

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

JOEL GONZALEZ LOPEZ. §
Individually §
And as Personal Representative of the §
Estate of Jose Alberto Gonzalez §
Rodriguez, DECEASED and PATRICIA §
GUADALUPE RODRIGUEZ, §
Individually §

V. § **CIVIL ACTION NO.** _____

WILLACY COUNTY, TEXAS and § **[JURY DEMANDED]**
LARRY SPENCE, in his Individual §
and Official capacity as Willacy County §
Sheriff, §
Defendants. §

PLAINTIFFS’ ORIGINAL COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, Joel Gonzalez Lopez, Individually and as Personal Representative of the Estate of Jose Alberto Gonzalez-Rodriguez, Deceased; and Patricia Guadalupe Rodriguez, Individually, (herein collectively referred to as “Plaintiffs”) are individuals residing in Tabasco, MX. Plaintiffs file their Plaintiffs’ Original Complaint and Jury Demand complaining of Defendants’ Willacy County, Texas; and Larry Spence, the Sheriff of Willacy County, Texas, in his individual and official capacity (collectively referred to as “Defendants”); and for the cause of action would respectfully show the Court as follows:

NATURE OF THE CASE

This is a wrongful death action brought by the Plaintiffs, who are the Father, Mother, and sole heirs of Mr. Jose Alberto Gonzalez-Rodriguez. Pursuant to 42 U.S.C. §1983 and §1988 they are seeking recovery and redress for the serious infringements of Mr. Jose Alberto Gonzalez-Rodriguez's rights causing his death and violations of his constitutionally protected civil rights. This is a denial of medical care case that requires federal court intervention. See *Estelle v. Gamble*, 429 US 97, (1976) and *Armon v. Jones* 580 F. Supp 917 (ND Texas 1983) and *Smith v. Dooley* 591, F. Supp 1157 (WD La, 1984). Specifically, Plaintiffs allege that Willacy County, Texas and its Sheriff, Larry Spence, violated Mr. Jose Alberto Gonzalez-Rodriguez's civil rights by denying him adequate medical care pursuant to the Fifth and the Fourteenth Amendment of the United States Constitution. The Defendants, jointly and in concert, denied Mr. Gonzalez-Rodriguez adequate medical care while incarcerated and under the custody, supervision and control of Willacy County.

Willacy County and the Sheriff, under color of law and with deliberate indifference, restricted the jail staff from promptly responding to emergency medical situations at the Willacy County Jail by implementing an explicit written healthcare plan with procedures that kept Mr. Gonzalez-Rodriguez from receiving medical treatment or transport to a hospital for three hours until he died in the jail.

I.

JURISDICTION & VENUE

1.1 This is a civil action for damages brought pursuant to 42 U.S.C. §1983, and §1988 of the United States Constitution resulting from deprivations, under color of law, of Plaintiffs' rights under the Fifth, and Fourteenth Amendments.

1.2 Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331 because it involves a Federal question; 28 U.S.C. § 1331 and § 1343. Further, this Court has supplemental jurisdiction under 28 U.S.C. § 1367. Plaintiffs procedurally bring this suit pursuant to the United States Constitution and 42 U.S.C. §1983 and §1988.

1.3 Venue is proper in the United States District Court of Texas-Brownsville Division pursuant to 28. U.S.C. Sec. 1391(b)(2) because all or a substantial part of the events, acts and omissions giving rise to the claims occurred in Willacy County Texas which is within the Southern District of Texas Brownsville Division.

II.

PARTIES

2.1 Plaintiff, Joel Gonzalez Lopez, is next of kin and administrator of the estate of his son Jose Alberto Gonzalez-Rodriguez, is suing for monetary damages for the death of his son who died at the Willacy County Jail from willful, wanton and negligent medical care of such a degree to constitute intentional maltreatment and deliberate indifference.

2.2 Plaintiff, Patricia Guadalupe Rodriguez, is the next of kin and administrator of the estate of her son Jose Alberto Gonzalez-Rodriguez who died at the Willacy County Jail from willful, wanton and negligent medical care of such a degree to constitute intentional maltreatment and deliberate indifference.

2.3 Defendant, Willacy County, Texas, is a unit of local government organized under the laws of the State of Texas is a Defendant under 42 U.S.C. §1983 and at all times relevant to this case acted under color of law. Willacy County may be served with process by serving the Willacy County Judge, Aurelio Guerra.

2.4 Defendant, Larry Spence is the Sheriff of Willacy County, Texas is being sued in his individual and official capacity is a Defendant under 42 U.S.C. §1983 and at all times relevant to this case acted under color of law.

III.

FACTS

3.1 The following facts are intended to meet the pleading standard established by Rule 8 of the Federal Rules of Civil Procedures and interpreted by the United States Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

3.2 On Information and belief, Willacy County has a Commissioner Court form of Government. Pursuant to the policies, practices, procedures and customs of Willacy County, policy-making decisions are vested in the County Commissioners. These policy-making decisions are then delegated to the appropriate heads of the Willacy County departments and agencies.

