

I.

PRELIMINARY STATEMENT

1. This is a Federal Civil Rights action brought as a result of blatant violations of, inter alia, the federal civil, constitutional and human rights of the Deceased, Rafael Solis, Sr., who while in the custody of the Webb County Sheriff Department on February 13 and 14, 2009, was beaten so severely that the Official Webb County Medical Examiner found that “Rafael Edgar Soliz, died from mechanical and position asphyxiation resulting from physical restraint” while under the care of Sherriff Martin Cuellar and the Webb County Jailers. The Medical Examiner found that Mr. Solis became unresponsive when “Mr. Soliz was restrained face down on the floor of his jail cell.” The Medical Examiner further ruled, “The manner of death is ‘Homicide.’”

2. Deceased’s rights under certain federal statutes, to include 42 U.S.C. Sections 1983, 1985, and 1986, together with certain rights under the Constitutions of the United States of America and the State of Texas were violated. Rafael Solis, Sr. is survived by two children and his mother. It is on behalf of the Estate of Rafael Solis, Jr., and the beneficiaries thereto, i.e., his children and mother, that the personal representative of the Estate, Rafael Solis, Jr., file this action and prays for the relief set forth in the following paragraphs.

II.

PARTIES

3. Plaintiff, Maria Del Refugio Escamilla is the mother of Rafael Solis, Sr. Maria Del Refugio Escamilla brings this suit individually, as a wrongful death beneficiary and as personal representative of The Estate of Rafael Solis, Sr. Plaintiff Alma Gaytan Gonzalez brings this suit as Next Friend of Rafael Edgardo Solis, Jr. and Juan Esteban Solis, minor children of Rafael Solis, Sr. individually and as wrongful death beneficiaries.

4. Defendant Webb County, Texas is a political subdivision of the State of Texas and is the entity responsible for the oversight and funding of the Webb County Sheriff Department. The Webb County Sheriff Department is a political entity or subdivision organized to provide security and safety to and for the citizens of Webb County, Texas. Defendant Webb County, Texas and the Webb County Sheriff Department have already entered an appearance.

5. Defendant, Sheriff Martin Cuellar is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas. Sherriff Cuellar is directly responsible for overseeing the administration of the Webb County Jail, developing, implementing and enforcing policies and procedures regarding the conduct of officers, their training, hiring and firing, the handling and/or processing of persons being detained, and jailed and for protecting the rights, privileges and immunities of every person in the custody of the Webb County Jail. Defendant, Sheriff Martin Cuellar has already entered an appearance.

6. Defendant, Joel Jorge Cavazos is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant, Joel Jorge Cavazos already entered an appearance.

7. Defendant, Gerardo Gonzalez is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant, Gerardo Gonzalez already entered an appearance.

8. Defendant, Rolando Cantu is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant Rolando Cantu already entered an appearance.

9. Defendant, John Jimenez is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant John Jimenez already entered an appearance.

10. Defendant, Ramiro Rendon is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant, Ramiro Rendon already entered an appearance.

11. Defendant, Carlos Diaz is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant, Carlos Diaz already entered an appearance.

12. Defendant, Juan Roque is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant, Juan Roque already entered an appearance.

13. Defendant, Guadalupe Javier Rivera is an adult resident citizen of Webb County, Texas. He is sued in his official and individual capacities. At all times material hereto he was employed by the Defendants, Webb County, Texas and the Webb County Sheriff Department, and on the date in question he was present and took part in the assault, abuse and death of Rafael Solis, Sr. Defendant, Guadalupe Javier Rivera already entered an appearance.

III.

