No. 19-276

IN THE

Supreme Court of the United States

JOSE LUIS GARZA, *et al.*,

Petitioners,

v.

CITY OF DONNA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a city police chief's instruction to install two signs, without evidence of deliberate indifference to Fourteenth Amendment rights in that instruction, can establish a custom or policy of a City to promote "vigilante-style" policing actionable under 42 U.S.C. § 1983?

2. Whether a claim under 42 U.S.C. § 1983 alleging a municipal policy of "vigilante-style" policing can establish a fact issue without evidence that such policy was the moving force of a detainee's injuries caused by "vigilante-style" actions of the municipality's officials?

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law…." U.S. CONST. amend. XIV, § 1. The Civil Rights Act provides that ""[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen 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 in equity, or other proper proceeding for redress…." 42 U.S.C.S. § 1983.

STATEMENT OF THE CASE

This case involves the suicide of Jose Luis Garza, Jr. ("Garza") while he was detained at the Donna's temporary holding facility, or jail, after his mother called the Donna Police Department ("DPD") to remove him from her house because he was heavily intoxicated and arguing with his brother. Pet. App. 2. Garza was arrested and placed in a jail cell, but was later found hanging in that jail cell, approximately thirty-nine minutes after last having been checked. *Id.,* at 3-4. Among other claims, Petitioners pursued a Fourteenth Amendment due process allegation of an episodic act or omission by jail officials that violated Garza's rights, arguing that the city had a policy of detainee mistreatment, established through DPD police chief Ruben De Leon's instruction to install two signs. *Id.,* at 3-5, 38-39.

Petitioners do not contend the City's officers passively ignored or failed to pay closer attention to Garza, but rather that he was injured as a result of an official policy of active vigilante-style policing and detainee mistreatment. Petitioners did not identify evidence to establish the City adopted a deliberately indifferent policy of active detainee mistreatment that was allegedly reflected in the signs, or how that policy caused or was the moving force of his suicide, however. Although Petitioners never specified whether they complained of the conditions of Garza's confinement or an episodic act or omission, their vitriol appeared to be directed to officers' allegedly deliberate actions. Without evidence of a custom or policy of intentional disregard for the rights of Garza to protect him from suicidal tendencies, however, reference to the signs, even with Petitioners' *post hoc* attribution of hostile intent in those signs, was too nebulous to constitute an official policy of the City to encourage active detainee mistreatment that was a moving force of Garza's suicide or a failure to intervene to prevent that suicide. *Id.,* at 16-17.

The court of appeals did not overlook Petitioners' contention that the two signs reflected a policy of active detainee mistreatment. *Id.,* at 8. But Petitioners did not identify evidence to establish those signs reflected a policy of vigilante-style policing or that such a policy was the moving force that somehow caused Garza's suicide or prevented the officers from intervening to prevent that suicide. Petitioners' reference to the police chief's instruction to install two signs, with nothing more, could not establish a deliberate choice of the City's final policymaker to disregard the needs of detainees, necessary to establish an unconstitutional policy of the City. *Id.,* at 19. The existence of those signs did not present

a question of fact because the chief's instruction to install the signs, without more, was too inexact and nebulous to establish municipal policy or the moving force of Garza's suicide.

I. Factual Background

On February 19, 2016, Garza's mother, Veronica Garza, called Donna Police Officers to her residence because Garza was heavily intoxicated and arguing with his brother, Gilbert Garza. Pet. App. 2. In fact, a subsequent autopsy report found ethanol and Alprazolam in Garza's body. *Id.,* at 33. Mrs. Garza called the police after Garza looked like he was ready to get in a fight with Gilbert and she was concerned one of them would get hurt. Mrs. Garza also reported to investigating officer Mario Silva that she "feared for his life" and was "afraid of him hurting himself," but she was not aware he ever told anyone he might commit suicide. *Id.,* at 2; 24. Silva thereupon arrested Garza for assault by threat and transported him to the DPD's "short-term holding facility where—unlike a county jail or state prison—detainees do not stay long." *Id.,* at 2.