3.3 Defendant, Larry Spence, was the Willacy County Sheriff at the time of Deceased Mr. Gonzalez-Rodriguez's death, and had the statutory duty to institute policies, procedures, practices and customs for the operation of the Willacy County Jail pursuant to the Texas Local Government Code §351.041. By statute, Defendant Spence is a policy-maker.

3.4 Additionally, the Texas Commission on Jail Standards requires a county jail to have a written health services plan and in this plan efficient and prompt procedures “to respond to acute or emergency medical situations.” *Tex. Admin. Code* §273.2 (5). Additionally, federal standards apply when federal pretrial detainee are housed within county facilities.

3.5 Pursuant to his duty under the Texas Local Government Code, Sheriff Spence wrote the “Willacy County Sheriff’s Department Manual” (hereafter “Manual”), which is attached herein as “Exhibit 1” and incorporated by reference.

3.6 §1.6 of the Manual states: “All provisions of the Manual will have the same authority as the Sheriff’s signed written order.”

3.7 §7.38.2.1 & .2 of the Manual titled “Sick Call” states: “Any inmate desiring medical attention will request a form from the detention officer. This form will be filled out by the inmate and if assistance is needed in doing this the detention officer will assist. The detention officer will contact the chief jailer who will approve or deny the request and make arrangement for transportation to the county health officer’s office during normal business hours.”

3.8 §6.39.6 of the Manual states: “Inmates who become seriously ill at time other than sick call will be transported to Willacy Methodist Hospital. A copy of the emergency room record will be obtained and returned to the facility.”

3.9 Plaintiffs’ claims arise out of Deceased Mr. Gonzalez-Rodriguez’s incarceration and subsequent inappropriate emergency medical care, and/or lack of appropriate medical care at the Willacy County Jail from approximately 4:00 am to 7:45 am on January 1, 2016.

3.10 On or about 05/20/2015, a deportation officer employed by the United States Immigration and Custody Enforcement identified the Deceased Mr. Gonzalez-Rodriguez while in custody at the Brownsville, Texas City Jail.

3.11 Subsequently, on or about 05/22/2015, the Deceased Mr. Gonzalez-Rodriguez was arrested and placed in the custody of the United States Marshal Service for transport to the

Willacy County Jail located in Raymondville, Texas where he was detained while awaiting future criminal court proceedings in federal court.

3.12 The Deceased Mr. Gonzalez-Rodriguez, plead guilty on 07/17/2015 to a violation of Title 8 of the United State Code sections 1326(a) and 1326(b) for charges brought against him for his unlawful presence in the United States. The Deceased Mr. Gonzalez-Rodriguez's sentencing hearing was set for 10/19/2015; however, was reset to 11/19/2015 and once again to 01/13/2016. The Deceased Mr. Gonzalez-Rodriguez died on 01/01/2016 while at the Willacy County Jail 12 days prior to his sentencing hearing.

3.13 Two of Deceased Mr. Gonzalez-Rodriguez's cellmates, Emilio De La Garza Montemayor and Armando Beltran-Sandoval, wrote statements detailing from their personal knowledge the events leading up to Deceased Mr. Gonzalez-Rodriguez's death. Both witness statements were written in Spanish and document the same series of events, which has been translated and set forth below. Both witnesses with statements say they are willing to testify.

3.14 There are two other witnesses to the Deceased Mr. Gonzalez-Rodriguez's death. They are: Mr. Oscar Gonzalez Nino, and Mr. Valdemar Balderrama Aguilar.

3.15 Additionally, Mr. Guadalupe Botello Martinez visited Deceased Mr. Gonzalez-Rodriguez at the jail before his death and witnessed his condition as well as Ms. Blanca Nelly Resendez Sanchez knew the Deceased Mr. Gonzalez-Rodriguez.

3.16 On 01/01/2016 at approximately 4:00 A.M., two of Deceased Mr. Gonzalez-Rodriguez's cellmates, witnessed that the Deceased, Mr. Gonzalez-Rodriguez was having the first of two heart attacks. Armando Beltran-Sandoval stated that, after calling for help, the jail guard appeared and saw Mr. Gonzalez-Rodriguez's condition and told Mr. Beltran-Sandoval that

he would have to get supervisory approval from the chief jailer, Sergeant Guadalupe Olivarez, in order to request an ambulance. This procedure is in accordance with the “Sick Call” section—§7.38.2.1 & .2—of the Manual.

3.17 The same jail guard who left to request approval from the chief jailer, returned to tell Mr. Beltran-Sandoval that the chief jailer or other supervisory on duty had ordered a pain pill and a bag of ice for the Deceased Mr. Gonzalez-Rodriguez. No ambulance was ordered to tend to Mr. Gonzalez-Rodriguez medical emergency.

