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Department of Justice

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FOR IMMEDIATE RELEASE

Friday, April 27, 2012

Federal Officials Close Investigation into the Death of Sergio Hernandez-Guereca

The Justice Department and the U.S. Attorney's Office for the Western District of Texas announced today that there is insufficient evidence to pursue federal criminal charges against a U.S. Customs and Border Protection (CBP), Office of Border Patrol agent for the fatal shooting of the late Sergio Hernandez-Guereca, a 15-year-old Mexican national shot within a spillway of the Rio Grande River along the United States – Mexico border on June 7, 2010.

The Justice Department conducted a comprehensive and thorough investigation into the shooting, which occurred while smugglers attempting an illegal border crossing hurled rocks from close range at a CBP agent who was attempting to detain a suspect. In conjunction with agents from the FBI and Department of Homeland Security, Office of the Inspector General (DHS-OIG), prosecutors from the Justice Department's Civil Rights Division and the U.S. Attorney's Office interviewed more than 25 law enforcement and civilian witnesses. In addition, they collected, analyzed and reviewed: evidence from the scene of the shooting; civilian and surveillance video; law enforcement radio traffic; 911 recordings; volumes of CBP agent training and use of force materials; and the shooting agent's training, disciplinary records, and personal history. Also, they conducted site visits and analysis and consulted with the International Boundary and Water Commission concerning jurisdictional issues.

The team of experienced prosecutors examined the shooting as a possible violation of U.S. criminal civil rights laws and as a possible violation of federal homicide statutes. With regard to the federal homicide statutes, the team of prosecutors and agents concluded that there is insufficient evidence to pursue prosecution of the CBP agent for a federal homicide offense. This review took into account evidence indicating that the agent's actions constituted a reasonable use of force or would constitute an act of self defense in response to the threat created by a group of smugglers hurling rocks at the agent and his detainee. The investigation also revealed that, on these particular facts, the agent did not act inconsistently with CBP policy or training regarding use of force. Based on a careful review and analysis of all the evidence, the team concluded that evidence would not be sufficient to prove beyond a reasonable doubt that the CBP agent violated the federal homicide laws in the shooting of Hernandez-Guereca.



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The Justice Department also concluded that no federal civil rights charges could be pursued in this matter. Under the applicable civil rights statutes, prosecutors must establish, beyond a reasonable doubt, that a law enforcement officer willfully deprived an individual of a constitutional right, meaning with the deliberate and specific intent to do something the law forbids. This is the highest standard of intent imposed by law. Accident, mistake, misperception, negligence and bad judgment are not sufficient to establish a federal criminal civil rights violation. After a careful and thorough review, a team of experienced federal prosecutors and FBI agents determined that the evidence was insufficient to prove, beyond a reasonable doubt, that the CBP agent acted willfully and with the deliberate and specific intent to do something the law forbids, as required by the applicable federal criminal civil rights laws. Moreover, a prosecution under the federal criminal civil rights statutes would be barred because the investigation determined that Hernandez-Guereca was neither within the borders of the United States nor present on U.S. property, as required for jurisdiction to exist under the applicable federal civil rights statute.

Accordingly, the investigation into this incident has been closed without prosecution.

The U.S. government regrets the loss of life in this matter, and the Civil Rights Division, the U.S. Attorney's Office for the Western District of Texas, the FBI and DHS devoted significant time and resources into conducting a thorough and complete investigation. The USG commits to continue to work with the Mexican government within existing mechanisms and agreements to prevent future incidents. The Justice Department is committed to investigating allegations of excessive force by law enforcement officers and will continue to devote the resources required to ensure that all allegations of federal civil rights violations are fully and completely investigated. The department aggressively prosecutes criminal civil rights violations whenever there is sufficient evidence to do so.

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Civil Rights Division

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