliance with international standards, but it has not. Until and unless it does, people in the United States will continue to suffer abuse and impunity.

This submission addresses excessive force in the United States and the “objectively reasonable” standard that violates human rights treaties and endangers the people who live, visit and migrate to the United States.

I. Anastasio was killed under a deficient and deadly use of force standard in the United States.

Anastasio was a longtime resident of San Diego, California who came to the United States from San Luis Potosí, Mexico when he was 15 years old, and he built a career in pool construction and repair. He met the love of his life, Maria, with whom he raised a family of five children, and became part of our community.



In May 2010, he was brutally killed by U.S. agents. At 42 years old, he was deported from San Diego for not having any legal status (and no way to get it). Separated from his family, he attempted to walk back and was taken into custody by CBP border agents. Then the following happened:

- Agents injured him at the station and intentionally denied him medical attention. When he asserted his right for medical help, they took him to the San Ysidro Port of Entry to deport him.
- There, additional officials surrounded and tortured him massively and repeatedly. They beat, punched, kicked, and stomped on his head and body.
- During this time he was face down on the ground, with his hands handcuffed behind his back, crying for mercy and help, with witnesses calling for agents to stop.
- Agents discharged a taser on him four times, the last in “drive stun” mode to his chest, then pressed down with their knees on his head and back, limiting his breathing, while punching him repeatedly in the ribs, while he was still hogtied.
- He stopped breathing and was resuscitated, then rendered brain dead. Soon after, he suffered a heart attack. The medical examiner ruled the death a homicide, and an autopsy revealed he died from the trauma to which he was subjected.
- From inception, the investigation was biased and the pursuit of justice undermined. Investigators identified Anastasio as the “subject” and the CBP officials as the “victims”. CBP officials also destroyed video evidence and obstructed the investigation.
- In November 2015, the U.S. Department of Justice closed the case without bringing charges, stating that the use of force was reasonable despite eyewitness video establishing the facts above.

In 2016, the family of Anastasio petitioned the IACHR, arguing that the objectively reasonable standard for use of force in the U.S. violated Anastasio’s human rights and treaty obligations.

A decision is now pending publication in this case, which is followed by many others before the IACHR challenging the use of force standard in the United States.

II. Prior UPR recommendations & responses from the United States on use of force.

During the 2020 Universal Periodic Review, the Human Rights Council reported that, “Three special procedure mandate holders expressed concern at what appeared to be the systematic use of excessive and unnecessary force.”ⁱ Members of the Human Rights Council recommended that the United States take measures to ensure that it comply with human rights and adhere to international standards on the use of force.ⁱⁱ The United States, in its response, stated that, “Where there is misconduct by police officers or law enforcement agencies, state and federal laws provide effective remedies.”ⁱⁱⁱ Unfortunately, the United States did not directly address the gap between its deadly use of force standard and the international standard.

III. The United States authorizes objectively reasonable force in violation of international law.

The U.S. Supreme Court has determined that use of force by law enforcement must be “objectively reasonable.”^{iv} This standard does not establish bright-line protections,^v instead courts must “balance the nature and quality of the intrusion on the individual’s constitutional rights against the importance of the governmental interest alleged to justify the intrusion.”^{vi} U.S. courts examine the conduct of law enforcement officers “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”^{vii}

International standards on use of force emanate from the core state obligation to protect the right to life,^{viii} and limit the use of force—including less-lethal force—to principles of legality, precaution, necessity, proportionality, and non-discrimination.^{ix} Upon ratifying the International Covenant on Civil and Political Rights (ICCPR), the United States joined the international community in recognizing that “[e]very human being has the inherent right to life” and that “[n]o one shall be deprived of his life.”^x The ICCPR requires all signatories, including the United States, to prevent the arbitrary deprivation of life by “comply[ing] with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.”^{xi} State agents must only employ force as a last resort after exhausting all other options, use de-escalation tactics, and provide warnings before using force.^{xii}

In the United States, an officer’s use of force may be justified even if force was not necessary to control the situation or proportionate to the threat. The objectively reasonable standard prioritizes the officer’s subjective perception of danger and the subjective knowledge of the law enforcement officer.^{xiii} Erwin Chemerinsky, a renowned scholar and expert in use of force, observed that the “[objective reasonableness standard] means that [U.S. law] does not turn on whether the officer was threatened, but rather if the officer perceived a threat.”^{xiv} In contravention to international protections, the United States’ use of force law prioritizes the officer’s perception of danger (even when the agent’s belief about the level of danger is mistaken) over preservation of the life of the civilian.

As discussed below, the objectively reasonable standard violates basic international law principles on use of force: legality, necessity, proportionality, and non-discrimination.