3.18 Willacy County, by operation of the Manual’s provisions, does not have a coherent policy that authorizes emergency medical care on an inmate’s behalf.

3.19 Under §7.38.2.1 & .2 of the Manual, Mr. Gonzalez-Rodriguez would have needed prior approval from a non-medically trained chief jailer to obtain medical treatment during his medical emergency. Under §6.39.6 of the Manual, the non-medically trained jail guard would seem to have authority to transport Mr. Gonzalez-Rodriguez to a hospital in a county vehicle unequipped to care for life-threatening emergency medical illnesses.

3.20 Both applicable sections of the Manual addressing medical care violate a pre-trial detainee’s constitutional right to emergency medical care by failing to provide a medically trained professional’s evaluation on-site or observation en route to a hospital.

3.21 These obstructive provisions of the Manual build significant delays into the process during a medical emergency when time is of the essence.

3.22 Approximately three hours after being offered a dose of over-the-counter pain medication and a bag of ice, the Deceased Mr. Gonzalez-Rodriguez died at the jail from a second

heart attack. According to Mr. Beltran-Sandoval, the second heart attack occurred at approximately 7:15 a.m. just after the deceased ate breakfast. This time, when the jail guards came and saw the Deceased Mr. Gonzalez-Rodriguez, they told his cellmate, Mr. Beltran-Sandoval, not to touch him.

3.23 Mr. Beltran-Sandoval explained that he didn't touch him but kept fanning the Deceased Mr. Gonzalez-Rodriguez to give him air but his lips were purple and he had stopped breathing.

3.24 By the time the paramedics arrived, he was already dead. Mr. Beltran-Sandoval said there were a total of 6 cellmates there who all witnessed the death.

3.25 The second cellmate's account was from Mr. Emilio De La Garza Montemayor who also observed the Deceased Mr. Gonzalez-Rodriguez having his first heart attack at 4:00 am. Garza-Montemayor explained that two jail guards or detention officers arrived at their cell. They noticed the emergency and said they had to leave to call the Sergeant for authorization and one of them came back about 12 minutes later with a bag of ice and an 800 mg. Ibuprofen pill for the Deceased Mr. Gonzalez-Rodriguez. This is in accordance with §7.38.2.1 & .2 of the Manual.

3.26 Mr. Garza-Montemayor told the detention officer when he came back with the pill and ice at approximately 4:12 am that his cellmate was still in bad shape. Mr. Garza-Montemayor and the other cellmate together this time urged again to the jail guard or detention officer to call the paramedics because the Deceased "couldn't feel his heart"; but, the guard did not respond to that request either. The jail guards were restricted in their action by the policies in the Sherriff's Manual preventing an adequate response to a medical emergency.

3.27 Mr. Garza-Montemayor further stated that when the guards came for the 7:00 a.m. head count he told the guards again to call the paramedics for the Deceased Mr. Gonzalez-Rodriguez but they did not answer.

3.28 Approximately 20 minutes later, Mr. Montemayor saw Mr. Gonzalez-Rodriguez begin to have another heart attack and he and the other cellmate called the guards to come back to the cell to help their cellmate. But this time Mr. Gonzalez-Rodriguez's health condition declined rapidly.

3.29 When the jail guards, Mr. Gustavo and Ms. Saucedo, arrived to see the Deceased Mr. Gonzalez-Rodriguez, one of them left right away while the other communicated by radio to someone that the Deceased Mr. Gonzalez-Rodriguez had changed color and was not breathing.

3.30 According to Mr. Montemayor, the paramedics arrived at approximately 7:35 a.m. and they tried to revive the Deceased Mr. Gonzalez-Rodriguez until approximately 7:45 a.m. when they took his body away.

3.31 Larry Spence and other policymakers within Willacy County were aware of the emergency medical care deficiencies practiced at the Willacy County Jail and did not act to change the deficiencies.

3.32 The County Commissioner agenda meetings reflect many tabled agenda items requesting C.P.R training. Defendant Sheriff Larry Spence was quoted in the February 3, 2016 edition of the Raymondville Chronicle, a local newspaper, that getting C.P.R. training at the jail was "something they had been discussing for a while."

3.33 Sergeant Olivarez, lacking authority or training under the Sheriff's policy and because resources were not provided, failed to authorize an ambulance. Sergeant Olivarez was made the scapegoat and his employment with Willacy County Sherriff's Department was terminated as a result of Mr. Gonzalez-Rodriguez's death at the jail.

3.34 Sergeant Olivarez explains: "I did not retire, I was pushed out... none of this would have happened if the inmate hadn't died, I was hoping to put in another four years" For years Sergeant Olivarez had been urging that jail staff receive training and become CPR certified, but the Defendants did not respond to the warnings.