JURISDICTION

14. This case is brought pursuant to 42 U.S.C. 1983 and 1985 for violations of Plaintiffs' rights secured by the constitution and laws of the United States. Plaintiffs herein invokes the federal question jurisdiction of this Honorable Court pursuant to 28 U.S.C. Sections 1331 & 1343 to obtain a judgment for the costs of suit, including reasonable attorneys' fees, and damages suffered and sustained by the Deceased, Rafael Solis, Sr., and caused by the Defendants' blatant violation of the rights, privileges and immunities of the Deceased, Rafael Solis, Sr., as guaranteed by the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America and by the applicable Federal statutes, more particularly, 42 U.S.C. Sections 1983, 1985(3), 1986 & 1988. Additionally, this Honorable Court has jurisdiction to adjudicate the pendent or supplemental state claims that arose out of the same course of conduct giving rise to the principal claims of the Plaintiff as herein stated.

IV.

VENUE

15. Venue is proper in this jurisdiction and district pursuant to 28 U.S.C. Section 1391(b) because a substantial part of the real and immediate harm sustained by the Plaintiff occurred in this judicial district and division.

V.

COUNT I - ACTION FOR DEPRIVATION OF CIVIL RIGHTS

(42 U.S.C. SECTION 1983)

16. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the forgoing paragraphs.

17. On or about February 14, 2009, Rafael Solis, Sr. was shackled by the hands and feet and beaten, choked and killed by defendants while housed as an inmate at the Webb County jail, a jail owned and operated by Defendant Webb County, Texas in Laredo, Texas. Mr. Solis was a detainee and had not been convicted of anything. He died an innocent man, but a tragic and horrific death at the hands of Webb County, the Sheriff and Webb County jailors. The jail officials knew of the excessive risk to Mr. Solis' health and safety and disregarded that risk. These jail officials were also aware of facts from which the inference of excessive risk to Mr. Solis's health and safety could be drawn and in fact drew the inference. The jailors continued striking Mr. Solis and using excessive force upon him long after he had been brought under control, thus causing his death.

18. At all times material hereto, the Defendants were vested with the state authority and the non-delegable responsibility and duty of adhering to, complying with and enforcing the laws of the United States of America and the State of Texas. Consequently, while acting under color of state law, the Defendants commenced to implement a policy, custom, usage or practice wherein the rights, privileges or immunities of the Deceased, Rafael Solis, Sr., were violated. Specifically, the Defendants, jointly and severally, engaged in a course of conduct that resulted in the violation of the Deceased's, Rafael Solis, Sr., right to the equal protection of the laws of the United States of America, the Fourteenth Amendment to the Constitution of the United States of America and the corresponding provisions of the Constitution of the State of Texas, the right to procedural and substantive due process of the law pursuant to the Fifth and Fourteenth Amendments to the *Second Amended Complaint - 7*

Constitution of the United States of America, the right against cruel and unusual punishment pursuant to the Eighth Amendment to the Constitution of the United States of America. The violations complained of in this Complaint include, but are not limited to, the use of excessive force, torture, deprivation of identifiable civil rights, i.e., life, liberty and/or property, the unnecessary and wanton infliction of pain in light of the circumstances confronted by the Defendants resulting in a deprivation that was sufficiently serious wherein the Defendants acted, maliciously and sadistically by using force and physical violence designed and intended to cause Rafael Solis, Sr., physical, mental and emotional harm, pain, humiliation and/or injury, and thereafter, evidence a deliberate indifference to the immediate, grave and serious medical needs of Deceased, Rafael Solis, Sr.

19. As a direct and proximate consequence of the Defendants' actions, Rafael Solis, Sr., was deprived of certain rights, privileges and immunities secured by the Constitution of the United States of America, the laws of this Nation and the State of Texas. Specifically, Rafael Solis, Sr.'s Fifth and Fourteenth Amendment rights to procedural and substantive due process and equal protection of the laws were violated by the Defendants, together with his Eighth Amendment right proscribing cruel and unusual punishment.

20. At all times material hereto, the Defendants, Webb County, Texas, Sheriff Martin Cuellar, the Webb County Sheriff Department, Sgt. Cavazos and their agents, representatives, and employees acted pursuant to the policies, regulations, and decisions officially adopted or promulgated by those persons whose acts may fairly be said to represent official policy of or were pursuant to a governmental custom, usage or practice of the Defendants, Webb County, Texas, the Webb County Sheriff Department and/or Sheriff Martin Cuellar.

