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2. Eventually, Albert died because his jailers refused to provide the medical care that would have saved his life. He was 22 years old.

3. This is a civil rights action, brought by Albert's mother, Nelda Nuncio, against Webb County, its Sheriff, and its jailers for violating Albert's rights under the U.S. Constitution and Texas state law.

II.

DISCOVERY CONTROL PLAN LEVEL

4. Plaintiffs submit this case for discovery under a tailored Discovery Control Plan under Level III.

III.

PARTIES, JURISDICTION AND VENUE

5. Plaintiff Nelda Nuncio is the mother of Luis Albert Barrientos (who went by Albert). Ms. Nuncio brings this suit both individually and as personal representative of Albert's estate. Ms. Nuncio is a resident and citizen of Webb County, Texas.

6. Webb County is a county of the State of Texas. It can be served with process by serving its County Judge, Tano Tijerina at 1000 Houston, 3rd Floor,

Laredo, Texas 78040. Webb County is the entity responsible for the oversight and funding of the Webb County Sheriff's Office and Webb County Jail. The Webb County Sheriff's Office is a political entity or subdivision of Webb County, Texas. Webb County is responsible for the formulation and implementation of certain policies, procedures, practices, and customs, as well as acts and omissions, challenged by this suit. Webb County is also responsible for ensuring that all its facilities, including Webb County Jail, are in compliance with federal and state law, department or agency policies, rules, and regulations, and related standards of care. At the time of the incidents alleged in this complaint, Webb County was the employer of the John Doe Defendant individual jailers and was responsible for the training and supervision of such individuals.

7. Defendant Sheriff Martin Cuellar is an individual resident and citizen of Webb County, Texas, and can be served with process by serving him at 902 Victoria Street, Laredo, Texas 78040. Defendant Martin Cuellar is the Sheriff of Webb County. Sheriff Cuellar is the policymaker responsible for overseeing the administration of the Webb County Jail. He is responsible for developing, implementing, and enforcing policies and procedures regarding the conduct of officers; officer training, hiring, and firing; the treatment of those detained at Webb County Jail; and the protection of the rights, privileges and immunities of every person in the custody of the Webb County Jail. At the time of

the events at issue, Sheriff Cuellar was acting within the scope of his employment. He is sued in his individual and official capacities.

8. Defendants John Does #1-30 are individual residents of Texas and can be served with process at their place of business, Webb County Jail, 1000 Washington Street, Laredo, Texas 78040. Individual defendants John Does #1-30 (together “jailers” or “guards”) were at all times relevant to this action employed by the Webb County Sheriff’s Office as jailers at the Webb County Jail. At the time of the events at issue, they were acting within the scope of their employment and under the control and supervision of Defendant Sheriff Cuellar. They are sued in their individual capacities.

9. At all times relevant to this complaint, all defendants were acting under color of state law.

10. Venue is proper in Webb County, Texas and this Court has both personal and subject matter jurisdiction over the parties and claims herein. Venue is proper in Webb County, Texas because all or a substantial part of Ms. Nuncio’s causes of action occurred within Webb County, Texas.

IV.

STATEMENT OF FACTS

11. On June 26, 2018, Albert Barrientos was booked into the Webb County Jail. Two weeks later, he was dead.

12. While he was detained, Albert became seriously, visibly ill. For several days, he was so ill that he lay on the floor of his cell, unable to move, breathing heavily, wheezing, and coughing up blood. In the days before he grew too incapacitated to even speak, Albert repeatedly told the jailers that he had chest pain and needed medical attention. But they refused to provide it.

13. Multiple other inmates, including Albert's cellmate, tried to get Albert help. For days, the inmates repeatedly told the guards that he needed medical attention. His cellmate told the guards at least seven times that Albert was ill and needed medical care. And still the jailers refused to provide it.

14. One person who was incarcerated with Albert was released from the jail three days before Albert died. Upon his release, he went to see Albert's mother. He told her that Albert was very sick, that Albert was lying incapacitated on the floor of his cell, and that the other inmates had been shouting at the guards for days that Albert needed medical attention. But, he said, the guards ignored their pleas.