3.35 An autopsy revealed cause of death as Myocarditis; and, Valley Baptist Medical Center's Emergency Room pronounced his death on 01/01/2016. He was 32 years of age.

3.36 Although the Deceased Mr. Gonzalez-Rodriguez was in serious medical condition for approximately 3 to 4 hours before his death, no doctor or medically trained staff or department appeared to be on duty nor was any doctor or medically trained staff ever called to treat him or even notified.

3.37 Such actions taken by Defendants Willacy County and the Sheriff were intentional and motivated by unwillingness to spend money on resources. These actions manifest a deliberate indifference in Defendants' policy and practice and to the particular serious medical need of Deceased Mr. Gonzalez-Rodriguez resulting in his death

3.38 On information and belief, this is not the first instance in Willacy County, Texas when the county has been responsible for a policy or custom that keeps known inadequate medical care policies in place that affect inmates and pretrial detainees.

3.39 In 2015 another jail facility located less than a mile away from the Willacy County Jail rioted and had to be shut down due to inadequate medical care issues among other failures of policy and oversight by Willacy County, Texas.

3.40 Information and assessments from various sources in the public domain attribute the unrest and rioting to inadequate and delayed medical treatment as will be discussed in further detail below.

3.41 The Bureau of Prisons' after-action report, letters of concern from federal monitors and investigative journalists have shown how medical service delays and under-staffing at the nearby facility in Willacy County led to that facilities shut down.

IV.

CAUSES OF ACTION

A. CONSTITUTIONAL CLAIMS UNDER 42 U.S.C. §1983

DEFENDANT WILLACY COUNTY'S VIOLATION OF PLAINTIFFS' RIGHTS TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

4.1 Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1.1 through 3.41 herein above.

4.2 Defendant Willacy County through the actions and/or omissions of Defendant, Larry Spence, and the County Commissioners; created an inadequate and dangerous system that placed unqualified staff in a position to manage inmates' critical illnesses that violated the Deceased Mr. Gonzalez-Rodriguez's right to Due Process guaranteed by the Fifth and the

Fourteenth Amendments to the U.S. Constitution. The Due Process Clause guarantees that people detained by the police, especially pretrial detainees are entitled to medical care.

4.3 Willacy County employees, Ms. Saucedo and Mr. Gustavo, (1) provided no medical evaluation or assessment of the Deceased Mr. Gonzalez-Rodriguez, and (2) followed the conflicting and restrictive provisions of the health services plan within the Willacy County Sheriff's Manual when faced with a request for emergency medical care. This was obstructive to the Deceased Mr. Gonzalez-Rodriguez's right to Due Process guaranteed by the Fifth and the Fourteenth Amendments to the U.S. Constitution and caused him to die without emergency medical care or outside transportation to a health care provider.

4.4 The Due Process Clause of the Fifth Amendment guarantees that a person detained by the police is entitled to medical care. *Thompson v Upshur County*, 245 F.3d 447,457. (5th Cir. 2001) ("[P]retrial detainees have a constitutional right, under the Due Process Clause of the Fourteenth Amendment, not to have their serious medical needs met with deliberate indifference on the part of the confining officials.").

(ii) COUNTY LIABILITY: CONSTITUTIONAL CLAIMS UNDER 42 U.S.C. §1983

4.5 Willacy County is a person under *Monell v Dept't of Soc.Servs.*, 436 U.S. 658 (1978) and is subject to 42 U.S.C. §1983 as acting under color of law in the violation of the Deceased Mr. Gonzalez-Rodriguez's constitutional right to adequate medical care while incarcerated.

4.6 Willacy County Texas incurred municipal liability through (1) its official policy Manual provisions that cover the health services plan for medical care of inmates at the Willacy county jail (2) the Defendant, Sheriff Larry Spence, as the final policymaker, knew or should

have known that the specific health services plan provisions restrict, misguide, and confuse layperson jail guards during an inmate's acute or medical emergency. The Sheriff knew or should have known that, in practice, the provisions of his policy builds significant delays into the layman jailer's ability to get prompt medical care for inmates during medical emergencies. The Sheriff knew or should have known that §7.38.2.1 & .2 of the Manual, by requiring the delays of procuring a prior supervisory approval on a form before a call to 911 could be placed and before emergency care could begin, would increase the risk of an inmate's critical illness proceeding to death while at the jail. The Sherriff knew or should have known that. §6.39.6 of the Manual, by authorizing a medically untrained jail guard to him or herself transport an inmate in need of medical care in a county vehicle that is unequipped for medical needs to a hospital, would increase the risk of an inmate's critical illness and unreasonably heighten the likelihood of death during transport. The health services provisions in the Sheriff's Manual along with the Sheriff's failure to train jail staff on these provisions and failure to train jail staff on emergency CPR constitutes deliberate indifference because the policy provisions themselves and as carried out at the jail are explicit, persistent and widespread. The explicit policy restriction left the jail staff without the ability during Mr. Gonzalez-Rodriguez's medical emergency to adequately and humanely react and was the moving force leading to the violation of his constitutional right and to his death.