A. The objectively reasonable standard violates the principle of legality.

The principle of legality “requires that there must be a sufficient legal basis for the use of lethal force that is grounded in domestic law and complies with international standards.”^{xv} The U.S. has no federal statute on use

of force.^{xvi} The objectively reasonable standard was established by Supreme Court case law.^{xvii} While the Court has identified general factors lower courts should consider,^{xviii} it has “fail[ed] to specify” how courts should “evaluate whether an officer’s actions were justified.”^{xix} In *Graham v. Connor*, the Court acknowledged that the objective reasonableness standard is incapable of a “precise definition.”^{xx} In lieu of specific guidance, U.S. use of force law allows “police to set their own reasonableness standard based on how the ‘average’ police officer would react in a rapidly evolving situation.”^{xxi}

For nearly thirty years, international human rights bodies have called on the United States “to take all necessary measures to prevent any excessive use of force” by bringing U.S. law into conformity with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.^{xxii} And for nearly 30 years, the United States has disregarded these recommendations and defended the objectively reasonable standard.^{xxiii} The United States has argued that the Basic Principles are not a standard for conducting operations and the United States “does not advise” law enforcement to use them.^{xxiv}

Given this position, it is unsurprising that all 50 U.S. states and the District of Columbia fail to comply with international standards on police use of lethal force.^{xxv} In fact, various states do not comply with the deficient objectively reasonable standard established by the Supreme Court.^{xxvi} In 2018, none of the use of force policies from the 20 largest U.S. cities complied with the legality requirement, according to one study.^{xxvii} Despite reforms enacted since the 2020 killing of George Floyd, the objectively reasonable standard continues to circumscribe accountability for law enforcement that use excessive force.^{xxviii} For example, Alabama law authorizes law enforcement officers to use deadly force to make felony arrests,^{xxix} including for crimes such as credit card fraud^{xxx} and possession of controlled substances.^{xxxi}

B. The objectively reasonable standard violates the principle of necessity.

Under the principle of necessity, officers may only resort to force to achieve a legitimate aim when no reasonable alternatives appear available.^{xxxii} Under the objectively reasonable standard, whether less deadly alternatives to use of deadly force are available is irrelevant to the assessment of the reasonableness of the officer’s perception of threat. Indeed, some courts do not allow juries to consider whether less deadly alternatives were available in assessing the “reasonableness” of the use of force.^{xxxiii} Moreover, local use of force policies establish exceptions to the necessity requirement, such as permitting the use of deadly force to prevent a suspect’s escape.^{xxxiv} Federal policies instruct officers to use necessary force, but define necessity to center the officer’s “reasonable belief” of the subject’s dangerousness.^{xxxv} The availability of less deadly alternatives is not part of the assessment of necessity.

C. The objectively reasonable standard violates the principle of proportionality.

International standards define proportionality to require that the use of force is reasonable and proportionate to the seriousness of the offense and the threat posed.^{xxxvi} Under U.S. laws, civilians claiming self-defense are required to demonstrate that proportionate force was used.^{xxxvii} The objectively reasonable standard, however, does not require law enforcement officers to use force that is proportionate to the threat. U.S. courts have considered the use of deadly force “reasonable” even when less-harmful alternatives were available.^{xxxviii} Relatedly, there is no requirement under the objectively reasonable standard that state agents give clear warning before using a weapon or lethal force.^{xxxix}

In *Scott v. Harris*, for example, the U.S. Supreme Court rejected an argument that law enforcement officers in pursuit of a fleeing vehicle should have deployed less-harmful alternatives before ramming a vehicle off the road, causing a crash that paralyzed the driver.^{xl} Plaintiffs argued that officers could have terminated the pursuit more safely by placing tire-puncturing devices (“strip spikes”) across the roadway.^{xli} The *Scott* Court

disregarded this argument, and rejected a similar argument that the innocent public would have been equally protected had officers ceased their pursuit.^{xlvi} The U.S. Supreme Court held that the driver’s “relative culpability”—for having initiated the chase by speeding—justified the level of force used by police.^{xlvi}

Following *Scott*, lower federal courts have not required state agents to consider less-harmful force alternatives or give clear warning of the intent to use force.^{xlvii} At the local level, many cities authorize use of force to prevent a suspect’s escape, to prevent the commission of a felony, and in cases of self-defense, regardless of whether the force was proportional to the threat confronted by the officer.^{xlviii}

D. The objectively reasonable standard violates the principle of non-discrimination.

Non-discrimination requires states to ensure that institutionalized racism and ethnic discrimination do not influence the use of force.^{xlviii} The objectively reasonable standard focuses on the reasonableness of the officer’s beliefs, not the reasonableness of their actions.^{xlviii} In practice, the focus on the reasonableness of their beliefs becomes an inquiry into the reasonableness of the officer’s fear of the suspect.^{xlviii} This allows racial biases and stereotypes to inform the assessment of the “reasonableness” of the officer’s perception.^{xlix} While the UN Expert Mechanism to Advance Racial Justice and Equality (EMLER) has identified the persistence of systemic racism within U.S. law enforcement,^l the Supreme Court has disregarded the significance of race in assessing an officer’s decision to use force against Black and Latino suspects.