15. After hearing from this former inmate, Albert's mother called the jail and spoke to a corporal, John Doe 1. She told the corporal that Albert had heart valve and kidney problems and needed to be taken to the hospital immediately. The

corporal's response: "yeah, whatever." The jailers still did not take Albert to the hospital. They did not get him any medical attention at all.

16. For the next several days, Albert's health continued to deteriorate. The other inmates on his floor continued to yell for help. And the jailers continued to ignore them. Instead of getting Albert medical care, the jailers would drag Albert's limp body to the showers, lay him on the floor, and turn the water on.

17. On July 13, 2018, Albert died as jailers were dragging him to the showers. The autopsy report stated that he died from sepsis secondary to acute endocarditis and pneumonitis. In other words, he died of an infection—an infection that could have been treated had the jailers provided him medical care instead of ignoring his pleas.

18. Though Webb County jailers knew for days, possibly weeks, that Albert was gravely ill, they never provided him with medical attention. This refusal to provide medical care caused his death.

19. At a community fundraiser to raise money for Albert's burial, Raymond Reina, who shared a cell with Albert a couple days before he died, spoke with Albert's mother. Mr. Reina told Albert's mother that he had told the guards Albert needed medical attention, but they did nothing. One guard, John Doe 2, even said to Mr. Reina in Spanish, "Leave him. That's one less we have to lock up." The jailers knew Albert was severely ill and needed medical attention. They knew that without

medical care, there was a substantial risk he would die. But they did not care. Worse, it seems, they wanted him to die.

20. Albert is not the only inmate to die at Webb County Jail. He was not even the only person to die that weekend. Within days of Albert's death, another inmate, Pedro Serna, also died because the jail refused to provide medical care. Albert and Pedro are just two in a string of deaths caused by Webb County Jail's failure to satisfy its constitutional obligations to those in its care.

21. Sherriff Cuellar has publicly acknowledged that Webb County Jail does not have enough capacity to adequately care for all its inmates. Indeed, in 2017, Sherriff Cuellar informed the Webb County Commissioners that a new facility with enough capacity for standard jail medical facilities and mental health facilities was needed. Yet, the County did not provide such a facility.

22. At the current facility, Webb County Jail's policies and practices—starting with when a person is first booked into the jail—prevent inmates from receiving constitutionally adequate medical care. The stated goal of the Jail's admissions policy is to maximize intake efficiency. Jailers are permitted to balance this goal with security and with the need to identify inmates. But nothing in the policy allows jailers to balance intake speed with the need to identify any medical conditions from which an inmate might be suffering and any requirements they might have for medical care. This policy leads to the Jail's failure to properly identify inmates' medical conditions upon admission. Webb County maintains this policy

even though it is aware that there is a high risk of preventable injury or death when people are not adequately medically screened when they enter the Jail. Webb County is thus deliberately indifferent in maintaining this policy. This policy resulted in Albert being inadequately screened for medical conditions upon admission to Webb County Jail and was a moving force in his death.

23. Webb County Jail also has a persistent practice of outright refusing to provide medical care to inmates—a practice from which not only Albert, but multiple other inmates, have died in recent years. Sherriff Cuellar is aware of this persistent practice—and the deaths it has caused. Nevertheless, Sherriff Cuellar has not trained Webb County’s jailers that they are required to provide medical care when there is a substantial risk of harm to an inmate. Nor has he implemented supervision of the jailers to ensure that medical care is provided when constitutionally required. Webb County and Sherriff Cuellar maintain these practices even though they are aware that the consequence is that jailers continue to refuse to provide inmates constitutionally-required medical care, and that this refusal leads to a high risk of preventable injury and death. Webb County and Sherriff Cuellar’s deliberate indifference to this risk was a moving force in Albert’ death.

V.