21. It is further averred that the Defendants Sheriff Martin Cuellar, and Sgt. Cavazos, were the governmental officials whose edicts or acts may fairly be said to represent official policy, practices, customs or regulations of the Defendants, Webb County, Texas, and the Webb County Sheriff Department. The aforementioned Defendants collectively and individually developed, planned and implemented the policy, custom and/or usage that resulted in and cause the death of the Deceased, Rafael Solis, Sr.

22. As a direct and proximate consequence of the Defendants' conduct wherein such Defendants deprived the Deceased, Rafael Solis, Sr., of certain rights guaranteed by the Constitution of the United States of America, the Deceased, Rafael Solis, Sr., suffered immediate and irreparable injury to his person resulting in the deprivation of his constitutional rights, privileges and immunities and ultimately causing his wrongful death. However, while alive and being beaten by the Defendant Deputies of Webb County, the Deceased, Rafael Solis, Sr., experienced extreme pain and suffering, humiliation, degradation, mental distress and severe emotion anguish.

23. Plaintiffs' liberty interests and substantive due process rights to be free from state actor-inflicted abuse, and from state intrusions into personal privacy, bodily security and integrity, were abridged by Defendants Webb County, and pursuant to Webb County's customs, policies, practices, and usages.

24. Defendant Webb County maintained policies, practices and customs allowing its jailors to abrogate Plaintiffs' right to be free from state intrusions into personal privacy and bodily security and integrity. Defendants maintained a policy and custom of allowing Plaintiffs' beating death, failing to investigate complaints of abuse generally and the Plaintiff specifically; of actively inhibiting investigations of complaints relating to abuse; of failing to prevent known abuse; of exercising deliberate indifference to the outrageous abuse of the

Plaintiff; of failing to provide proper staffing; and/or failing to adequately train, monitor or otherwise supervise the actions of the individual Defendant Webb County's jailors.

25. At all times material hereto, Webb County and the individual Defendant jailors were "persons" within the meaning of 42 U.S.C. 1983 who were acting under color of state of law.

26. Defendants, acting under the color of state law, intentionally, deliberately, willfully, and knowingly injured the Plaintiff in violation of his established rights protected by the Fourth, Eighth, Thirteenth, and Fourteenth Amendments, and they deprived Plaintiff of his rights to due process of law, in contravention to the Fourteenth Amendment, and his right to be free of state intrusion into personal privacy and bodily integrity, as well as his rights to be free from physical and psychological harm.

27. By maintaining a policy, practice, custom usage of physical and mental abuse, which is arbitrary, capricious, and wholly unrelated to the legitimate state goals, Defendants violated Plaintiffs' rights to substantive due process as guaranteed by the Fourteenth Amendment. Furthermore, Defendants' conduct intruded upon Plaintiff's bodily security through means so demeaning and harmful as to shock the conscience.

28. The violations of the Plaintiff's civil rights by each of the Defendants, both singularly and collectively, were each a proximate cause of injuries and damages sustained by the Plaintiff, for which he sues. Each Defendant subjected Plaintiff and caused him to be subjected to the deprivation of the following and other constitutional and legal rights:

(a) His rights to be free from violations of bodily integrity as secured by the substantive due process component of the 14th Amendment;

(b) His right to be free from cruel and unusual punishment as secured by the 8th Amendment;

(c) His rights to be free in his person and property from unlawful seizures as guaranteed by the 4th Amendment;

(d) His rights to be free from a denial of equal protection because of his disabilities as secured by the 14th Amendment.

(e) His right to be free from the use of unreasonable, unnecessary and excessive force as secured by the 4th and 14th Amendment.

29. The injuries suffered by Plaintiff were significant, substantial, and severe.

30. At the time of the Deceased incarceration, Defendants were acting under color of the laws and regulations of the State of Texas and the County of Webb. Webb County had a custom in place that enabled its agents and employees to act with deliberate indifference to the constitutional rights of individuals. This policy or custom included tolerating misconduct by its jailors, encouraging misconduct by failing to adequately supervise, discipline, or train. *See* 42 U.S.C. 1983; *Tenn v. Garner*, 471 U.S. 1, 7 (1985).