Decades of studies indicate that racist associations of Blackness with criminality and delinquency have a direct discriminatory impact on interactions with law enforcement, including use of force. Law enforcement officers are more likely to stop^{li}, use force,^{lii} and kill^{liii} Black individuals. In fact, pretextual stops and racial profiling is considered legal^{liv} and even best practice in the United States.^{lv} The Department of Justice (DOJ) explicitly allows for discriminatory policing at U.S. borders,^{lvi} which disproportionately affects both Black and Latino people, including citizens, visitors, and migrants.

IV. The deficient use of force standard leads to impunity.

Only 1.9% of all killings by police in the years 2013-2022 resulted in criminal charges.^{lvii} In 2023, less than 1% of the officers were charged.^{lviii} In the last 100 years, no U.S. border agent has ever been convicted, and few have even been charged. Unable to secure justice from the U.S. legal system, victims and their families have turned to international human rights bodies. In addition to the petition filed by the family of Anastasio, petitions have been filed against the United States before the Inter-American Commission on Human Rights alleging that U.S. law enforcement killed Black individuals with impunity, including on behalf of the families of Michael Brown,^{lix} Lesley Mcfadden,^{lx} Rekia Boyd,^{lxi} and Sandra Bland.^{lxii}

V. Reforms to address excessive force will prove insufficient until and unless the United States brings its use of force law into compliance with international protections.

The United States has previously claimed that a series of reforms address the disproportionate impact of excessive force on Black residents and migrants.^{lxiii} However, none of the reforms enacted at the federal or state level ensure that U.S. law on use of force adheres to the principles of legality, necessity, proportionality, and non-discrimination established by international instruments.^{lxiv}

Not one of the numerous Executive Orders issued by President Biden reformed the objectively reasonable standard.^{lxv} To the contrary, in practice, the Biden administration promoted the problematic standard as a model for state and local law enforcement agencies.^{lxvi} Federal agencies, such as the DOJ and CBP, have

affirmed the deficient standard.^{lxvii} President Trump has since revoked Biden’s orders and taken no action to address the problematic standard. Instead, the current administration has exacerbated the conditions for abuse and impunity by eliminating federal oversight bodies including the Department of Homeland Security Office of Civil Rights and Civil Liberties, which oversees abuse by CBP agents.^{lxviii}

Recent reforms also fail to bring state laws into compliance with international protections. For example, in 2020, California amended its use of force law.^{lxix} However, the new law fails to incorporate international principles such as necessity and proportionality.^{lxx} Even California’s law enforcement training guides discourage agencies from implementing stricter standards of necessity and proportionality by warning that these policies may result in legal liability.^{lxxi}

In recent years, the United States has further limited access by victims of excessive use of force to justice. In 2022, the Supreme Court ruled in *Egbert v. Boule* that victims could not sue the federal government in court for misconduct if an “alternative” mechanism for redress existed.^{lxxii} Robert Boule, who runs a bed-and-breakfast on the U.S.-Canada border, had sued Border Patrol agent Erik Egbert for damages after he entered the inn without a warrant in search of a guest and threw Boule to the ground, injuring him. The Court’s decision closes the courthouse doors to victims of abuse by federal agents and instructs them to seek redress from the agency’s administrative grievance process, which is ineffective and insufficient.^{lxxiii}

Government reforms focused on improving law enforcement training will not solve the problem created by lax regulation of use of force.^{lxxiv} So long as law officers are trained on the objectively reasonable standard, victims of law enforcement violence will be precluded from human rights protections and recourse.^{lxxv} U.S. courts, laws, and policies authorize force by law enforcement that constitutes excessive use of force under international standards.

VI. Recommendations from other UN and regional human rights bodies.

In the last two years, several UN bodies have expressed concern and made recommendations regarding the use of force standard in the United States. In September 2023, EMLER issued a report expressing concern, “that existing local and national standards on the use of force by law enforcement officials, including the Supreme Court rulings and the Department of Justice’s updated policy, do not meet international standards.” EMLER further noted, that “the current regulatory situation is conducive to the early and unjustified use of force, including lethal force, by law enforcement,” and that “numerous law enforcement practices do not prioritize de-escalation and other less harmful methods of control of the situation, contrary to the principles of strict necessity and precaution of international use of force standards.”^{lxxvi} EMLER recommended that the United States “ensure that all laws, policies, procedures and practices to restrict the use of force are in compliance with international standards on the use of force and firearms by law enforcement officials, particularly the principles of legality, precaution, necessity, proportionality, accountability and non-discrimination. These principles, and the obligation to protect and respect the right to life, should apply in all kind of operations and use of force by all law enforcement agencies in the United States.”^{lxxvii}

In November 2023, the Special Rapporteur on Racism issued a statement following her visit to the United States and expressed concern about the “lack of a regulatory framework on the use of force by law enforcement officials that enshrines the principles of legality, precaution, necessity, proportionality, accountability, and non-discrimination, as established in international human rights law standards.”^{lxxviii} This sentiment was echoed by the Human Rights Committee in its review of the United States under the ICCPR.

