

**Department of Justice**

Office of Public Affairs

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**Federal Officials Close the Investigation into the Death of Anastasio Hernandez-Rojas**

The Justice Department announced today that following a comprehensive investigation it will not pursue federal criminal civil rights or other federal charges against the federal agents involved in the in-custody altercation that resulted in the death of Mexican national Anastasio Hernandez-Rojas.

Officials from the Department of Justice's Civil Rights Division, the FBI and the Department of Homeland Security's Office of the Inspector General (DHS-OIG) met today with Hernandez-Rojas' family members and their representatives to inform them of this determination. The department's decision is based on the facts developed during an independent and comprehensive investigation into this matter.

The department devoted significant time and resources to investigating the events surrounding Hernandez-Rojas' death on May 31, 2010, three days after he was taken into custody at the San Ysidro Port of Entry in San Diego, California. A team of experienced federal prosecutors reviewed hundreds of pages of evidence generated by San Diego Police Department Homicide investigators. Federal agents and the Civil Rights Division then initiated an independent federal investigation into the incident, which included numerous witness interviews and visits to the scene. The evidence generated during the federal investigation included videos of the incident, federal law enforcement witness accounts, Mexican law enforcement witness accounts, civilian witness accounts, medical personnel accounts, medical records, autopsy reports, official use of force training materials and forensic evidence.

The evidence developed during the investigation indicated that when Hernandez-Rojas' handcuffs were removed at the San Ysidro Port of Entry, Hernandez-Rojas began grappling with the two U.S. Border Patrol (USBP) agents and then resisted their efforts to restrain him. Two Immigration and Customs Enforcement (ICE) agents, as well as another USBP agent, joined the struggle and struck Hernandez-Rojas several times with their asp batons. The agents again secured Hernandez-Rojas in handcuffs, but he continued to struggle and kick at the agents. The agents called for backup and a transport vehicle to take Hernandez-Rojas for processing since he was no longer eligible for voluntary return due to the struggle. As agents attempted to place Hernandez-Rojas in the transport van to take him back to the station, he again physically resisted and attempted to kick the agents. A number of Customs and Border Protection (CBP) officers responded to the scene, one of whom shocked Hernandez-Rojas with a taser. Hernandez-Rojas stopped resisting and the agents restrained his legs. Shortly thereafter, Hernandez-Rojas' breathing slowed and he became unresponsive. The CBP officers administered CPR until medical personnel arrived at the scene. Hernandez-Rojas was pronounced dead two days later after being removed from life support.

Subsequent autopsies concluded that Hernandez-Rojas died of an acute myocardial infarction (heart attack) while being restrained. Acute methamphetamine intoxication, pre-existing heart disease, the level of physical exertion during the struggle, the electro-shocks from the taser and positional restraint were stated as contributory factors in Hernandez-Rojas' death. The medical examiner stated further that Hernandez-Rojas would not have died had there not been methamphetamine intoxication.

After a careful and thorough review, a team of experienced federal prosecutors determined that the evidence was insufficient to pursue federal criminal civil rights charges. Under the applicable federal criminal civil rights law, prosecutors must establish, beyond a reasonable doubt, that an official willfully deprived an individual of a constitutional right, meaning that the official acted with the deliberate and specific intent to do something the law forbids. This is the highest standard of intent imposed by the law. Neither accident, mistake, fear, negligence nor bad judgment is sufficient to establish a federal criminal civil rights violation. In the present matter, the federal government could not prove beyond a reasonable doubt that the subjects acted willfully, that is with the specific intent to deprive the victim of a constitutional right. Specifically, the federal government cannot disprove the agents' claim that they used reasonable force in an attempt to subdue and restrain a combative detainee so that he could be placed inside a transport vehicle.

The federal government is also unable to prove, beyond a reasonable doubt, that the subjects violated the federal homicide statutes within the Special Maritime and Territorial Jurisdiction of the United States. Although positional restraint of Hernandez-Rojas and electro-shocks from the taser were contributory factors in his death, there is no

evidence that any of the federal agents deployed the taser or restrained Hernandez-Rojas with malice. Nor is there sufficient evidence to establish that the federal agents' conduct violated the federal manslaughter statute, which does not require malice but requires that the federal agents committed a lawful act in an unlawful manner, or without due caution and circumspection, that might produce death. Rather, the federal agents' restraint and deployment of the taser against Hernandez-Rojas when he was non-compliant and physically assaultive was not unlawful and, based on the evidence gathered relating to the federal agents' use of force training, the federal agents' action were not done without due caution and circumspection.

While the loss of life is regrettable, the facts of this matter do not support a federal prosecution. Accordingly, the investigation into this incident has been closed.

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