FIRST CAUSE OF ACTION

**Violation of the Fourteenth Amendment Right to Due Process,
Under 42 U.S.C. § 1983
(Against Defendant Jailers John Does 1-30 in their Individual Capacities)**

24. Plaintiff incorporates by reference the allegations in all preceding 23 paragraphs.

25. 42 U.S.C. § 1983 provides: “Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.”

26. While in the custody of the Webb County Jail as a pretrial detainee, Albert Barrientos had a clearly established constitutional right under the Fourteenth Amendment to adequate medical care. At the very least, this right meant that Albert’s jailers were constitutionally prohibited from acting with deliberate indifference to his medical needs. A jailer acts with deliberate indifference when they know of a substantial risk of serious harm to a detainee and disregard that risk.

27. Defendant Jailers John Does 1-30 acted with deliberate indifference to Albert’s medical needs in violation of the Fourteenth Amendment.

28. The jailers knew of a substantial risk of serious harm to Albert, yet they disregarded this risk. The jailers knew that Albert was gravely ill: They saw him lying on the floor, incapacitated, wheezing, and coughing up blood. They heard him complain of chest pain and ask for medical attention. They heard other detainees yell that Albert needed help. They heard his cellmate tell them at least seven times that Albert needed medical care. And they knew Albert's mother had called the jail to inform them that Albert had heart and kidney problems and needed to go to the hospital immediately. The jailers knew there was a substantial risk of serious harm to Albert if they did not get him medical treatment. Aware of this risk, the jailers still refused to do so.

29. Because of the jailers' deliberate indifference, Albert suffered physical pain, emotional distress, and ultimately death.

30. The jailers acted in deliberate or reckless disregard of Albert's constitutionally protected rights, justifying an award of punitive damages against them in an amount according to proof at the time of trial. Punitive damages will deter the defendants and others from engaging in similar conduct. Plaintiff is also entitled to attorney fees and costs of this lawsuit.

VI.
SECOND CAUSE OF ACTION
Violation of the Fourteenth Amendment Right to Due Process,
Under 42 U.S.C. § 1983
(Against Sheriff Cuellar in his Individual Capacity)

31. Plaintiff incorporates by reference the allegations in all preceding 30 paragraphs.

32. Sheriff Cuellar implemented the unconstitutional admissions policy that requires jailers to prioritize speed of intake over ensuring that the Jail adequately identifies inmates' medical conditions. As a result of this policy, the jailers did not identify Albert's medical condition when he was admitted to Webb County Jail, which was a moving force in Albert's death. Sheriff Cuellar knew that prioritizing intake speed over identification of medical conditions bore a substantial risk of serious harm, yet was deliberately indifferent to that risk. Sheriff Cuellar chose to prioritize efficiency over adequate medical care.

33. Sheriff Cuellar is responsible for training and supervising Webb County's jailers. Despite knowing that the jailers maintain a consistent practice of unconstitutionally refusing medical care, the Sheriff did not train the jailers to provide the medical care the Constitution requires. Nor did he supervise the jailers to ensure they were doing so. As a result, the jailers intentionally ignored Albert's obvious need for medical care, which led to his death. Sheriff Cuellar knew that his failure to train and supervise the jailers would ensure that their practice of refusing

to provide medical care would continue, which would lead to a serious risk of injury or death to those housed at Webb County Jail, including Albert.

VII.

THIRD CAUSE OF ACTION

Violation of the Fourteenth Amendment Right to Due Process, Under 42 U.S.C. § 1983 (Against Webb County and Sheriff Cuellar in his Official Capacity)

34. Plaintiff incorporates by reference the allegations in all preceding 33 paragraphs.

35. Sherriff Cuellar was at all relevant times, the final policymaker at the County Jail, with oversight responsibility over the jailers present when they refused to provide Albert medical care. Sherriff Cuellar had the overall responsibility for the hiring, training, instruction, supervision and discipline of the jailers.