4.7 Under 5th Circuit precedent, "[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Hinojosa v.*

Livingston, 807 F.3d 657, 665 (5th Cir. 2015) (citing *Farmer v. Brennan*, 511 U.S. 825, 842, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)).

4.8 The Willacy County Sherriff and Commissioners acted with deliberate indifference as they were aware that a non-medically trained chief jailer was serving as the gatekeeper to medical emergencies presented within the jail and therefore must have drawn the inference that a non-medically trained jailer would: (1) misdiagnose medical emergencies; (2) deprive urgent critical care treatment resulting in; (3) death of a pretrial detainee. A prison official acts with deliberate indifference when he: "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.*

(iii) SUPERVISORY LIABILITY: CONSTITUTIONAL CLAIMS UNDER 42 U.S.C.

§1983

4.9 The Supervisory Defendant, Sheriff Spence incurred supervisory liability by allowing jail guards who were under their supervision to provide inadequate emergency medical services to inmates at the Willacy County State Jail. Specifically, the Supervisory Defendants implemented the unconstitutional policy or custom of requiring the assessment by a non-medically trained jailer to determine the degree of medical urgency before his supervisees, who are also not medically trained, could call for an ambulance.

4.10 "To support a supervisory liability claim, the misconduct of a subordinate must be conclusively linked to the action or inaction of the supervisor." *Zarnow v. City of Wichita Falls, Texas*, 614 F.3d 161, 169 (5th Cir. 2010) *cert. denied*, 564 U.S. 1038 (2011). The Sheriff of Willacy County, Larry Spence, knowingly allowed Sergeant Olivarez's personal involvement on

the night of Mr. Gonzalez-Rodriguez's death by mandating, through this policy or custom, the implementation of a condition of confinement at the jail that in effect, denied all emergency medical care to a pretrial detainees, like Deceased Mr. Gonzalez-Rodriguez, during the most critical moments of his medical emergency, which caused the violation of Deceased Mr. Gonzalez-Rodriguez's constitutional right to medical care.

4.11 This custom or practice created de facto MD's of jail guards and encouraged the unauthorized practice of medicine by Sergeant Olivarez and the jail guards.

4.12 The Supervisory Defendants (Willacy County and its Sheriff), while not personally engaged on the night of Mr. Gonzalez-Rodriguez's death, knew of the substantial risk of injury to the constitutional rights of the inmates and to that risk continued to implement the unconstitutional policy or custom.

4.13 Under Fifth Circuit precedent, the unengaged Supervisory Defendants can become liable by failing to adopt a policy to cure this substantial risk or failing to train and/or failing to supervise the supervisees. *Morgan v. Texas Dep't of Criminal Justice McConnell Unit*, 537 Fed. App'x. 502, 509 (5th Cir. 2013) ("A defendant . . . may be held liable for his or her role in a constitutional violation premised on [his] conduct as a supervisor, for example, his or her failure to train.").

4.14 The Supervisory Defendants acted with deliberate indifference as they were aware that a non-medically trained Sergeant along with the jailers were serving as gatekeepers to medical emergencies and as such must have drawn the inference that a non-medically trained jailer would misdiagnose medical emergencies resulting in urgent critical care treatment deprivations and lead to the occasional death of a pretrial detainee. Also, in the Fifth Circuit,

where a custom or a policy is so deficient as to actually repudiate the constitutional right it addresses the supervisory level defendants can be liable even without direct engagement. See *Cozzo v. Tangipahoa Parish Council*, 279 F.3d 273, 289 (5th Cir. 2002) ("Supervisory liability may additionally exist 'without overt personal participation in the offensive act if supervisory officials implement a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation.'). Under this analysis, customs or widespread practices are akin to official policies.

(iv) CONDITION OF CONFINEMENT / EPISODIC ACTS: CONSTITUTIONAL

CLAIMS UNDER 42 U.S.C. §1983

4.15 Both the Defendants and the staff at the jail acting in concert created a condition of confinement or in the alternative an episodic act that violated the Deceased Mr. Gonzalez-Rodriguez's right to Due Process guaranteed by the Fifth, Eighth and the Fourteenth Amendments to the U.S. Constitution. The Due Process Clause of the Fifth Amendment guarantees that a person detained by the police is entitled to medical care. The Eight Amendment prohibits cruel and unusual punishment.

The Problem In Willacy County

4.16 Just three months before the Deceased Mr. Gonzalez-Rodriguez was incarcerated at the Willacy County Jail, a riot broke out at another correctional unit less than a mile away in Willacy County.

4.17 Although that facility was managed in a different way—by a private prison management entity—Willacy county still had the oversight and monitoring duties in connection to the facility because even in situations involving contracting out for full services, the

governmental entity retains responsibility for Monitoring the contractor to ensure that performance is in accordance with the contract terms and governmental regulations.