31. The exercise of this established policy and custom violated Plaintiffs' clearly established rights under the U. S. Constitution

(a) against unreasonable seizure of his person. *See* U. S. Const. amends. 4, 14; *Garner*, 471 U.S. at 7.

(b) against the use of unreasonable, unnecessary, and excessive force. *See* U.S. Const. amends. 4, 14; *Graham*, 490 U.S. at 393-95; *Brown*, 219 F.3d at 462-63.

VI.

COUNT II - ACTION FOR CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(42 U.S.C. SECTION 1985)

32. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

33. There existed at the Webb County Jail, a belief, practice, usage and/or custom of beatings and abuse of detainees. Once the Defendants began violating Decedent's constitutional rights by utilizing excessive force, beating, abusing and torturing him, those members of the Webb County Sheriff's Department, who did not intervene to stop the beating or to report the same, likewise became co-conspirators, aiders and abettors and/or accomplices to the deprivation of Rafael's civil, constitutional and human rights and they are likewise liable for their acts of omission.

34. Furthermore, the conspiracy to interfere with the Deceased's, Rafael Solis, Sr., civil rights manifested itself in the labeling of Mr. Solis' as an alcoholic. The toxicology report shows that the Deceased, Rafael Solis, Sr., did not have any controlled substances in his systems at the time of his beating. This information was disseminated in a further attempt to cover up the atrocious conduct of Sheriff's employees.

35. The conspiracy to deprive the Deceased, Rafael Solis, Sr., of certain federally protected rights, privileges and immunities began with a basic agreement among Defendants of cover-up including either failing to properly photograph and video tape the beating death of Mr. Solis, or outright destruction of that evidence. It is clear from the facts set forth above that the Defendants were acting outside their capacities as officers in that they willfully and maliciously agreed and conspired to engage in a course of conduct that resulted in a blatant violation the Deceased's,

Rafael Solis, Sr., constitutional rights through their acts of omission and commission. As a direct and proximate consequence of the Defendants' action on the date in question, the Deceased, Rafael Solis, Sr., was died. Thus the Defendants are jointly and severally liable to the Plaintiff for the injuries, pain, suffering, and resulting death of the Deceased, Rafael Solis, Sr.

VII.

COUNT III ACTION FOR FAILURE TO PREVENT CONSPIRACY

(42 U.S.C. SECTION 1986)

36. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

37. Defendants in their individual and official capacities, either intentionally or through their own negligence, failed to expose, prevent or otherwise thwart the conspiracy to deprive the Deceased, Rafael Solis, Sr., and other persons similarly situated, of the equal protections of the laws of this Nation and State notwithstanding the fact that they possessed the authority, power, and ability to halt, annul, void, expose, intervene in or stop the violations before they occurred. Consequently, these Defendants are liable for Rafael Solis, Sr.'s death and the deprivations that occurred prior thereto.

VIII.

COUNT IV FAILURE TO ADEQUATELY TRAIN & SUPERVISE DEPUTIES

38. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

39. Defendants, Webb County, Webb County Sheriff's Department, and Sheriff Martin Cuellar failed to provide adequate and competent training and/or supervision to the Defendant Deputies working in the jail on the date in question. The aforementioned Defendants are (and at the time of Rafael's death were) tasked with the non-delegable duty and responsibility to formulate, oversee and implement official policies, procedures, practices and customs that were to be carried out at the Webb County Jail by the Deputies employed there.

40. As a direct and proximate consequence of the aforementioned Defendants' failure to properly develop, implement and otherwise devise a policy of adequate police training and/or supervision for its booking room Deputies, the Deceased, Rafael Solis, Sr., was deprived of certain constitutional rights, privileges and immunities which, if properly trained and supervised, every Deputy within the employ of the Webb County Sheriff's Department and Sheriff Martin Cuellar would have known of the illegality of the Defendants' conduct on the date in question and Rafael's death and the corresponding deprivation of his civil rights, privileges and immunities would not have happened.