36. Webb County has a policy and practice—as promulgated by Sheriff Cuellar—of prioritizing intake efficiency without regard to whether that compromises the Jail’s ability to identify inmates’ medical conditions; of failing to properly screen inmates for medical conditions; of refusing to provide medical care to inmates despite obvious need; of keeping people in the Jail even if they require hospitalization; of failing to train Webb County jailers to provide constitutionally-adequate medical care; and of failing to supervise Webb County jailers to ensure that they are providing constitutionally-adequate medical care.

37. Webb County has failed to establish a medical program sufficient to meet the medical needs of its inmates (e.g., initial physical assessments, monitoring and treatment of serious medical conditions, and stabilization of urgent and emergency medical conditions); and has failed to ensure sufficient medical staff to meet inmates' medical needs.

38. Webb County and Sheriff Cuellar know that these policies and practices carry with them a substantial risk of harm to the County's inmates, but they are deliberately indifferent to this risk.

39. These policies and practices were each moving forces in causing the violation of Albert's Fourteenth Amendment rights and his untimely death.

VIII.
FOURTH CAUSE OF ACTION
Wrongful Death
(Against John Does 1-30, Sheriff Cuellar in their Individual Capacity,
and Against Webb County)

40. The previous 39 paragraphs are incorporated by reference.

41. Nelda Nuncio is Luis Albert Barrientos's surviving heir at law. Ms. Nuncio brings this wrongful death action pursuant to Tex. Civ. Prac. & Rem. Code § 71.001 et. seq. because of injuries Albert suffered resulting in his wrongful death based upon the facts and legal theories more fully set out above. As Albert's mother, Ms. Nuncio is a proper beneficiary of this wrongful death action pursuant to Tex. Civ. Prac. & Rem. Code § 71.004. Ms. Nuncio sues in all capacities in which she is entitled to recover.

42. Albert was injured and killed as a result of Defendants'—or their servant's or agent's—wrongful, negligent, careless, or unskilled acts and omissions, described more fully above.

43. Jailers John Doe #1-30 caused Albert's death. The jailers failed to adequately screen Albert for underlying medical conditions; they ignored Albert's complaints and the pleas of other people in the jail to give Albert medical treatment; they refused to provide Albert any medical treatment; and they failed to transport Albert to a hospital after his mother informed Webb County Jail of Albert's underlying heart valve and kidney problems. These actions caused Albert's death.

44. Sheriff Cuellar caused Albert's death through his own wrongful, negligent, careless, or unskilled acts in overseeing and implementing the policies and practices of inadequate screening; inadequate training and supervision of Webb County's jailers; and failure to provide medical treatment that led to Albert's death.

45. Webb County caused Albert's death because it acted wrongfully, negligently, carelessly, or was unskilled in carrying out its non-proprietary governmental function of establishing and maintaining Webb County Jail. Webb County is therefore liable for Albert's wrongful death pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 101.0215.

46. All Defendants owed Albert a duty of care that they breached. That breach actually and proximately caused Albert's death. As a result of Defendants' conduct, Ms. Nuncio has sustained actual damages related to the loss of her son

including loss of companionship and society, mental anguish, loss of advice and counsel, loss of support, loss of consortium, loss of inheritance, funeral expenses and loss of services. She hereby sues for the wrongful death of Luis Albert Barrientos pursuant to Tex. Civ. Prac. & Rem. Code § 71.001 et seq.

IX.
FIFTH CAUSE OF ACTION
Survival Claims

**(Against John Does 1-30, Sheriff Cuellar in their Individual Capacity,
and Against Webb County)**

47. The previous 46 paragraphs are incorporated by reference.

48. Ms. Nuncio is an heir of Luis Albert Barrientos, so Albert's personal injury action survives to her and in her favor, pursuant to Tex. Civ. Prac. & Rem. Code § 71.021(b).

49. Ms. Nuncio has standing because she has been appointed as personal administrator to the estate of her son, Luis Albert Barrientos.

50. Jailers John Doe #1-30 caused Albert's suffering, pain, and severe mental anguish by breaching the duties they owed him. The jailers failed to adequately screen Albert for underlying medical conditions; they ignored Albert's complaints and the pleas of other people in the jail to give Albert medical treatment; they refused to provide Albert any medical treatment; and they failed to transport Albert to a hospital after his mother informed Webb County Jail of Albert's underlying heart valve and kidney problems. These wrongful acts caused Albert

injury, unnecessary pain, and severe mental anguish before his ultimate, untimely death.