4.18 In 2015, Willacy County neglected those monitoring duties when it housed a soaring population of non-citizens incarcerated for border crimes, like the Deceased Mr. Gonzalez-Rodriguez. The intentional neglect was based on a revenue motive. Because a per diem is paid, Willacy County developed a policy including the maximum number of prisoners not providing adequately for their medical care.

4.19 In April 2014, there were two confirmed deaths and another inmate had died in September 2013. All three men were finishing sentences for illegal reentry, like the Deceased Mr. Gonzalez-Rodriguez. These deaths raised anxieties about what the inmates already perceived as indifference on the part of the doctors and overall lags in medical care.

4.20 After years of allegations of subpar medical services and the abhorrent conditions of confinement at the other Willacy County facilities, inmates nicknamed it "Ritmo" and the riot broke out in 2015.

4.21 Willacy County Jail, where Mr. Gonzalez-Rodriguez died, is one of 3 facilities in Willacy County that hold noncitizens, like the Deceased Mr. Gonzalez-Rodriguez, serving or waiting to serve their criminal sentences before being transferred to ICE to be deported.

4.22 According to an article written after the 2015 riot in Willacy County, three former officers described an informal rule for prisoner medical complaints that, in one officer's words, held that "If they are not dead and they're breathing, it can wait till morning." Several officers told stories about their struggles to convince medical staff to pay attention to seriously ill patients in their units. "For everything, they would give them Ibuprofen," said another officer.

4.23 In Willacy County, more than 25,000 men were held in facilities, which have fewer programs than most jails because these inmates are not expected to reintegrate into US society.

4.24 The Deceased Mr. Gonzalez-Rodriguez was in the category, as a non-citizen inmate pretrial detainee, that in effect was segregated based on national origin into jail settings with subpar conditions and lack of oversight in Willacy County Texas.

4.25 The classification into these facilities is not just separate, but also unequal. The Willacy County riot in 2015 was a reaction to understaffing and failure to address known inadequacies in security and medical healthcare.

4.26 Also, when the prison is at or above capacity, solitary cells are often completely filled—not with inmates having discipline problems but with people who simply cannot fit in the open units. At the time of the riot, about 75 men were held in solitary cells. Many of the prisoners at Willacy are immigrants incarcerated for nonviolent drug-related crimes, border-crossing violations, or some combination of the two.

4.27 Three months before the Deceased Mr. Gonzalez-Rodriguez was incarcerated, 2,834 inmates had to be moved into to other facilities.

4.28 About half of these inmates were doing time for “illegal entry or reentry”—crossing the border—a crime that makes up the fastest-growing percentage of federal prosecutions in this area of the country.

4.29 In 2013, 88 percent of federal prosecutions in South Texas were for immigration offenses. Prisoners interviewed by the ACLU complained of delayed medical care, guards using solitary confinement to punish those who are ill or who complained about squalid and cramped living conditions, and interference by prison officials with inmates trying to correspond with or meet with lawyers.

4.30 This pattern and practice of providing inadequate medical care to pretrial detainees results from the Defendants' acts or omissions which are a condition of confinement in Willacy County jail facilities under the same Sheriff and County Commissioners in the year before the Deceased Mr. Gonzalez-Rodriguez died. The conditions include deficiencies in the provision of medical care as a persistent policy, custom or practice perceived by the inmates.

4.31 In those instances in which the Defendants' acts or omissions were episodic, in nature, the facts demonstrate, as is required in the 5th Circuit, that the Defendants acted with deliberate indifference to the Deceased Mr. Gonzalez-Rodriguez's serious emergency medical needs.

4.32 Specifically, allowing and encouraging non-medically trained jailers to serve as the gatekeepers to the provision of emergency medical care without notification to medical department staff is the identifiable or intended condition, policy or practice that jeopardized the health and safety of the inmates and pretrial detainees exposing them to substantial risk of serious harm.

4.33 The Supervisory Defendants (Sheriff Spence and the County) exposed the Deceased Mr. Gonzalez-Rodriguez to a substantial risk of serious harm by the persistent and widespread practice at the Willacy County Jail that is so common and well-settled that it fairly represents the Jail's policy. This is proven by the Supervisory Defendants, as policy makers, who knew of the custom of a non-medically trained jailer serving as the gatekeeper to the provision of emergency medical care for pretrial detainees and continuing to allow and to encourage it by failing to change it, failing to train and to supervise the staff against this custom and de facto policy.

4.34 In fact, the specific de facto policy and custom actually repudiates the very constitutional right to adequate medical care that it seeks to protect and is not reasonably related

to the legitimate government objective of providing emergency medical care to pretrial detainees.