41. Failure to provide adequate training and supervision to the jailors in question was so grossly negligent that it amounted to a deliberate indifference and blatant disregard for the rights, privileges and immunities of the Deceased, Rafael Solis, Sr., and any other person or persons similarly situated. Thus, because of the failure to adequately train and supervise the jailors, the

aforementioned Defendants are liable for Rafael's death and the deprivation of civil rights associated therewith.

IX.

**COUNT V - NEGLIGENT HIRING, RETENTION AND FAILURE TO DISCIPLINE OR
TAKE NECESSARY CORRECTIVE ACTION**

42. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

43. Defendants, Webb County, Webb County Sheriff's Department, and Sheriff Martin Cuellar, were vested with the authority to hire, fire and discipline employees of the Webb County Sheriff's Department. They have a duty to not only engage practices and standards to hire qualified and trained jailors; they also owe a duty to each prisoner to adequately ensure their safety and protection and the ensure their rights under the Constitution and the State of Texas. Defendants knew or should have known that the referenced practices and procedures were not only inadequate, but posed a risk of certain civil rights and constitutional violations, as well as the risk to the safety of the prisoners they were sworn to protect.

44. Plaintiff avers that Defendant jailors were unfit to serve in a capacity such as the one they served in on the date in question. While employed by Webb County, the Defendant jailors used egregiously excessive force under any objective and reasonable circumstances committed the aforementioned acts which caused Decedent's death. They failed in their duties owed to prisoners.

45. As a direct and proximate cause of the Defendants' failings, and neglect, and willful lack of oversight, improper screening of officer candidates, lack of discipline, and the failure to implement corrective measures, Rafael Solis died and was deprived of certain Constitutional and civil rights, privileges and immunities.

46. These failings and the refusal to, or neglect to implement new and different methods amounted to willful indifference and the resulting harm to Decedent or any other prisoner so situated was foreseeable and obvious.

X.

COUNT VI PENDENT STATE OR SUPPLEMENTAL CLAIMS

47. The Defendant jailors' conduct violates clearly established statutory and/or constitutional rights of which a reasonable person would have known. Based upon the facts pled above, any plea of immunity on Defendants' part cannot be sustained because Defendants' conduct manifested a callous indifference to the Decedent's rights. Therefore, Plaintiffs plead the following state law claims.

A. BATTERY

48. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

49. After the Deceased, Rafael Solis, Sr., was taken into the custody of the Webb County Jail the Defendants jailors commenced, at some point, to physically beat Rafael inflicting upon him offensive contact to his person. The offensive contact was intended to cause harm to Rafael and/or to unnecessarily inflict pain and distress upon his body.

50. As a direct and proximate consequence of the beating, i.e., the offensive contact, the Defendants inflicted upon the person of the Deceased, Rafael Solis, Sr., he was injured to such an extent that he ultimately died of his wounds. Thus the Plaintiff, on behalf of the Estate, mother and children of the Deceased, Rafael Solis, Sr., is entitled to a money judgment against the Defendants, both known and unknown, jointly and severally, who engaged in or contributed to or otherwise facilitated through their acts of omission or commission the illegal beating that was inflicted upon the Deceased, Rafael Solis, Sr.

B. ASSAULT

51. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

52. The events that give rise to this action that occurred on February 13-14, 2009 at the Webb County Jail created in the Deceased, Rafael Solis, Sr., a reasonable apprehension that the Defendants and other unknown individuals acting independently and in concert with one another, were going to cause him to suffer or sustain immediate harmful or offensive contact to his person.

53. As a direct and proximate consequence of the conduct of the aforementioned Defendants, both known and unknown, the Defendants are jointly and severally liable to the Plaintiff for the assault perpetrated upon the person of the Deceased, Rafael Solis, Sr. Thus the Plaintiff, on behalf of the Estate, mother and children of the Deceased, Rafael Solis, Sr., is entitled to a money judgment against the Defendants who engaged in or contributed to or otherwise facilitated through their acts of omission or commission the illegal assault that was inflicted upon the Deceased.