Once Garza was arrested, Officer Silva no longer believed he was a danger to himself or anyone else. By that time, Garza's "demeanor was 'okay,' and [he and Silva] "even had a couple of laughs," … there was '[n]o indication [Garza] wanted to harm himself" … [and] Silva did not believe [Garza] would harm himself. *Id.,* at 24-25. Garza was then booked and placed in a cell at 6:05 a.m., though no particular mental-health precautions were taken prior to placing him in the cell. *Id.,* at 2; 25. While the City does not require a suicide screening for arrestees, if an arresting officer sees that an arrestee needs medical or

mental assistance, that officer must seek medical or mental screening assistance. *Id.,* at 25.

When Jailer Esteban Garza arrived at the DPD at 8:00 a.m., he learned Garza (a friend he had known from elementary and high school) was being held, and at 8:10 a.m. checked on his well-being, though the cell-check was not recorded contemporaneously. *Id.,* at 3; 29. After that, Jailers Garza and Nathan Coronado worked on signs that DPD police chief Ruben De Leon directed them to put up in the jail. One read "Welcome to Donna Hilton," and the other was a decal of a comic-book character, the Punisher, known for carrying out vigilante justice. *Id.,* at 3. While the officers were working on the signs, Garza hung himself from the bars of his jail cell. There was no evidence that the jailers heard Garza say or do anything during this time, however. After agents from U.S. Immigration and Customs Enforcement ("ICE") arrived to check the immigration status of any detainees, they found Garza hanging from his jail cell door with his shirt at 8:49 a.m., though it was unclear how long he had been hanging, and they immediately called out for assistance. *Id.,* at 3-4; 30; 32. Petitioners' allegation of a request to preserve footage of Garza being booked into custody was not supported by any evidence.

Immediately upon hearing the ICE Agents call for help (seven seconds after the Agents had entered the jail area), Jailers Garza and Coronado ran into the jail area to assist. Fifty-five seconds later, the jailers and ICE agents pulled Garza's body into the booking room, closer to the Jail exit, and called for medical assistance. Supervisory officers arrived thirty seconds later and began CPR sixteen seconds after that. During this time, Jailer Garza was in "shock" seeing

his friend's limp body. Once emergency medical help arrived, Garza was transported to the hospital, though there was some confusion about what had happened, and the medical personnel lacked some information to relay to hospital staff upon arrival. *Id.,* at 4; 30-31.

Dispatcher Minerva Perez had been tasked with monitoring the jails camera feeds under the jail's written policy, along with answering emergency 911 calls and handling other duties. She understood that once jailers arrived, however, it was their responsibility to monitor the detainees. *Id.,* at 2-3; 26. From 8:09:50 a.m. to 8:57:31 a.m., she received approximately twenty 911 calls and did not recognize that Garza had obscured the camera lens in his jail cell with wet paper towels sometime between 8:30 a.m. and 8:49 a.m., possibly because the layout of her office was such that she could not take 911 calls and monitor the video feeds at the same time. *Id.*, at 26-28; 32. After Garza was found hanging, she called EMS at the request of a jailer. *Id.*, at 28. Petitioners' allegation that she was "drunken" was not supported by any evidence.

Though Petitioners interpreted the "Donna Hilton" sign as a reference to the notorious Vietnam POW camp known as the "Hanoi Hilton," DPD Chief De Leon explained that his purpose for the "Donna Hilton" sign was to remind jailers and staff that their duties were to serve. He also referred to the people who come in as customers rather than prisoners. *Id.*, at 7. No evidence was presented to support a different purpose, and he denied requesting the "Punisher" decal. *Id.,* at 56. Regardless, he was not aware Garza was at the jail that morning, and he did not instruct the jailers to disregard Garza in favor of installing the signs. During the jail's forty-five year

existence, no one had previously committed suicide. *Id.*, at 70.