In December 2023, the Human Rights Committee issued its concluding observations, stating it “remains deeply concerned at police brutality and the excessive and deadly use of force by law enforcement officials,

including Customs and Border Protection officers, which has a disparate impact on people of African descent, members of Indigenous Peoples, persons of Hispanic/Latino origin, migrants and asylum-seekers.”^{lxxxix} The Committee expressed concern “at reports of a lack of accountability in the majority of cases of excessive or deadly use of force by law enforcement officials.”^{lxxx} The Committee recommended that the United States “[r]eview the federal and state regulations, standards and operational procedures governing the use of force by law enforcement officials and bring them into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.”^{lxxxi} It also urged the United States to “[e]nsure that all allegations of the excessive use of force are investigated promptly, thoroughly and impartially, that those responsible are prosecuted and, if found guilty, punished and that the victims or their families obtain redress.”^{lxxxii}

More than a year has passed since the above recommendations were made and neither the Biden nor the Trump administration has taken steps to align the U.S. standard for use of force with the international standard under its international treaty obligations. Now the use of force standard is under review by the Inter-American Commission on Human Rights in the case of Anastasio Hernández Rojas, the first case of human rights violations to examine the United States under the international standard to which the U.S. is bound by treaty. A decision in the case is currently pending, and it could be decided soon.

VII. Suggested Question for the United States regarding its use of force standard.

The United Nations’ Human Rights Council now has the opportunity to follow up with the United States on prior recommendations and deepen its question on the use of force standard to explicitly examine the “objectively reasonable” standard, which is the root of the systemic abuse and impunity by law enforcement in the United States. We suggest the following question:

How will the United States change its use of force standard to align with the international standard and limit force to that which is necessary and proportional rather than “objectively reasonable” in order to protect life and prevent inhumane treatment pursuant to the ICCPR, American Declaration of the Rights and Duties of Man, the U.N. Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials?

VIII. Suggested Recommendations.

In the U.S. Constitution, Article VI states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land,” which renders treaty obligations applicable across the country. As such, the Human Rights Council has the opportunity to speak to all three branches of government and at all levels of government in the United States in its recommendations. We suggest the following recommendations:

To the Executive Branch (U.S. President, State Governors, Local Mayors): Direct law enforcement agencies under your governance to amend use of force policies to conform with the international standard, and specifically the U.N. Code of Conduct and Basic Principles.

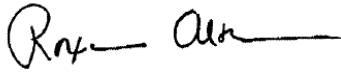
To the Legislative Branch (U.S. Congress, State Legislatures, and Local Legislatures): Adopt federal, state and local legislation to align with the international standard on use of force and limit use of force to that which is ‘necessary and proportional’ in compliance with treaty obligations.

To the Judicial Branch (U.S. Courts, State Courts, and Local Courts): Incorporate international law on use of force into domestic jurisprudence to examine whether law enforcement officers have used

excessive force in violation of a person's human rights.

Thank you for your consideration of this submission. Please do not hesitate to contact us if you have questions or require additional information.

Respectfully submitted,



Roxanna Altholz
Co-Director, Human Rights Clinic
UC Berkeley, School of Law



Andrea Guerrero
Executive Director
Alliance San Diego

ⁱ Office of the United Nations High Commissioner for Human Rights, *Compilation on the United States of America*, U.N. Doc. A/HRC/WG.6/36/USA/2 (Mar. 11, 2020), at ¶ 27.

ⁱⁱ Report of the Working Group on the Universal Periodic Review for the United States, U.N. Doc. A/HRC/46/15 (Dec. 15, 2020), at Recommendation 26.114 (Switzerland), 26.113 (Mexico), 26.219 (Thailand), 26.221 (United Kingdom), 26.224 (Argentina), 26.225 (Australia), 26.226 (Austria), 26.229 (Belgium), 26.230 (Colombia), 26.231 (Costa Rica), 26.232 (Côte d'Ivoire), 26.234 (Ecuador), 26.236 (Germany), 26.237 (Indonesia), 26.256 (Romania), 26.249 (Qatar), and 26.218 (Norway).

ⁱⁱⁱ United States of America, National Report, U.N. Doc. A/HRC/WG.6/36/USA/1 (Aug. 13, 2020), at ¶ 16.

^{iv} *Graham v. Connor*, 490 U.S. 386, 397 (1989) (stating that “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation”).

^v *Id.* at 396 (“[T]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application”) (citing *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

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

^{vii} *Graham*, 490 U.S. at 396.

^{viii} International Covenant on Civil and Political Rights, adopted Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), art. 4(2) [hereinafter ICCPR]; see also United Nations Human Rights Committee [UN HRC], *General Comment No. 36 on Article 6: right to life*, U.N. Doc. CCPR/C/GC/36, at ¶¶ 2, 13, 67 (Sept. 3, 2019) [hereinafter UN HRC, *General Comment No. 36*] (explaining that the right to life requires that law enforcement officials comply with all the relevant international standards regulating the use of force).