C. CIVIL CONSPIRACY

54. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

55. On the date in question the Defendants, acting in concert with one another entered into an agreement, expressly or by implication through their joint participation in the beating death of the Deceased, Rafael Solis, Sr., to engaged in conduct that was wrongful, intentional, willful and wanton and designed to inflict upon the Deceased, Rafael Solis, Sr., certain harm, suffering and pain the likes of which can be compared only to episodes of barbaric torture. The Defendants agreement to engage in such conduct was illegal and amounted to a civil conspiracy against the Deceased, Rafael Solis, Sr.

56. As a direct and proximate consequence of the conduct of the aforementioned Defendants, both known and unknown, the Defendants are jointly and severally liable to the Plaintiff for the civil conspiracy to engage in conduct they knew or reasonably should have known was against the law and the public policy of this State when the same manifested itself against the interests of the Deceased, Rafael Solis, Sr. Thus the Plaintiff, on behalf of the Estate, mother and children of the Deceased, Rafael Solis, Sr., is entitled to a money judgment against the Defendants who engaged in or contributed to or otherwise facilitated through their acts of omission or commission this civil conspiracy against the Deceased, Rafael Solis, Sr.

D. BREACH OF A NON-DELEGABLE FIDUCIARY DUTY

57. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

58. Defendants failure and/or refusal to provide the Deceased, Rafael Solis, Sr., with prompt, proper, professional, and necessary protection at a time when the same was absolutely essential constituted a breach of a non-delegable and/or fiduciary duty owed to the Deceased, and other persons similar situated. Part and parcel of the resulting conduct on the date in question was that the Webb County Jail was under staffed and adequate accommodations for persons such as the deceased were not met.

59. As a direct and proximate consequence of the conduct of the aforementioned Defendants, both known and unknown, the Defendants are jointly and severally liable to the Plaintiff for the breach of a non-delegable and/or fiduciary duty owed to the Deceased, Rafael Solis, Sr., and other persons similar situated that caused and/or contributed to his death. Thus the Plaintiff, on behalf of the Estate, mother and children of Rafael Solis, Sr., is entitled to a money judgment against the Defendants who engaged in or contributed to or otherwise facilitated through their acts of omission or commission this breach of a legal duty that adversely impacted the personal interests of the Deceased, Rafael Solis, Sr., by causing his death.

60. The Defendants overall conduct on the date in question was so outrageous that it shocks the moral and legal conscience of the community. This outrageous conduct resulted in the beating death of the Deceased, Rafael Solis, Sr. The manner, method and design of the Defendants conduct amounted to a cold, callous, premeditated abuse of legal authority.

F. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

61. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

62. The Defendants overall conduct on the date in question was so outrageous that it shocks the moral and legal conscience of the community. This outrageous conduct resulted in the beating death of the Deceased, Rafael Solis, Sr. The manner, method and design of the Defendants conduct was cold, callous, and a premeditated abuse of legal authority. The Defendants conduct was designed to not only inflict physical pain and suffering upon the Deceased, Rafael Solis, Sr., but also emotion and mental anguish and distress on the date in question and it did just that according to eye witness accounts of this atrocity. The manner, method and design of the Defendants' conduct caused Rafael to endure enormous emotional and mental distress and anguish.

63. As a direct and proximate consequence of the outrageous conduct of the aforementioned Defendants, both known and unknown, the Defendants are jointly and severally liable to the Plaintiff for the intentional infliction of emotional distress and mental anguish inflicted upon the person of the Deceased, Rafael Solis, Sr. Thus the Plaintiff, on behalf of the Estate and children of the Deceased, Rafael Solis, Sr., is entitled to a money judgment against the Defendants who engaged in or contributed to or otherwise facilitated through their acts of omission or commission such outrageous conduct perpetrated upon the Deceased, Rafael Solis, Sr.