II. Proceedings below

Petitioners alleged the City of Donna violated Garza's Fourteenth Amendment right to due process, pursuant to 42 U.S.C. § 1983, arising out of his February 19, 2016, custodial suicide at the City's detention facility. Pet. App. 2. They initially sought to establish the City's liability through five circumstances: (1) officer Silva's booking Garza into the jail; (2) dispatcher Perez' monitoring of Garza's cell; (3) jailers Garza's and Coronado's failure to discover Garza's suicide; (4) supervisory officers Rosas' and Suarez' failure to relate information to EMT Tafolla; and (5) police chief De Leon's instructions to install the "Donna Hilton" and "Punisher" signs. *Id.,* at 4-5. The district court rejected each basis for municipal liability and granted the City's motion for summary judgment. *Id.,* at 5; 73. The district court recognized Petitioners' contention that the signs "indicate[d] a general mistreatment of detainees," but found that emphasis misplaced because there was "no concrete causal relationship between [the signs] and [Garza's] death" and Petitioners failed "to specify the exact type of mistreatment supposedly behind [Garza's] death." *Id.,* at 71-72.

The court of appeals affirmed the judgment of the district court, concluding that Petitioners had not identified evidence of any city officials' actions that might reasonably be attributed to the City. *Id.,* at 19-20. The court recognized initially that the Fourteenth Amendment provides pretrial detainees with the right to medical care and protection from known suicidal tendencies, explaining that the

denial of such rights may be attacked as a condition of confinement ("general conditions, practices, rules, or restrictions of pretrial confinement") or as an episodic act or omission (in which "the complained-of harm is a particular act or omission of one or more officials, and an actor usually is interposed between the detainee and the municipality"). *Id.,* at 6. The court of appeals rejected Petitioners conditions of confinement claim, to the extent such a claim was intended. *Id.,* at 9. A conditions theory generally "concern[s] durable restraints or impositions on inmates' lives like overcrowding, deprivation of phone or mail privileges, the use of disciplinary segregation, or excessive heat." *Id.* Petitioners did not complain of such a continuous burden on inmate life in such a manner and do not appear to pursue such a claim before this court.

The Fifth Circuit panel explained that "[t]o establish municipal liability in an episodic-act case, a plaintiff must show (1) that the municipal employee violated the pretrial detainee's clearly established constitutional rights with subjective deliberate indifference; and (2) that this violation resulted from a municipal policy or custom adopted and maintained with objective deliberate indifference." *Id.* Deliberate indifference requires that "the official knows of and disregards an excessive risk to inmate safety." *Id.,* at 14. Policy could be in the form of written policy statements, ordinances, regulations, or "a widespread practice that is so common and well-settled as to constitute a custom that fairly represents municipal policy," including a decision to adopt a course of action for a particular situation if made by an authorized decisionmaker. *Id.,* at 16. *See Bd. of County Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397, 403-04, 117 S. Ct. 1382, 1388, 137 L. Ed. 2d 626 (1997); *City of St.*

Louis v. Praprotnik, 485 U.S. 112, 123, 108 S. Ct. 915, 92499 L. Ed. 2d 107 (1988). Petitioners were also required to establish the policy or custom was the *moving force* for any episodic acts or omissions of DPD employees. *Id.*

Petitioners did not attribute officer Silva's booking Garza into the jail or supervisory officers Rosas' and Suarez' failure to relate information to EMT Tafolla to any policy or custom of the City. Even assuming DPD police chief De Leon was a final policymaker for the City, Petitioners' reference to the signs as announcing an official policy of detainee mistreatment was "too general or inexact … to constitute the sort of specific directive required for municipal liability, and … too nebulous to constitute a moving force," to attribute any "episodic acts or omissions of these employees … to the City." *Id.*, at 17. The record was similarly inadequate to establish any deliberate indifference in the training of dispatcher Perez, either through "a pattern of constitutional violations or … a single incident with proof of the possibility of recurring situations that present an obvious potential for violation of constitutional rights." *Id.*, at 18.

While Jailers Garza's and Coronado's preoccupation with installing the signs, to the detriment of their job duties, could be attributed to De Leon's directive *to install* the signs, that directive did not involve a "*deliberate* choice to follow a course of action … made from among various alternatives… *with respect to the subject matter in question*." *Id.*, at 19 (emphasis in original). Because De Leon was not aware Garza was in the jail, "much less that he instructed the jailers to disregard Garza in favor of installing the signs," his directive could not have been deliberate in the sense meant by the Court necessary to support municipal liability. *Id.*

REASONS FOR DENYING THE PETITION

Petitioners' attribution of hostility to an instruction to install two signs, without more, could not overcome their failure to identify evidence of a deliberately indifferent custom or policy to promote "vigilante-style" policing that was the moving force of injuries caused by "vigilante-style" actions.

