



# FLORIDA LEGAL SERVICES, INC.

## COMMUNITY JUSTICE PROJECT

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United Nations Committee Against Torture  
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November 5, 2014

Dear Committee Members:

In light of the recent letter submitted by Sgt. Alejandro Bello, President of the Miami Beach Fraternal Order of Police William Nichols Lodge #8 in response to the shadow report filed on behalf of the family of Israel “Reefa” Hernandez and the Dream Defenders, the undersigned organizations deem it necessary to respond in advance of the Committee Against Torture’s review of the United States during its 53<sup>rd</sup> Session.

Despite attempts to frame this case as an unresolved medical anomaly, the autopsy report confirms that Mr. Hernandez’s “sudden cardiac death” was the direct result of a “conducted energy device discharge.” Scientific evidence of the danger of these devices has made it clear that even perfect use can cause burns on the skin, rapidly increased heart rate, changes in blood chemistry and internal bruising and injury on a perfectly healthy victim.<sup>i</sup> The American Civil Liberties Union (ACLU) previously expressed its concerns with safety risks of Tasers and called for their ban at the local state and federal level pending an independent inquiry into their safety and use.<sup>ii</sup>

The FOP’s failed efforts to paint Mr. Hernandez as a criminal are outrageous and intend to distract attention from the clear need to evaluate the safety of these devices and, at a minimum, impose strict, uniform regulations on the use of these devices and accountability to prevent their excessive and disproportionate use in situations where an officer is not faced with a threat of great bodily harm or death. The fact that this young artist was allegedly engaged in an act of painting an abandoned building (at most a misdemeanor) is no justification for the use of force exhibited in this case. This case glaringly demonstrates the need for the U.S. Department of Justice to investigate the killing of Mr. Hernandez, for local prosecutors to launch a credible, transparent and thorough criminal probe into whether Officer Jorge Mercado should face

prosecution and issue guidelines strictly regulating the use of Taser weapons to ensure that cases like that of Mr. Hernandez do not happen again.

The shadow report underscores that these measures are already long overdue: in just the 15 months since Mr. Hernandez's death, seven more deaths due to Tasers have been logged in Florida alone. Numerous videos and testimonies have come out evidencing law enforcement's unnecessary and excessive use of these devices. And yet, as reported recently in the *New York Times* and other outlets, Florida has not prosecuted a police officer in over two decades.<sup>iii</sup> Officer Jorge Mercado's record alone indicates a checkered history,<sup>iv</sup> including one case in which two military officers were allegedly forced to drop their complaint for police brutality (also involving use of a Taser) against Officer Mercado and three other Miami Beach police officers.<sup>v</sup>

The Committee has considered the use of electroshock devices or Taser weapons on multiple occasions. In its 2006 Conclusions and Recommendations to the U.S., the Committee expressed its concern about the extensive use of these devices by law enforcement.<sup>vi</sup> The Committee's 2008 Concluding Observations concerning Portugal, went further in noting that "use of these weapons causes severe pain constituting a form of torture" and "in some cases it may even cause death..." The Committee recommended suspending the use of "TaserX26" weapons as their impact "on the physical and mental state of targeted persons would appear to violate articles 1 and 16 of the Convention."<sup>vii</sup>

In 2013, the Committee weighed in yet again on the use of electroshock devices, when it learned of the Dutch government's intentions to equip their police forces with Tasers. During its review of the Kingdom of Netherlands, Committee members expressed their concern about the physical and psychological impact of these devices.<sup>viii</sup> In its Concluding Observations, the Committee emphasized that these weapons should only be used when officers face a deadly threat, recommending guidelines by which "electrical discharge weapons should be used exclusively in extreme limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons."<sup>ix</sup>