^{ix} H.R.C. Res. 47/21, U.N. Doc. A/HRC/RES/47/21, at 3 (July 13, 2021); International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement [EMLER], *Report on Visit to the United States of America*, U.N. Doc. A/HRC/54/CRP.7 (Sept. 26, 2023), at ¶ 30 [hereinafter EMLER Report on Visit to USA]; U.N. Off. of the High Comm’r for Hum. Rts. [OHCHR], *Guidance on Less-Lethal Weapons in Law Enforcement*, U.N. Doc. HR/PUB/20/1, at ¶ 2.3 (2020) [hereinafter OHCHR, *Guidance on Less-Lethal Weapons*].

^x ICCPR, *supra* note 8, at art. 6(1); see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 111 (AMM. L. INST. 1987) (recognizing that the United States is bound by the international treaties to which it is party).

^{xi} UN HRC, *General Comment No. 36*, *supra* note 8, at ¶ 14.

^{xii} Christof Heyns (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, U.N. Doc. A/HRC/26/36, at ¶ 59 (Apr. 1, 2014) [hereinafter Heyns, *Report of the Special Rapporteur*].

^{xiii} See *Graham*, 490 U.S. at 396 (establishing that courts examine the conduct of law enforcement officers “from the perspective of a reasonable officer on the scene”); see also Jeffrey Fagan & Alexis D. Campbell, *Race and Reasonableness in Police Killings*, 100 B.U.L. REV. 951, 960 (2020) (stating that “although [the objectively reasonable] standard purports to be objective, racial disparities in police killings of civilians evidence differences in the subjective interpretation of what is reasonable based on the suspect’s race”).

^{xiv} Brief of Erwin Chemerinsky as Amici Curiae Supporting Petitioners, Family members of Anastasio Hernandez Rojas, Petition No. 14.042, Inter-Am. Comm’n H.R., at 7 (2022) (citing Dara Lind, *When is it legal for a cop to kill you?*, VOX (July 6, 2016), <https://www.vox.com/2014/8/13/5994305/legal-police-lethal-force-murder>).

^{xv} Brief of William J. Aceves as Amici Curiae Supporting Petitioners, Family members of Anastasio Hernandez Rojas, Petition No. 14.042, Inter-Am. Comm’n H.R., at 22 (2022) [hereinafter Aceves Amicus] (citing Heyns, *Report of the Special Rapporteur*, *supra* note 12, at ¶ 58); see also Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112–13, principles 4, 9 (1990) [hereinafter UN Basic Principles on Use of Force].

^{xvi} EMLER Report on Visit to USA, *supra* note 9, at ¶ 28.

