

**In The
Supreme Court of the United States**

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JOSE LUIS GARZA, individually and as Representative of
the Estate of Jose Luis Garza, Jr., Deceased; VERONICA
GARZA, individually and as Representative of the Estate
of Jose Luis Garza, Jr., Deceased; CYNTHIA LOPEZ
as Next Friend of J.R.G., Minor Son,

Petitioners,

v.

CITY OF DONNA,

Respondent.

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**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

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**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

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This is a §1983 case arising out of the death-by-suicide of Jose Luis Garza, Jr. (“Decedent”), who hung himself on February 19, 2016 while in the custody of the police department of the Respondent City of Donna, Texas (“Respondent”). There is no real question in this case that – at every stage of his confinement – Respondent’s officers were deliberately indifferent to Decedent’s serious medical needs, including even after Decedent’s suicide attempt was discovered.

Instead, the primary dispute here lies in connecting such rank & file misbehavior to the officially-adopted policies of Respondent. However ghastly, the unique “twist” in this case lies in the fact that at the very moment Decedent was attempting to hang himself in his unmonitored cell, the Jailers charged with his safekeeping were busy preparing signs purchased and ordered to be mounted in the Jail by Respondent’s final policymaker, its chief of police (“Signs”).

The first such Sign read “Welcome To Donna Hilton,” which Petitioners (and the investigating Texas Ranger) interpreted as a taunting reference to the infamous Vietnam War-era prisoner of war camp, the “Hanoi Hilton,” which term has become synonymous with prisoner abuse. The second Sign bore the stylized skull of the fictional Marvel Comics character, the Punisher, who has not only become synonymous with bloodthirsty vigilantism, but whose symbol has been increasingly adopted – officially or unofficially – by American police departments in recent months, thereby touching off enormous controversy.

Both before the District Court and the Fifth Circuit, and within the summary judgment context, Petitioners extensively argued that a fact issue existed as to whether such Signs constituted official policy encouraging precisely the type of detainee mistreatment as was inflicted upon Decedent. Both courts, however, essentially refused to squarely address the consequences of a police department officially adopting signage openly endorsing (for summary judgment purposes) the torturous practices of the Hanoi Hilton, and the Punisher's murderous vigilantism. The Fifth Circuit, in particular – on no articulated basis whatsoever – unilaterally pronounced the import of such Signs to be too “inexact” or “nebulous” to be a moving force behind Decedent's mistreatment.

As amply demonstrated by Petitioners' evidentiary showing set out below, however, there is nothing “inexact” or “nebulous” about the meaning of the Signs adopted by Respondent, nor about the uncontradicted testimony of Petitioners' expert, who stated that such Signs constituted Respondent's “clear approval of the mistreatment of those incarcerated.”

As stated in Petitioners' Petition For A Writ Of Certiorari, this case deserves this Court's full attention not because of the otherwise mundane §1983 dispute contained herein, but because of the very dire issues arising from permitting American police departments to openly endorse – without consequence – the unconstitutional mistreatment of the detainees they are charged with safeguarding.



ARGUMENT

I. Non-movant Petitioners Presented Ample Evidence That Signs Directly Promoted Mistreatment Of Detainees Such As Decedent

At pages 2, 5 and 13-14 of its Brief In Opposition, Respondent repeatedly pushes the falsehood that Petitioners – although the non-movants here – somehow failed to present evidence that the “Punisher” and “Donna Hilton” Signs ordered posted in the Jail by its final policymaker encouraged the mistreatment of detainees of such as Decedent. In response to this falsehood, Petitioners have set out below specific cites to the key evidence set out in their summary judgment response filed in the District Court (“SJ Response”), and their Brief For Appellants filed with the Fifth Circuit (“Appellants’ Brief”).

In their SJ Response, the non-movant, Petitioners extensively laid out the long and sordid history of the interrelationship between Punisher imagery and American police brutality. SJ Response at pp. 39-45, 83-89. Likewise, Petitioners’ SJ Response also thoroughly explored the wide historical resonance of the specific phrase “Welcome To The Hanoi Hilton,” as well how “Hanoi Hilton” entered popular culture as a shorthand reference for the torture and abuse of prisoners, including inducing suicide attempts. SJ Response at pp. 45-49, 83-85, 89-93.