(v) QUALIFIED IMMUNITY: CONSTITUTIONAL CLAIMS UNDER

42 U.S.C. §1983

4.35 Qualified Immunity provides protection for all but the plainly incompetent government officials or those who knowingly violate the law. See *Malley v. Briggs*, 475 U.S. 335 (1986). The official who knew that what he was doing was wrongful under clearly established law is not entitled to qualified immunity.

4.36 In the case at bar, the clearly established right or right at issue is the right to basic human needs, which includes the right to adequate medical care. Adequate medical care does not mean the best medical care. Plaintiffs assert that access to medical care during a heart attack is a basic human need and a right that is clearly established under the law.

4.37 Under clearly established law in the Fifth Circuit, *Pedraza v. Meyer*, 919 F.2d 317, 318 (5th Cir. 1990) (per curiam), the court found “[d]eliberate indifference to known withdrawal symptoms may state a claim [under the Eighth Amendment].” In *Pedraza*, the plaintiff died while in jail for lack of adequate medical care to his known drug withdrawal symptoms. Likewise, in the case at bar, deliberate indifference to known heart attack symptoms may state a claim under the Eighth Amendment, by and through the 14th Amendment.

4.38 Although Sherriff Spence was not actually involved on the morning of the death at the jail incurred, he incurs individual liability because he acted with deliberate indifference. He acted or failed to act with knowledge and with the awareness of a specific policy, custom, practice or procedure that substantially increased the risk of harm and injury to the Constitutional rights of inmates and pretrial detainees at Willacy County.

4.39 The Sheriff, having knowledge of the increased risk, continued, by actions or omissions, to allow this unconstitutional custom of allowing non-medically trained jailers to serve as the gatekeeper to medical emergencies presented within the jail.

4.40 The Sherriff must have drawn the inference that a non-medically trained jailer would misdiagnose medical emergencies resulting in urgent critical care treatment deprivations that lead to the occasional death of an inmate or a pretrial detainee. From this inference, the Sherriff continued to implement this unconstitutional policy or custom.

4.41 Sergeant Olivarez knew the Deceased Mr. Gonzalez-Rodriguez was experiencing a heart attack but had not been given the resources or training to respond. Sergeant Olivarez's unreasonable engagement that morning was restricted by the Sheriff and the County's failures to provide adequate policies and resources. The Sherriff's deliberate indifference to the conditions that made Olivarez unable to respond reasonably to the obvious symptoms of a heart attack coupled with the Sherriff and the County's knowledge that jail guards were not trained to administer CPR in emergency situations vitiates immunity from suit under qualified immunity.

4.42 The Sherriff, through the applicable provisions of the Manual, authorized the objectively unreasonable action of administering an over-the-counter pain pill and a bag of ice to the Deceased Mr. Gonzalez-Rodriguez without first seeking the advice of a medical professional.

4.43 At the time of Deceased Mr. Gonzalez-Rodriguez's death, no reasonable Sherriff with the same information would have believed that allowing medically untrained jail guards to serve as gatekeepers during emergency medical situations was lawful because jailers are simply not trained to assess medical emergencies. Jailers who lack CPR training are particularly under-qualified to evaluate medical emergencies. Jailers who are discouraged from calling the medical department for emergency care are even more unable to keep medical gates open or closed during a medical emergency. Sergeant Olivarez's actions were required by the policy of the

Willacy County Sherriff and Willacy County and the inadequate resources provided by the Defendants.

4.44 The Non-Supervisory Defendants at the Jail were plainly incompetent to serve as medical assessment providers at the jail because they have no medical training or background. A policy or custom that encourages jailers not to notify the medical department in the face of an emergency medical event renders the jailers plainly incompetent and raises the risk of inmate and pretrial detainees death substantially.

4.45 The jail guards, Saucedo and Gustavo, were aware of Deceased Mr. Gonzalez-Rodriguez's emergency medical condition having actually perceived the Deceased Mr. Gonzalez-Rodriguez at approximately 4:00 am. Saucedo and Gustavo acted in one of the two ways that the health services plan within the Sheriff's Manual required, which was to do nothing until calling their chief jailer and following his orders. The jail guards should have drawn the inference that quick action from competent medical personnel was needed immediately; however, because they were not trained in CPR or otherwise competent to manage a person having a heart attack, they did not do so. Instead, they chose to follow one of the objectively unreasonable policies mandated by the Sherriff in the Manual in violation of Mr. Gonzalez-Rodriguez's clearly established constitutional right.

V.

DAMAGES

A. SURVIVAL DAMAGES OF DECEASED

5.1 Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1.1 through 4.45 herein above

5.2. As a result of Defendant's actions and or omissions, Deceased sustained bodily injuries, physical pain, mental anguish and suffering prior to his death. The Estate of Jose

Alberto Gonzalez- Rodriguez is entitled to recover for his damages, including but not limited to, damages for mental anguish, suffering, physical pain and necessary funeral bills and expenses, which damages are sought under the Federal common law and Texas Survival Statute, codified in Chapter 71.012 of the TEXAS CIVIL PRACTICE AND REMDDIES CODE. The Estate of Jose Alberto Gonzalez-Rodriguez therefore seeks damages against Defendants, jointly and severally, for Deceased's personal injuries in an amount not to exceed \$10,000,000.00.