G. WRONGFUL DEATH

64. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

65. The Defendants' conduct on the date in question as set forth above resulted in the wrongful death of the Deceased, Rafael Solis, Sr. As a direct and proximate consequence of the outrageous conduct of the aforementioned Defendants, both known and unknown, that resulted in the wrongful death of the Deceased, the Defendants are jointly and severally liable to the Plaintiff for Rafael's wrongful death. Thus the Plaintiff, on behalf of the Estate, mother and children of the Deceased, Rafael Solis, Sr., is entitled to a money judgment against the Defendants who engaged in or contributed to or otherwise facilitated through their acts of omission or commission the wrongful death of the Deceased, Rafael Solis, Sr.

H. SLANDER AND SLANDER PER SE

66. Plaintiffs hereby incorporate by reference and re-allege the information set forth in the foregoing paragraphs.

67. The Defendants have made and continue to make certain false, slanderous and defamatory statements that Rafael Solis, Sr. was an alcoholic. Defendants making these statements knew or reasonably should have known that the statements were false and untrue at the time they were made.

68. Furthermore, the statements complained of were not privileged and the same were made with malice and in an attempt to injure the Plaintiff and/or as part of a cover up of what actually happened. The statements made by these Defendants about the Deceased, were not the product of innuendo, speculation or conjecture.

69. The statements made by the Defendants are actionable per se because the same suggest that the Deceased, Rafael Solis, Sr., engaged in certain improper or illegal conduct thus justifying the beating he received at the hands of the Defendants and ultimately implying that he caused his own death.

70. As a direct and proximate consequence of the slanderous statements made by the Defendants as referenced above, the Deceased, Rafael Solis, Sr., was actually damaged and/or injured.

XI.

42 U.S. C.1983 CLAIM AGAINST INDIVIDUAL DEFENDANTS

71. The Webb County Sheriff and individual jailor Defendants acted willfully, deliberately, maliciously or with reckless disregard for Plaintiff's clearly established constitutional rights.

XII.

RESPONDEAT SUPERIOR/AGENCY

72. Webb County is liable for the misconduct of its employees under the doctrine of respondeat superior and agency.

XIII.

WRONGFUL DEATH AND SURVIVAL CLAIMS

73. Plaintiff and surviving heirs at law are as follows: Maria Del Refugio Escamilla is the mother of Rafael Solis, Sr.; Rafael Edgardo Solis, Jr. and Juan Esteban Solis are the children of Rafael Solis, Sr., hereinafter called "the decedent." Plaintiffs bring this wrongful death and survival action because of injuries suffered by the decedent resulting in decedent's wrongful death based upon the facts and legal theories more fully set out above. Plaintiffs sue in all capacities in which he is entitled to recover.

74. Decedent Rafael Solis, Sr. was injured and killed as a result of Defendant's negligence described more fully above. At the time of the decedent's wrongful death, the decedent was survived by his mother, and children, the people entitled to recover damages in this action.

75. Maria Del Refugio Escamilla is decedent's mother and the personal representative of decedent's estate. Alma Gaytan Gonzalez is the mother of Rafael Edgardo Solis, Jr. and Juan Esteban Solis, decedent's children. Plaintiffs seek damages for the conscious pain and suffering and mental anguish that the decedent suffered prior to death and for the reasonable and necessary medical, funeral and burial expenses which were reasonably incurred because of such wrongful death. Plaintiffs seek damages far in excess of the minimum jurisdictional limit of the court.

DAMAGES FOR PLAINTIFF, THE ESTATE OF RAFAEL SOLIS, SR.

76. During his lifetime, Rafael Solis, Sr. gave advice, counsel, comfort, care and protection to his family. In all reasonable probability, he would have continued to provide this comfort and support for his family for the remainder of his life. As a direct and proximate result of the occurrence made the basis of this lawsuit, Rafael Solis, Sr. was caused to suffer great physical and emotional injury, and death.

77. As a direct and proximate result of the occurrence made the basis of this lawsuit, Rafael Solis, Sr. incurred the following damages:

1. Physical pain and suffering;
2. Mental anguish;
3. Physical impairment;
4. Disfigurement;
5. Death; and
6. Burial and funeral expenses.