A sign, decal, bumper sticker, pin, cap, clothing design, or other such item, without more, does not establish a deliberately indifferent custom or policy to violate a detainees' constitutional rights. Likewise, a message on a sign will not support a § 1983 claim absent a causal nexus between the message and injuries resulting from actions of the type allegedly promoted in that message. The court of appeals therefore did not decide an important question of federal law that conflicts with relevant decisions of this Court, or that has not been or should be settled by this Court, it has not departed from the accepted and usual course of judicial proceedings, and its decision is not in conflict with another United States court of appeals on any matter raised. Review should be denied.

Petitioners sought to establish a Fourteenth Amendment due process claim alleging an episodic act or omission by jail officials that violated Garza's rights. An episodic act or omissions case is one in which a detainee complains first of a particular act or omission by an actor and then points derivatively to a policy, custom or rule of the municipality that permitted or caused the act or omission. Pet. App. 66-67. To establish that claim, Petitioners were required to identify a custom or policy of the City that was deliberately indifferent to Garza's rights and which was a moving force that caused the violation of

those rights. *Connick v. Thompson*, 563 U.S. 51, 60-61, 131 S. Ct. 1350, 1359, 179 L. Ed. 2d 417 (2011); *City of Canton v. Harris*, 489 U.S. 378, 388-89, 109 S. Ct. 1197, 1205, 103 L. Ed. 2d 412 (1989). They failed to identify evidence to establish a question of fact to avoid dismissal on that basis.

I. An instruction to install two signs, without more, could not establish a deliberately indifferent custom or policy to promote "vigilante-style" policing actionable under 42 U.S.C. § 1983.

"[Municipalities] can be sued directly under §1983 for monetary, declaratory or injunctive relief where...the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 690, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d 611 (1978). "[M]unicipal liability under §1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. Cincinnati*, 475 U.S. 469, 483-84, 106 S. Ct. 1292, 89 L.Ed.2d 452 (1986). "Where a claim of municipal liability rests on a single decision, not itself representing a violation of federal right and not directing such violation, the danger that a municipality will be held liable without fault is high." *Brown*, 520 U.S. at 408. Simply alleging Garza suffered a deprivation of his constitutional rights will not permit an inference of culpability or causation. *Id.*

To hold the City liable, Petitioners were required to establish the state-of-mind of the municipality's legislative

body or an authorized decision-maker to prove the underlying violation. *Id.*, 520 U.S. at 405. The necessary state-of-mind for liability against the City is deliberate indifference. *Id.*, 520 U.S. at 407. "[A] plaintiff seeking to establish municipal liability on the theory that a facially lawful municipal action has led an employee to violate a plaintiff's rights must demonstrate that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences." *Id. See also Connick*, 563 U.S. at 71 (requiring notice of "highly predictable" consequences to establish conscious disregard for rights). "'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence to his action." *Brown*, 520 U.S. at 410. The complained-of conduct must "shock the conscience." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 855, 118 S. Ct. 1708, 1721, 140 L. Ed. 2d 1043 (1998).

The Court has long required that for liability to attach "the official [must] know[] of and disregard[] 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." *Farmer v. Brennan,* 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994). Even if a City official is aware of facts from which a serious risk of harm *could be inferred*, the official must *actually draw that inference.* Negligence alone is not enough. Neither negligence nor gross negligence is sufficient to establish municipal liability for action taken with deliberate indifference; the standard is higher. *Brown*, 520 U.S. at 407. None of the staff at the DPD was subjectively aware of a substantial risk of serious harm to Decedent, and if one existed, the staff did not draw that inference. Pet. App. 10,

n.4. Because no one had previously committed suicide at the jail during its forty-five year existence, the lack of any prior experience in dealing with a jail death supports the lack of deliberate indifference. *Id.*, at 70.