-
- ^{xvii} *Graham*, 490 U.S. at 397.
- ^{xviii} *Id.* at 396; *Tennessee v. Garner*, 471 U.S. 1, 8 (1985).
- ^{xix} Rachel A. Harmon, *When Is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1131, 1179–80 (2008).
- ^{xx} 490 U.S. at 396.
- ^{xxi} Fagan & Campbell, *supra* note 13, at 964.
- ^{xxii} UN HRC, *Concluding observations on the initial report of the United States of America*, U.N. Doc. CCPR/C/79/Add.50, ¶¶ 282, 297 (Apr. 7, 1995); UN HRC, *Concluding observations on the second and third reports of the United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, ¶ 30 (Dec. 18, 2006); UN HRC, *Concluding observations on the fourth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4, ¶ 6 (Apr. 23, 2014); UN HRC, *Concluding observations on the fifth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/5, ¶¶ 37(a) (Dec. 7, 2023) [hereinafter UN HRC, *Concluding observations on the fifth periodic report of the United States of America*].
- ^{xxiii} See e.g., UN HRC, *Third periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/3, ¶ 461 (Nov. 28, 2005); UN HRC, *Fifth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/5, ¶ 52 (Nov. 11, 2021) [hereinafter UN HRC, *Fifth periodic report of the United States of America*].
- ^{xxiv} UN HRC, *Fifth periodic report of the United States of America*, *supra* note 23, at ¶ 56 (arguing that “[u]se of force, including lethal force, by state officials is subject to the U.S. Constitution and federal laws”; that UN principles on use of force are “non-binding” and “vary from U.S. law, policy, and practices”; and that U.S. law enforcement are not required to use the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials “as a standard for conducting operations, and the U.S. government does not advise them to do so”).
- ^{xxv} AMNESTY INT’L, DEADLY FORCE: POLICE USE OF LETHAL FORCE IN THE UNITED STATES 4 (2015), https://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf.
- ^{xxvi} See generally, *id.*
- ^{xxvii} UNIV. CHI. L. SCH. GLOB. HUM. RTS. CLINIC, DEADLY DISCRETION: THE FAILURE OF POLICE USE OF FORCE POLICIES TO MEET FUNDAMENTAL INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS 6 (2020) [hereinafter DEADLY DISCRETION], <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1014&context=ihrc>.
- ^{xxviii} Seth Stoughton, *How the Fourth Amendment Frustrated the Regulation of Police Violence*, 70 EMORY L. J. 521, 584–85 (2021) (detailing the “spillover effect” of the objectively reasonable standard into state courts, preventing the application of seemingly stricter local laws on police use of force).
- ^{xxix} ALA. CODE § 13A-3-27 (2024).
- ^{xxx} ALA. CODE § 13A-9-14 (2024).
- ^{xxxi} ALA. CODE § 13A-12-212 (2024).
- ^{xxxii} G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials, art. 3 (Dec. 17, 1979) (“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”); UN Basic Principles on Use of Force, *supra* note 15, at art. 4 (“[Law enforcement officials] may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”); see also OHCHR, *Guidance on Less-Lethal Weapons*, *supra* note 9, at ¶ 2.8 (“The principle of necessity requires that, to achieve a legitimate law enforcement objective, no reasonable alternative appears available at that moment other than resorting to the use of force.”).
- ^{xxxiii} See, e.g., *Plakas v. Drinski*, 19 F.3d 1143, 1149 (7th Cir. 1994) (“We do not believe the Fourth Amendment requires the use of the least or even a less deadly alternative so long as the use of deadly force is reasonable”); *Schulz v. Long*, 44 F.3d 643, 649 (8th Cir. 1995) (“Alternative measures . . . are simply not relevant to the reasonableness inquiry.”); *United States v. Melendez-Garcia*, 28 F.3d 1046, 1052 (10th Cir. 1994) (“We must avoid ‘unrealistic second-guessing’ of police officers’ decisions . . . and thus do not require them to use the least intrusive means in the course of a detention, only reasonable ones.”).
- ^{xxxiv} DEADLY DISCRETION, *supra* note 27, at 6; see also U.S. CUSTOMS AND BORDER PROT., CBP USE OF FORCE POLICY U.S. 4 (2021) [hereinafter CBP USE OF FORCE POLICY], https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/cbp-use-of-force-policy_4500-002A.pdf (authorizing use deadly force “when the officer/agent has a reasonable belief that the subject of such force poses an imminent danger of serious bodily injury or death to the officer/agent or to another person”); U.S. DEP’T OF JUST. [DOJ], JUSTICE MANUAL, § 1-16.000 (2022) [hereinafter DOJ MANUAL] <https://www.justice.gov/jm/1-16000-department-justice-policy-use-force>.
- ^{xxxv} DOJ MANUAL, *supra* note 34, at 1-16.200 (“Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.”); CBP USE OF FORCE POLICY, *supra* note 34, at 3 (“A use of deadly force is “necessary” when the officer/agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious bodily injury to the officer/agent or to another person.”).
- ^{xxxvi} UN Basic Principles on Use of Force, *supra* note 15, at art. 3 comment (b); Heyns, *Report of the Special Rapporteur*, *supra* note 12, at ¶ 65.
- ^{xxxvii} Cynthia Lee, *Reforming the Law on Police Use of Deadly Force: De-Escalation, Pre-Seizure Conduct, and Imperfect Self-Defense*, 2018 U. ILL. L. REV. 629, 656 (2017); Harmon, *supra* note 19, at 1178.
- ^{xxxviii} See *infra* note 50; see also CBP USE OF FORCE POLICY, *supra* note 34, at 3–4 (“CBP Authorized Officers/Agents are permitted to use force that is objectively reasonable This standard does not require Officers/Agents to meet force with equal or lesser force .

. . CBP Authorized Officers/Agents do not have a duty to retreat to avoid the reasonable use of force, nor are they required to wait for an attack before using reasonable force to stop a threat.”).

xxxix See *Scott*, 550 U.S. at 385–86.

xl *Id.* at 385.

xli Brief for Respondent at 5, *Scott*, 550 U.S. 372 (No. 05-1631).

xlii *Scott*, 550 U.S. at 385–86.

xliii *Id.* at 384.

xliv In *Long v. Slaton*, for example, the Eleventh Circuit held that the use of a firearm to terminate a police chase was reasonable, rejecting arguments by plaintiffs that the officer should have considered the less-harmful measures available, such as spike strips or later tracking the suspect vis-à-vis the stolen police cruiser’s tracking device. 508 F.3d 576, 583 (11th Cir. 2007). The court reasoned that, under *Scott*, an officer “need not have taken [the] chance” that less harmful measures might have proven effective. *Id.* (quoting *Scott*, 550 U.S. at 385). Thus, even if firing at the suspect’s body “was not the best available means of preventing [his] escape and preventing potential harm to others,” the officer’s use of force was nevertheless reasonable. *Id.*; see also *Abney v. Coe*, 493 F.3d 412, 416 (4th Cir. 2007); *Pasco v. Knoblauch*, 566 F.3d 572, 579, 581 (5th Cir. 2009) (concluding that officer’s decision to ram a fleeing vehicle off the road, killing the driver, was reasonable, even though the officer gave no warning, made no attempt at terminating the chase by less lethal means, and conceded that the chase had not endangered any pedestrian or other motorists).

