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United States Senate

COMMITTEE ON FINANCE

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April 23, 2025

The Honorable Kristi Noem
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20528

Dear Secretary Noem:

I am writing to request documentation related to the case of Mr. Anastasio Hernández Rojas, whose death in the custody of San Diego U.S. Customs and Border Protection (CBP) agents sparked public outrage and resulted in multiple law enforcement investigations. As these external investigations were underway, Mr. Rodney Scott, then-Acting Deputy Chief Patrol Agent in the San Diego Sector for U.S. Border Patrol and now President Trump's nominee for CBP Commissioner, is alleged to have signed an illegal administrative subpoena to obtain Mr. Hernández Rojas's medical records in pursuit of an internal cover-up. As Mr. Scott's nomination to serve as CBP Commissioner comes before the Senate Finance Committee for consideration, I am requesting information related to Mr. Scott's alleged attempts to interfere with investigations into Mr. Hernández Rojas's death.

According to court documents, on May 28, 2010, Mr. Hernández Rojas was detained by CBP agents while crossing the U.S.-Mexico border into San Diego, where he lived with his family and had lived most of his life. Agents kicked Mr. Hernández Rojas, reinjuring his broken ankle, then denied him medical attention and proceeded to initiate his deportation.¹ CBP removed Mr. Hernández Rojas to a secure area to prepare him for deportation where agents hit, kicked, tased, and smothered him while he lay handcuffed.² After administering at least four taser shocks of five to 13 seconds each, agents placed Mr. Hernández Rojas facedown, kneeling into his neck and back and stripping his pants off.³ Eventually, he ceased to move.⁴ Mr. Hernández Rojas was removed to the hospital, where he was pronounced brain dead and died after briefly being on life

1 Family Members of Anastasio Hernández Rojas v. U.S., Inter-Am. Comm'n H.R., Case No. 14.042, Compl., Mar. 2016 at 3-4, <https://drive.google.com/drive/folders/1kPv6QJfgpYLLLLLEIFU0AVQ7srFSwoX72>.

2 *Id.* at 4-6.

support. His death was ruled a homicide by two autopsies that uncovered extensive physical injuries and confirmed that the law enforcement interaction was a secondary cause of his death.⁵ He left behind a wife and five children.

The Department of Homeland Security Office of the Inspector General (DHS OIG), the Federal Bureau of Investigation (FBI), and the local police department (in this case, the San Diego Police Department (SDPD)), have jurisdiction to investigate use of force and deaths in the custody of CBP.⁶ However, contrary to that policy, at the time of Mr. Hernández Rojas's death, CBP instead initiated its own internal investigation through its Critical Incident Team (CIT). According to allegations, immediately upon Mr. Hernández Rojas's death, CBP failed to notify the SDPD and instead took full control of the crime scene and began to internally manage the investigation of the incident.⁷ CBP did not contact the FBI until more than 12 hours after the incident.⁸ When SDPD requested video footage of the incident from CBP, the field office delayed, eventually handing over the wrong hour of footage and allowing its recording of the incident to be taped over.⁹

During this time, Mr. Scott signed an administrative subpoena to obtain Mr. Hernández Rojas's medical records.¹⁰ CBP then refused to release these records to the SDPD.¹¹ This use of a CBP subpoena was decried as "illegal and potentially obstruction of justice" by the Assistant CBP Commissioner at the time of the incident, James Tomasheck, and "improper if not criminal" by the Deputy Assistant Commissioner of CBP Internal Affairs at the time of the incident, James Wong.¹² Indeed, CBP agents do not have the authority to issue administrative subpoenas for the purposes of internal review.¹³ Both Mr. Tomasheck and Mr. Wong elevated their concerns about Mr. Scott's conduct to CBP leadership.¹⁴

Mr. Scott has been nominated to lead CBP, one of the largest law enforcement agencies in the country, responsible for directing more than 60,000 employees. As his nomination comes before

3 *Id.* at 6-7.