The use of Tasers in the U.S. is subject to very few standards, despite the documented physical and psychological harm that these devices can cause. The Committee has indicated that these devices should be a substitute for lethal force in limited circumstances, and yet there is an alarming lack of uniformity in the way Tasers are used by local law enforcement officials, such as in situations where the officer is not threatened with deadly force. While one United States federal appeals court ruled that the use of Taser and electroshock devices must be limited to cases where a government interest compels the employment of such force,<sup>x</sup> no such government interest can exist in Mr. Hernandez's case. Though the Miami Beach Police Department has a local policy on the use of force including Tasers, the circumstances of this case appear to go against that policy. The MBPD policy states that the use of force, both deadly and non-deadly, is justified only "when officers reasonably believe it to be necessary to affect an arrest or to defend themselves or another from bodily harm" and upon weighing of a number of factors, including the "seriousness of the crime committed," "size, age and weight" of the subject, the "apparent physical ability" of the subject and whether the subject is armed. In Mr. Hernandez's case, witness statements indicate that he was an unarmed, and that he was motionless before Officer Mercado deployed his Taser on him. The Miami Beach Police Department must hold officers

accountable to the Departmental policies to prevent tragedies like that of Mr. Hernandez from happening in the future.

The lack of uniform regulations on the use of Taser weapons combined with the failure to prosecute officers for misuse of these dangerous devices create a climate of permissiveness and impunity in which law enforcement officers can cause serious bodily harm or death and never face any consequences. Since the Committee has previously found the use of Tasers can be a form of torture, it is imperative that the U.S. federal government create guidelines that clearly circumscribe the very limited instances in which Taser use can be authorized, in full conformity with international human rights law.

Sincerely,

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<sup>i</sup> ACLU of Iowa, Taser Policies in Iowa (October 19, 2014), <http://www.aclu-ia.org/iowa/wp-content/uploads/2014/10/Oct-19-2014-FINAL-Taser-Report-wappendix.pdf>; *see also* TASER CEW Warnings, (March 15, 2013), [https://www.taser.com/images/resources-and-legal/product-warnings/downloads/citizen\\_warnings.pdf](https://www.taser.com/images/resources-and-legal/product-warnings/downloads/citizen_warnings.pdf)

<sup>ii</sup> [https://www.aclu.org/files/safefree/torture/torture\\_report.pdf](https://www.aclu.org/files/safefree/torture/torture_report.pdf)

<sup>iii</sup> [http://www.nytimes.com/2014/09/04/us/challenges-seen-in-prosecuting-police-for-use-of-deadly-force.html?\\_r=0](http://www.nytimes.com/2014/09/04/us/challenges-seen-in-prosecuting-police-for-use-of-deadly-force.html?_r=0);  
<http://fusion.net/Justice/video/tasered-israel-hernandez-story-919999>

<sup>iv</sup> [http://blogs.miaminewtimes.com/riptide/2013/08/cop\\_who\\_tasered\\_israel\\_hernand.php](http://blogs.miaminewtimes.com/riptide/2013/08/cop_who_tasered_israel_hernand.php)

<sup>v</sup> [http://blogs.miaminewtimes.com/riptide/2013/08/israel\\_hernandez\\_killing\\_soldi.php](http://blogs.miaminewtimes.com/riptide/2013/08/israel_hernandez_killing_soldi.php)

<sup>vi</sup> Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture: United States of America, CAT/C/USA/CO/2 (July 25 2006), at para. 35  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en)

<sup>vii</sup> Committee Against Torture, Conclusions and recommendations of the Committee against Torture: Portugal, CAT/C/PRT/CO/4 (February 19 2008), at para. 14.

<sup>viii</sup> <https://www.privacyfirst.eu/focus-areas/law-and-politics/item/595-dutch-taser-weapons-on-agenda-of-un-committee-against-torture.html>

<sup>ix</sup> Committee Against Torture, Concluding observations on the combined 5th and 6th periodic reports of the Netherlands, adopted by the Committee at its 50th session, CAT/C/NLD/CO/5-6 (May 31 2013), at para. 27.

<sup>x</sup> *Bryan v. MacPherson*, 630 F3d 805, 826 (9<sup>th</sup> Cir. 2010)