xlvi See DEADLY DISCRETION, *supra* note 27, at 6; but see UN HRC, *General Comment No. 36*, *supra* note 8, at ¶ 13 (observing that “the use of potentially lethal force for law enforcement purposes . . . cannot be used, for example, in order to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others”).

xlvi Aceves Amicus, *supra* note 15, at 22 (citing Heyns, *Report of the Special Rapporteur*, *supra* note 12, at ¶ 74).

xlvii Numerous state statutes follow Supreme Court precedent and authorize law enforcement officers to use deadly force to defend himself or a third person from what he reasonably believes to be the imminent use of deadly physical force or to effect arrest or prevent the escape of a person who he reasonably believes is attempting to escape. See e.g. ALASKA STAT. § 11.81.370(A) (2024); ARIZ. REV. STAT. ANN. § 13-410(C) (2024); COLO. REV. STAT. § 18-1-707(2) (2024); FLA. STAT. § 776.05(3) (2024); LA. STAT. ANN. § 14:20(A) (2024); MO. REV. STAT. § 563.046(3) (2024); N.H. REV. STAT. ANN. § 627:5(II) (2024); see also Fagan & Campbell, *supra* note 20, at 965 (“The core of the *Graham* standard is that the accuracy of accounts of why officers thought they were in imminent danger matters less than what the officer felt in that moment at that scene and whether a similarly situated officer would have felt the same urgency.”).

xlviii Fagan & Campbell, *supra* note 13, at 962 (“However, this reliance on the officer’s belief about whether the suspect poses a threat creates an inherent tension between subjective assessments of threat or danger and the objective reasonableness of a police officer’s decision to use deadly force.”).

xlvi *Id.* at 964.

¹ EMLER Report on Visit to USA, *supra* note 9, at ¶ 23.

li *Id.* at ¶¶ 36, 46.

lii *Id.* at ¶ 36.

liii *Id.* at ¶ 41.

liv *Whren v. U.S.*, 517 U.S. 806, 814 (1996) (“[The] Fourth Amendment’s concern with “reasonableness” allows certain actions to be taken in certain circumstances, whatever the subjective intent.”).

lv Agency policy often encourages the use of pretextual stops. See Charles R. Epp, Steven Maynard-Moody, & Donald Haider-Markel, *Beyond Profiling: The Institutional Sources of Racial Disparities in Policing*, 77 PUB. ADMIN. REV. 168, 171 (2016) (describing institutional drivers of “investigatory” traffic stops and detailing extensive evidence of their use). Additionally, the DOJ encouraged the use of pretextual traffic stops. See *id.*; Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 MICH. L. REV. 651, 671 (2002).

lvi DOJ, GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, GENDER IDENTITY, AND DISABILITY, 3 n.5 part (c) (2022) [hereinafter DOJ GUIDANCE FOR FEDERAL LAW ENFORCEMENT].

lvii EMLER Report on Visit to USA, *supra* note 9, at ¶ 68. In California, 98% of all police killings have gone unprosecuted. ALL. SAN DIEGO, DEFENDING HUMAN DIGNITY IN CALIFORNIA: LOCAL LAW ENFORCEMENT’S ONGOING DISCRIMINATION, ABUSE, AND IMPUNITY 14 (2023) [hereinafter ASD REPORT], <https://startwithdignity.org/s/Defending-Human-Dignity-in-California>. Between 2018 and 2022, 754 people were killed by California law enforcement, but only 11 officers prosecuted. *Id.*

lviii 2023 Police Violence Report, MAPPING POLICE VIOLENCE, *supra* note 5.

lix Michael Brown, Jr. & Lesley McFadden v. U.S., Petition 909-15, Inter-Am. Comm’n H.R., Report No. 367/22, OEA/Ser.L/V/I. Doc. 375 (2022), https://www.oas.org/en/iachr/decisions/2022/USAD_909-15_EN.PDF.

lx *Id.*

lxi Rekia Boyd v. U.S., Petition 1720-15, Inter-Am. Comm’n H.R., Report No. 374/22, OEA/Ser.L/V/II. Doc. 382 (2022), https://www.oas.org/en/iachr/decisions/2022/USAD_1720-15_EN.PDF.

^{lxii} Sandra Bland et.al. v. U.S., Petition 2152-15, Inter-Am. Comm’n H.R., Report No. 232/22, OEA/Ser.L/V/II. Doc 235 (2022),

https://www.oas.org/en/iachr/decisions/2022/USAD_2152-15_EN.PDF.

^{lxiii} EMLER USA Report, *supra* note 9, at ¶ 17 (naming EXEC. ORDER NO. 13985, 14035, 14089, and 14091).

^{lxiv} DOJ MANUAL, *supra* note 41.