4 *Id.* at 7.

5 *Id.* at 8.

6 Investigations into Deaths in Custody and Use of Force Incidents, DHS CBP Fiscal Year 2016 Report to Congress, Aug. 17 2016 at 3, https://www.dhs.gov/sites/default/files/publications/Customs%20and%20Border%20Protection%20-%20Investigations%20into%20Deaths%20in%20Custody%20and%20Use%20of%20Force%20Incidents_0.pdf.

7 Family Members of Anastasio Hernandez Rojas v. U.S. Inter-Am. Comm'n H.R., Case No. 14.042, Additional Observations on Merits, Jan. 27, 2021 at 14, <https://drive.google.com/drive/folders/1Mvr-2H1b9ib4rSUlzShhw57uD4pGdat->.

8 *Id.* at 15.

9 *Id.* at 20.

10 *Id.* at 19.

11 *Id.*

12 *Id.* Exhibits D and E.

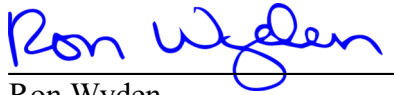
13 Additional Observations on Merits, Exhibit D at 10; Additional Observations on Merits, Exhibit E at 20.

14 Additional Observations on Merits, Exhibits D and E.

the Senate Finance Committee, I have serious concerns about the gross failures of integrity and leadership he has shown. Mr. Scott's role in a death-in-custody investigation marred by process failures and potential obstruction, as well as his decision to issue a potentially unlawful and obstructive subpoena during his tenure as Deputy Chief Patrol Agent are deeply troubling. His actions suggest that he does not have the discretion required to lead CBP, an agency with which Americans interact every day at border ports of entry and airports in the course of regular travel. In the hands of someone who has allegedly repeatedly abused his position of power, the vast security apparatus for which CBP is responsible could be wielded for harm. I am seeking clarification of Mr. Scott's role in CBP interference in the investigations into Mr. Hernández Rojas's death in custody. Accordingly, please provide the requested information and documents by April 28, 2025.

1. The Department of Homeland Security Office of the Inspector General (DHS OIG) opened an investigation into the death of Mr. Hernández Rojas on June 1, 2010. DHS completed, but did not publicly release, its findings.
 - a. Please disclose this report in its entirety, including exhibits.
 - b. Did DHS or subcomponent agencies take any internal action in response to this report's findings?
2. The San Diego Sector of U.S. Customs and Border Protection CIT produced a report of its findings on its investigation of the death of Mr. Hernández Rojas.
 - a. Please disclose this report in its entirety, including exhibits.
 - b. Did CBP take any internal action following the conclusion of this report and in response to its findings?
3. Please produce CBP policy and procedure governing the use of administrative subpoenas by agents and leadership contemporary to the death of Mr. Hernández Rojas.
4. Please produce current CBP policy and procedure governing the use of administrative subpoenas by agents and leadership.
5. Please describe CBP's understanding of Mr. Scott's actions during the CIT investigation into Mr. Hernández Rojas's death.
 - a. What role did Mr. Scott play in this investigation?
 - b. For what reason did Mr. Scott issue an administrative subpoena to obtain Mr. Hernández Rojas's medical record?
 - c. Who directed this issuance of a subpoena?
 - d. Did Mr. Scott communicate with SDPD regarding their request to CBP to access Mr. Hernández Rojas's medical record?
6. Did DHS or any component agency take action, including internal review or conversation, in response to Mr. Tomasheck's and Mr. Wong's articulated concerns over Mr. Scott's use of an unlawful administrative subpoena to obtain Mr. Hernández Rojas's medical records?
7. Please identify all CIT reports that Mr. Scott approved in his capacity as Deputy Chief Patrol Agent in the San Diego Sector for U.S. Border Patrol and Chief of Border Patrol.

Sincerely,

A handwritten signature in blue ink that reads "Ron Wyden". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Ron Wyden

United States Senator

Ranking Member, Committee
on Finance