Petitioners’ SJ Response also introduced evidence showing that the Texas Ranger investigating Decedent’s death – upon encountering the Jail’s “Welcome

To Donna Hilton” Sign – immediately interpreted it as a reference to the infamous Hanoi Hilton, and expressly informed the City’s police chief that “***this is going to look – it’s going to look bad as far as the sign goes.***” SJ Response at p. 92.

After establishing the respective meanings of such Signs as endorsing detainee mistreatment, Petitioners’ SJ Response then went on to introduce uncontradicted evidence, from their expert Donald L. Leach, regarding the link between such Signs and Decedent’s mistreatment:

What is especially troubling is that the placement of the signage occurred at the direction of the highest level of the agency, Chief Ruben De Leon. This indicates that the culture of oppression emanates from the highest level of this public service agency. It is forgivable, though not tolerated (and definitely sanctioned) when line staff put up such signage. The administrative sanctioning reflected by the placement of the signs indicates an administrative sanctioning of the oppression of those incarcerated in the jail. . . . This is not some harmless prank but clear approval of the mistreatment of those incarcerated.

SJ Response at p. 84. All such arguments and evidence were likewise put before the Fifth Circuit, via Petitioners’ Appellants’ Brief at pp. 17-18, 24-26.

Petitioners having thus satisfied their own evidentiary burden, this Court's review of Respondent's Brief In Opposition will find no countervailing suggestion of any possible circumstances whereunder Signs positively referencing either the Punisher or the Hanoi Hilton could be appropriately posted in a jail, under any circumstances. Tellingly, Respondent's Brief likewise fails to supply any caselaw supporting its claim, at page 9 thereof, that a sign somehow cannot constitute evidence of a municipal "policy" for §1983 purposes.

II. Petitioners Have Not Pled, Nor Does §1983 Require, That Respondent's Policy Specifically Encourages "Active" Forms Of Detainee Mistreatment

At the top of page 2 of its Brief In Opposition, Respondent falsely argues that – by alleging that the Signs posted by the City constituted official approval of "vigilante-style" mistreatment of Jail detainees – Petitioners somehow became obligated to supply evidence showing that the City's police officers *actively* mistreated Decedent (preferably, it seems, in the form of a full-on billyclub thrashing), instead of repeatedly ignoring his serious medical needs. See also pages 16-17 of Respondent's Brief, where it again claims that Petitioners failed to identify evidence indicating that the City's officers engaged in "use of force or active hostility" toward Decedent.

Given that Respondent's own Brief acknowledges at page 7 that Petitioners' §1983 claim is unquestionably governed by a "deliberate indifference" standard, which addresses both "acts and omissions," it is wholly unclear upon what source Respondent grounds its assertion that Petitioners must demonstrate that the Signs encouraged the City's officers to *actively and intentionally* mistreat Decedent.

At pages 2-3 of its Opinion, the Fifth Circuit itself acknowledged that 1) the arresting officer took "no particular mental-health precautions" when jailing Decedent, despite being warned by Decedent's mother that she "feared for his life"; 2) the Jail's communications officer admittedly breached her duty to monitor Decedent in his cell; 3) a fact issue exists as to whether the Jailers checked on Decedent shortly before his suicide, when they heard him "banging on his cell door and making other noise trying to get their attention"; and 4) after Decedent was found hanging, the City's police officers refused to answer the responding EMT's "questions about what happened to" Decedent, thereby impeding his treatment. Appx. 2-3.

Petitioners would also note that after Decedent was cut down from his noose, one of his Jailers – instead of administering CPR – is caught on camera, beside the Punisher Sign, simply standing over Decedent and prodding him with his boot, exactly in the manner of a dead dog in the road. Exhibit A-19 of SJ Response, and Appellants' Brief at pp. 46-47.

Given that 1) the essence of vigilantism is the summary administration of punishment without due process of law, and 2) in the “medical needs” context, the withholding of needed treatment can be every bit as punishing as actively administering a beating, it seems clear that where officially-sanctioned Signs advocate mistreatment of detainees, it is wholly irrelevant whether such mistreatment manifests itself as either an act or an omission.

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CONCLUSION

For the foregoing reasons, as well as those contained in the Petition for Certiorari, the petition should be granted.

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