B . WRONGFUL DEATH DAMAGES OF JOEL GONZALEZ LOPEZ

5.3 Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1.1 through 5.2 herein above.

5.4. As a result of Defendants' acts and /or omissions, Plaintiff, Joel Gonzalez Lopez seeks recovery, including but not limited to, the following;

- (a) The loss of care, maintenance, support, services, advise, counsel and reasonable contributions of pecuniary value that Plaintiff, Joel Gonzalez Lopez, in all reasonable probability would have received from Deceased had he lived:
- (b) The loss of positive benefits flowing from the love, comfort, affections, companionship and society that Plaintiff, Joel Gonzalez Lopez, in all reasonable probability, would have received from the Deceased had he lived; and
- (c) The emotional pain, torment and suffering experienced by Plaintiff, Joel Gonzalez Lopez, because of the wrongful death of Deceased.

5.5 Such damages are sought under the Federal common law and /or the Texas Wrongful Death Statute, codified in Chapter 71.001 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE. Plaintiff, Joel Gonzalez Lopez, therefore seeks damages against Defendants, jointly and severally, for his personal injuries and damages in an amount not to exceed \$5,000,000.00.

C. WRONGFUL DEATH DAMAGES OF PATRICIA GUADALUPE RODRIGUEZ

5.6 Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1.1 through 5.5 herein above.

5.7. As a result of Defendants' acts and /or omissions, Plaintiff, Patricia Guadalupe Rodriguez, seeks recovery, including but not limited to, the following;

- (a) The loss of care, maintenance, support, services, advise, counsel and reasonable contributions of pecuniary value that Plaintiff, Patricia Guadalupe Rodriguez, in all reasonable probability would have received from Deceased had he lived:
- (b) The loss of positive benefits flowing from the love, comfort, affections, companionship and society that Plaintiff, Patricia Guadalupe Rodriguez, in all reasonable probability, would have received from the Deceased had he lived; and
- (c) The emotional pain, torment and suffering experienced by Plaintiff, Patricia Guadalupe Rodriguez, because of the wrongful death of Deceased.

5.8 Such damages are sought under the Federal common law and /or the Texas Wrongful Death Statute, codified in Chapter 71.001 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE. Plaintiff, Patricia Guadalupe Rodriguez, therefore seeks damages against Defendants, jointly and severally, for his personal injuries and damages in an amount not to exceed \$5,000,000.00.

VI.

RELIEF REQUESTED

6.1 Plaintiffs re-allege and incorporate the allegations set forth in Paragraphs 1.1 through 5.8 in their entirety, as set forth herein above and reference thereto make said paragraphs a part hereof, the same as if set forth verbatim.

6.2 As a result of the conduct described herein, Plaintiffs seek damages for the wrongful death of their son, Jose Alberto Gonzalez-Rodriguez, for the following:

- (a) Loss of companionship and society;
- (b) Mental anguish;
- (c) Loss of support;
- (d) Costs of medical care associated with Deceased injuries and death, and for the expenses incurred for Deceased's burial;
- (e) Recovery of their attorney's fees and costs of court;
- (f) Pre-judgment and post-judgment interest as allowed by law; and
- (g) Such other and further relief at law or in equity to which Plaintiffs may show themselves to be justly entitled.

6.3 Plaintiff, Estate of Jose Alberto Gonzalez-Rodriguez, by and through Plaintiff, Joel Gonzalez Lopez, as Personal Representative of the Estate of Jose Alberto Gonzalez-Rodriguez, seeks recovery of an award for the Estate of Jose Alberto Gonzalez-Rodriguez including the following;

- (a) Jose Alberto Gonzalez-Rodriguez's conscious pain and suffering experienced prior to his death;
- (b) Jose Alberto Gonzalez-Rodriguez's loss of life;
- (c) Recovery of Attorney's fees and costs of court; and
- (d) Pre-judgment and post-judgment interest as allowed by law.

6.4 Equitable relief, including, without limitation, that Willacy County and Sheriff Spence be made to apologize and to promulgate, adopt, train, maintain and enforce appropriate policies to prevent future instances of the type of misconduct described herein and such other relief, including injunctive and/or declaratory relief, as the court may deem proper.

VII.

JURY DEMAND

7.1 Plaintiffs hereby request and demand a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that upon trial on the merits hereof, they recover their damages as set forth herein and their attorney's fees and costs expended in preparing, prosecuting and trying this case, in accordance with 42 U.S.C.A. §1983 and §1988.



Respectfully submitted,

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