XIV.

DAMAGES FOR PLAINTIFF, MARIA DEL REFUGIO ESCAMILLA

78. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, Maria Del Refugio Escamilla incurred the following damages:

1. Mental anguish, grief and sorrow in the past;
2. Mental anguish, grief and sorrow in the future;
3. Loss of Consortium in the past, including damages to the parent- child relationship, including loss of affection, assistance, emotional support, comfort, solace, companionship, protection, services, and love.
4. Loss of Consortium in the future, including damages to the parent- child relationship, including loss of affection, assistance, emotional support, comfort, solace, companionship, protection, services, and love.

XV.

**DAMGES FOR PLAINTIFFS, RAFAEL E. SOLIS, JR.
AND JUAN ESTEBAN SOLIS**

79. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiffs, Rafael E. Solis, Jr. and Juan Esteban Solis, have incurred the following damages:

1. Mental anguish, grief and sorrow in the past;
2. Mental anguish, grief and sorrow in the future;
3. Loss of Consortium in the past, including damages to the parent-child relationship, including loss of affection, assistance, emotional support, comfort, solace, companionship, protection, services, and love.
4. Loss of Consortium in the future, including damages to the parent-child relationship, including loss of affection, assistance, emotional support, comfort, solace, companionship, protection, services, and love.

XVI.

CONDITIONS PRECEDENT

80. All conditions precedent to the filing of this case have been performed or have occurred. To the extent not fulfilled, same are futile, waived, or Defendants are estopped from asserting from asserting.

XVII.

ATTORNEY FEES

81. Plaintiffs are entitled to an award of attorney fees and costs under 42 U.S.C.1988(b).

XVIII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Maria Del Refugio Escamilla, Individually and as Personal Representative of the Estate of Rafael Solis, Sr., and Alma Gaytan Gonzalez, as Next Friend of Rafael Edgardo Solis, Jr. and Juan Esteban Solis respectfully pray that Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants, for the following relief:

- a. enter a judgment in favor of the Plaintiffs and against the Defendants, jointly and severally, for the actual or compensatory and presumed damages sustained by the Deceased, Rafael Solis, Sr. and which survive his demise pursuant to 42 U.S.C. Sections 1983, 1985, 1986, 1988, the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America and for the violation of numerous pendent or supplemental state claims arising out of the same set of facts from which the deprivation of civil, constitutional and human rights arose for the deprivation of such constitutional rights, wrongful death, personal injury to his body as a whole but especially his head, eyes, face, back, legs, arms, chest, internal organs and other parts of his anatomy, infliction of emotional distress, mental anguish, pain, suffering, degradation, humiliation, torture, loss of enjoyment of life, medical, funeral and/or burial expenses, loss of society and support, slander and any other injury or claim for which the law holds the Defendants liable and responsible in an amount to be determined by a jury;
- b. a judgment in favor of the Plaintiff and against the Defendants, jointly and severally, for punitive or exemplary damages, for the outrageous, willful, wanton and intentional conduct that resulted in a gross or reckless disregard for the welfare, safety, rights, privileges or immunities of the deceased, Rafael Solis, Sr. in an amount to be determined by the jury;

- c. a judgment in favor of the Plaintiff and against the Defendants, jointly and severally, for the Plaintiff's reasonable attorneys' fees pursuant to 42 U.S.C. Section 1988, all costs of this action and related litigation expenses and expert fees;
- d. a judgment for pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law and post-judgment interest at the legal rate; and
- e. a judgment for such other relief, general or specific, as the Court may deem appropriate, just and equitable.

Signed this 21st day of September, 2012.

Respectfully submitted,

BY: ___ "S/Ronald Rodriguez" ___
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ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was electronically served on this September 21, 2012 on the following:

Mr. Charles Frigerio
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Fax. 210-281-0602

Molly Higgins Santos
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___"S/Ronald Rodriguez"___
Ronald Rodriguez