Although the Constitution requires the government to provide for "medical care[] and reasonable safety" in a custodial setting because of the limitations on the individual's ability to meet his own needs, that duty is limited. *Deshaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200, 109 S. Ct. 998, 1005, 103 L. Ed. 2d 249 (1989). "[E]ven then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities." *Youngberg v. Romeo*, 457 U.S. 307, 317, 102 S. Ct. 2452, 2459, 73 L. Ed. 2d 28 (1982). Thus far, however, "[n]o decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols. No decision of this Court even discusses suicide screening or prevention protocols … [and] the weight of that authority… suggest[s] that such a right [does] *not* exist." *Taylor v. Barkes*, 135 S. Ct. 2042, 2044, 192 L. Ed. 2d 78 (2015) (*per curiam*), *citing Comstock* v. *McCrary*, 273 F. 3d 693, 702 (6th Cir. 2001); *Tittle* v. *Jefferson Cty. Comm'n*, 10 F. 3d 1535, 1540 (11th Cir. 1994); *Burns* v. *Galveston*, 905 F. 2d 100, 104 (5th Cir. 1990); *Belcher* v. *Oliver*, 898 F. 2d 32, 34-35 (4th Cir. 1990).

Rule 56(a) provides that a district court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "[W]hen a properly supported motion for summary judgment is made, the adverse party 'must set forth specific facts showing that there is a genuine issue for trial.'" *Anderson*

v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986), *quoting prior version of* FED. R. CIV. P. 56(e) (currently, "[i]f a party fails to properly support an assertion of fact … the court may … grant summary judgment if the motion and supporting materials … show that the movant is entitled to it"). "If the evidence is merely colorable, … or is not significantly probative, **…** summary judgment may be granted. *Id.*, at 249-50. "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. … Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 586-587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (citation omitted). Courts

> must distinguish between evidence of disputed facts and disputed matters of professional judgment. In respect to the latter, our inferences must accord deference to the views of prison authorities. Unless a prisoner can point to sufficient evidence regarding such issues of judgment to allow him to prevail on the merits, he cannot prevail at the summary judgment stage.

Beard v. Banks, 548 U.S. 521, 530, 126 S. Ct. 2572, 2578, 165 L. Ed. 2d 697 (2006) (citation omitted) (plurality opinion).

Petitioners identified no evidence to support their allegation that the City, or DPD chief De Leon, adopted the incendiary or hostile purpose they attribute to the

signs with "'deliberate indifference' as to its known or obvious consequences." *Brown*, 520 U.S. at 407. To the contrary, De Leon explained the purpose for the "Donna Hilton" sign was to remind jailers and staff that their duties were to serve the detainees. Pet. App. at 7. Petitioners' attribution of a hostile intent to De Leon's request for two signs, without more, therefore did not identify evidence of a custom or policy of the City that was deliberately indifferent to Garza's constitutional rights or that the City "disregarded a known or obvious consequence to [its] action." *Brown*, 520 U.S. at 410, 117 S. Ct. at 1391. *Cf. Tolan v. Cotton*, 572 U.S. 650, 657-58, 134 S. Ct. 1861, 1867, 188 L. Ed. 2d 895 (2014) (fact issues remained as to whether evidence established porch light was decorative or illuminating, whether suspect's mother at the scene was "very agitated," whether comments were "verbally threatening the officer" or a plea not to continue an assault on his mother, and whether suspect was on his knees or in a "charging position" when the officer shot him).

Incendiary arguments or allegations, without evidence that such matters were considered by the relevant actors, can not serve to attribute that intent to the actors. The mere existence of the signs, even with Petitioners' incendiary interpretations of the signs, were "too nebulous to amount to an official rule or restriction" and "too general and inexact … to constitute the sort of specific directive required for municipal liability" or to constitute a moving force that caused his suicide. Pet. App. 9; 17. That finding was in line with the only case cited by Petitioners. *See Coon v. Ledbetter*, 780 F.2d 1158, 1161 (5th Cir. 1986) ("Sheriff Ledbetter denied that [plaintiffs' proffered] meaning [to a statement he made] was either intended or in context was so understood. This denial

was not rebutted by contrary evidence, and it follows that Jackson County could not be held liable on the basis of the sheriff's statement.").