51. Sheriff Cuellar caused Albert's injuries and suffering by breaching the duties he owed Albert. Specifically, Albert's injuries and suffering were caused by Sheriff Cuellar's wrongful acts in overseeing and implementing the policies and practices of inadequate screening; inadequate training and supervision of Webb County's jailers; and failure to provide medical treatment.

52. Webb County caused Albert's injuries and suffering by failing to properly carry out its non-proprietary governmental function of establishing and maintaining Webb County Jail. Webb County is therefore liable for Albert's injuries and suffering pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 101.0215.

53. All Defendants owed Albert a duty of care that they breached. These breaches actually and proximately caused Albert's acute physical pain and suffering for the duration of time he spent in Webb County Jail before his ultimate untimely death.

54. Defendants John Doe #1-30, Webb County, and Sheriff Cuellar committed acts and omissions that were substantial factors that proximately caused Luis Albert Barrientos to suffer pain and mental anguish prior to his death. Such acts and omissions would have been actionable by Albert had he survived his injuries.

Plaintiff hereby sues for all damages allowed by Tex. Civ. Prac. & Rem. Code § 71.021.

55. Nelda Nuncio is Albert's mother and the personal representative of Albert's estate. Albert left no children and no will. Ms. Nuncio seeks damages for the conscious pain and suffering and mental anguish that Albert suffered prior to death and for the reasonable and necessary medical, funeral, and burial expenses which were reasonably incurred because of such wrongful death.

X.
DAMAGES FOR THE ESTATE OF LUIS ALBERT BARREINTOS

56. As a direct and proximate result of the occurrence made the basis of this lawsuit, Luis Albert Barrientos was caused to suffer great physical and emotional injury, and death.

57. As a direct and proximate result of the occurrence made the basis of this lawsuit, Luis Albert Barrientos incurred the following damages:

- a. Physical pain and suffering;
- b. Mental anguish;
- c. Physical impairment;
- d. Disfigurement;
- e. Death; and
- f. Burial and funeral expenses.

XI.
DAMAGES FOR NELDA NUNCIO, INDIVIDUALLY

58. As a direct and proximate result of the occurrences made the basis of this lawsuit, Plaintiff, Nelda Nuncio incurred the following damages:

- a. Mental anguish, grief and sorrow in the past;
- b. Mental anguish, grief and sorrow in the future;
- c. 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.
- d. 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.

XII.
RESPONDEAT SUPERIOR / AGENCY

59. Under Texas law, Webb County is liable for the misconduct and actions of its employees under the doctrine of respondeat superior and agency.

XIII.
NOTICE

60. All notices required under state and federal law were timely provided to Defendant Webb County, and Defendant Webb County had actual notice of Luis Albert Barrientos' injuries and death. All conditions precedent to filing this lawsuit have occurred or have been performed.

XIV.
DEMAND FOR TRIAL BY JURY

61. Plaintiff demands a trial by jury.

RELIEF SOUGHT

WHEREFORE, Ms. Nuncio respectfully requests that this Court:

- a. RULE that the actions of Defendants Jailers John Doe #1-30, Sheriff Cuellar, and Webb County violated Albert's rights under the Fourteenth Amendment to the United States Constitution, and under Texas state law;
- b. ENTER JUDGMENT awarding Ms. Nuncio compensatory and punitive damages in an amount commensurate with the proof adduced at trial together with pre-judgment and post-judgment interest at the maximum rate allowed by law;
- c. AWARD Ms. Nuncio costs and reasonable attorneys' fees in this action;
and
- d. GRANT Ms. Nuncio such other and further relief as this Court may deem just and proper.

Respectfully submitted,

THE LAW OFFICES OF RONALD RODRIGUEZ,
A PROFESSIONAL CORPORATION

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