^{lxv} EXEC. ORDER NO. 13985, 86 FR 7009 (Jan. 25, 2021) (directing federal agencies to assess and address procedures that might limit underserved communities’ access to services); EXEC. ORDER NO. 14089, 87 Fed. Reg. 77459 (Dec. 12, 2022) (creating a general advisory council on the African Diaspora without reforming use of force policy); EXEC. ORDER NO. 14091, 88 Fed. Reg. 10825 (Feb. 22, 2023) (addressing administrative agencies’ equity efforts without reforming use of force standards).

^{lxvi} See e.g., *Fact Sheet: Biden-Harris Administration Highlights Accomplishments on Anniversary of Historic Executive Order to Advance Effective, Accountable Policing and Strengthen Public Safety*, WHITE HOUSE (May 23, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/25/fact-sheet-biden-harris-administration-highlights-accomplishments-on-anniversary-of-historic-executive-order-to-advance-effective-accountable-policing-and-strengthen-public-safety/> (last visited Apr. 5, 2024) (celebrating executive initiatives to independently evaluate law enforcement agencies’ compliance with national standards, including the objectively reasonable standard); U.S. DEP’T OF JUST., NATIONAL STANDARD FOR INDEPENDENT CREDENTIALING BODIES EXEC. ORDER 14074 SEC. 19 (May 2023), https://cops.usdoj.gov/pdf/executive_order/National_Accreditation_Standards.pdf (last visited Apr. 5, 2024).

^{lxvii} Under the current DOJ policy “[o]fficers may use only the force that is objectively reasonable to effectively gain control of an incident, while protecting the safety of the officer and others, in keeping with the standards set forth in *Graham*.” DOJ MANUAL, *supra* note 41. In the immigration context, CBP’s updated use of force policies do not impose upon officers a duty to “meet force with equal or lesser force,” to “retreat to avoid the use of reasonable force,” or “wait for an attack before using reasonable force to stop a threat. CBP USE OF FORCE POLICY, *supra* note 41, at 3–4.

^{lxviii} Homeland Security makes cuts to civil rights and immigration oversight offices, NPR, March 21, 2025, <https://www.npr.org/2025/03/21/nx-s1-5336738/homeland-security-rif-cuts-dhs#:~:text=Homeland%20Security%20makes%20cuts%20to%20civil%20rights%20and%20immigration%20oversight%20offices&text=The%20Department%20of%20Homeland%20Security,adversaries%20that%20slow%20down%20operations.%22>.

^{lxix} ASD Report, *supra* note 92, at 11.

^{lxx} *Id.*; CAL. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING [POST], 2021 POST USE OF FORCE STANDARDS AND GUIDELINES 12 (2022) https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf (“[T]hese standards and guidelines are not intended to create or impose any legal obligations or basis for legal liability absent direction by a legislative body, court, or agency.”).

^{lxxi} ASD Report, *supra* note 92, at 11.

^{lxxii} 596 U.S. 482, 497 (2022).

^{lxxiii} *Id.* at 520 (Sotomayor, J., concurring in part) (“[T]he Court’s holding that a nonbinding administrative investigation process, internal to the agency and offering no meaningful protection of the constitutional interests at stakes, constitutes an alternative remedy that forecloses Bivens relief.”); see also S. BORDER COMMUNITIES COAL. [SBCC], DEFENDING HUMAN DIGNITY AT THE U.S.- MEXICO BORDER: U.S. CUSTOMS AND BORDER PROTECTION’S ONGOING DISCRIMINATION, VIOLENCE, AND IMPUNITY, 4 (2023) <https://static1.squarespace.com/static/645aab32d974f32d8bad770e/t/650a1e9bb4233343b58e0ea9/1695162685126/Defending+Human+Dignity+at+the+US+Mexico+Border>.

^{lxxiv} See *id.*; Marlee Jackocks, *Use of Force by Law Enforcement in the United States: A Human Rights Based Reform and the Ireland Decision Making Model*, 32 IND. INT’L & COMPAR. L. REV. 483, 507 (2022) (discussing the futility of reform in police use of force under the objectively reasonable standard because “it is more likely that use of force will be used in excess or be abused by law enforcement officers responding to situations in fear and for their own safety.”).

^{lxxv} *Id.* at 511.

^{lxxvi} EMLER Report on Visit to USA, *supra* note 9, at ¶¶ 28, 29.

^{lxxvii} *Id.* at ¶ 30.

^{lxxviii} Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, *End of visit statement: United States of America* (Nov 14, 2023), <https://www.ohchr.org/en/press-releases/2023/11/america-critical-juncture-fight-against-enduring-systemic-racism-says-un>.

^{lxxix} *Concluding observations on the fifth periodic report of the United States of America*, *supra* note 22, at ¶ 36.

^{lxxx} *Id.*

^{lxxxi} *Id.* at ¶ 37(a).

^{lxxxii} *Id.* at ¶ 37(b).