Petitioners contend that a jury could have reasonably inferred that the signs reflected a policy of "vigilante-style policing" without evidence that such a policy was ever considered. "[T]his Court does not typically grant a petition for a writ of certiorari to review a factual question of this sort…." *Salazar-Limon v. City of Hous.*, 137 S. Ct. 1277, 1277-78, 197 L. Ed. 2d 751 (2017) (*per curiam*) (Alito, J., concurring). Petitioners did not identify any failure to apply a governing legal rule in either of the courts below. To the contrary, "it is clear that the lower courts acted responsibly and attempted faithfully to apply the correct legal rule to what is at best a marginal set of facts." *Id.*, at 1278.

II. Petitioners could not establish liability of the City without evidence that a City policy was the cause or moving force of a constitutional violation of the type authorized through that policy.

The "first inquiry in any case alleging municipal liability under § 1983 is the question whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *Collins v. City of Harker Heights*, 503 U.S. 115, 123, 112 S. Ct. 1061, 1067, 117 L. Ed. 261 (1992), *quoting City of Canton*, 489 U.S. at 385. "[A] municipality can be liable under § 1983 only where its policies are the 'moving force [behind] the constitutional violation.'" *City of Canton*, 489 U.S. at 389, *quoting Monell*, 436 U.S. at 694. Municipalities may not be held liable "unless action pursuant to official

municipal policy of some nature *caused* the constitutional tort." *Monell*, 436 U.S. at 691 (emphasis added). "That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Brown*, 520 U.S. at 404. "There must at least be an affirmative link between the (policy) alleged, and the particular constitutional violation at issue." *Okla. City v. Tuttle*, 471 U.S. 808, 824 n.8, 105 S. Ct. 2427, 2436, 85 L. Ed. 2d 791 (1985).

Petitioners complained only that the City of Donna should be liable because Garza was able to hang himself after arriving at the Donna Jail, a short term holding facility, though neither Garza nor any other person ever indicated he was at risk of suicide. Pet. App. 2, 4-5, 24. Without evidence to establish a causal relationship between the alleged policy and any specific mistreatment, that allegation was too nebulous to identify a moving force that promoted Garza's suicide or any specific mistreatment of detainees. *Id.*, at 17. "No reasonable fact finder could determine that [De Leon] was subjectively and deliberately indifferent towards a known, substantial risk [Garza] would commit suicide. *Id.*, at 56.

While Petitioners argued that the City had a policy of detainee mistreatment, established through the DPD police chief's instruction to install two signs that promoted "vigilante-style policing" and the mistreatment of detainees, they identified no evidence that Garza suffered any injury from officers' *vigilante-style actions*, such as might arise in a Fourteenth Amendment excessive force context. *Cf. Kingsley v. Hendrickson*, 135 S. Ct. 2466, 192

L. Ed. 2d 416 (2015) (considering requirements for pretrial detainee's Fourteenth Amendment § 1983 excessive force claim). Petitioners did not complain of, and there was no evidence of, any use of force or active hostility towards Garza. Petitioners did not identify evidence that pro-vigilante signs caused *any officials to act as vigilantes*.

To the contrary, Petitioners did not complain of or identify any alleged use of force or mistreatment by any City official. Pet. App. 72. Petitioners identified "no concrete causal relationship between [the signs] and Decedent's death. … [Their] suggestion that these signs indicate a general mistreatment of detainees is … insufficient for failure to specify the exact type of mistreatment supposedly behind Decedent's death. *Id.*, at 71-72. "If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have *authorized* the use of constitutionally excessive force is quite beside the point." *City of L.A. v. Heller*, 475 U.S. 796, 799, 106 S. Ct. 1571, 1573, 89 L. Ed. 2d 806 (1986) (*per curiam*) (emphasis in original).

CONCLUSION

Petitioners' characterization of DPD police chief De Leon's instruction to install two signs as a custom or policy of the City to promote "vigilante-style" policing, without evidence of such an intent or deliberate indifference to Garza's Fourteenth Amendment rights in enacting such a policy, and without evidence that such a policy was the moving force of injuries caused by "vigilante-style" actions of DPD officials, could not establish liability of the City under § 1983 for Garza's suicide. For the foregoing reasons, Respondent respectfully disagrees with the premises contained within Petitioner's petition requesting this Court's review.

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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