

No. _____

In the

Supreme Court of the United States

JOHN DOE 1 ON BEHALF OF THEMSELVES
AND A CLASS OF ALL OTHER SIMILARLY
SITUATED JOHN AND OR JANE DOE
EMPLOYEES OF HARRIS COUNTY;
JOHN DOE 2, et al.,

Petitioners,

v.

HARRIS COUNTY, TEXAS; LINA HIDALGO,
COUNTY JUDGE, et al.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The state-created danger doctrine allows constitutional claims against government officials as first shown in *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989). Most circuits have recognized the claim as a substantive due process right under the Fourteenth Amendment but not all agree on the standards. The Fifth Circuit stands alone as the only circuit to not recognize the state-created danger doctrine. The circuits have become sharply divided since *DeShaney* and there stands a tacit imbalance of liability.

The Due Process clause of the Fourteenth Amendment prevents the government from depriving persons of life, liberty, or property without due process of law. U.S. Const. amend. XIV. Harris County Sheriff's Office employees are not at-will employees but are a civil service protected class. Employees also have protections under the law, such as qualified immunity, but would lose such protections for working below minimum jail standards mandated by law. Employees are prevented from adequately performing their essential job duties when the government purposefully underfunds and fails minimum safety standards.

The questions presented are:

1. Can the public employees of a county jail join as a class to sue their employing county under 42 U.S.C. 1983 in order to force compliance, through injunctive and declaratory relief, with state

mandated safety guidelines that the county contentiously fails to meet thereby putting the employees and inmates of the jail at a heightened and extreme risk of harm?

2. Can government employees with a property interest in their employment seek protection from government officials' intentional conduct of refusing to properly provide adequate funding for the county jail to meet minimum jail standards?

PARTIES TO THE PROCEEDINGS BELOW

The Petitioners in the case are the individual John and Jane Does, jail employees, of the Harris County Sheriff's Office who are the Appellants in the Fifth Circuit below.

The Respondents are Harris County by and through the individual members comprising Commissioners Court in their official capacity, and the elected Harris County Sheriff in his official capacity, which were the Appellees in the Fifth Circuit below.

RELATED PROCEEDINGS

John Doe 1, et al. v. Harris County, Texas; et al. (S.D. Tex.), No. H-21-03036 (judgment entered November 17, 2022).

John Doe 1, on behalf of themselves and a Class of all other similarly situated John and or Jane Doe employees of Harris County; John Doe 2, et al. v. Harris County, Texas; Lina Hidalgo, County Judge; et al. (5th Cir.), No. 22-20652 (judgment entered December 5, 2023).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners seek a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit that is unreported adopting the memorandum rulings from the district court.

OPINIONS BELOW

The opinion of the court of appeals, App. 1a, is unreported. The district court's memorandums and orders 3a and 22a are also unreported.

JURISDICTION

The judgment of the Court of Appeal was entered on December 5, 2023. This petition is timely filed on April 3, 2024. Petitioners invoke this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth and Fifth Amendments to the Constitution provide for the basis of the claims being asserted by Petitioners as provided for by 42 U.S.C. 1983.

42 U.S.C. 1983 "state-created danger doctrine" as described in *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989). The Fourteenth Amendment of the United States Constitution "due process of law" clause. The Fifth Amendment of the United States Constitution "takings clause"

regarding loss of property benefits.

INTRODUCTION

This case presents an opportunity to resolve continuing and intrinsic circuit conflicts with the 14th Amendment of the United States Constitution and the state-created danger doctrine and for this Court to articulate a test for the application of the state-created danger doctrine. This will help resolve the hodgepodge of varying tests and standards across the circuits that developed in the time since *DeShaney*. Conduct by the state or state actors, in some circuit, would be found liable under the state-created danger doctrine, yet in other circuits such conduct would not create liability under their test for state-created danger.

This case is about whether or not Harris County, home of the fourth largest city in the Country, must fund its county jail to meet the minimal standards for safety set by Texas law.¹ The Harris County jail regularly houses over 9,000 pre-conviction inmates and has a twenty-year history of failing set jail standards that put the employees and inmates at risk. The Respondents, Harris County Commissioners, intentionally underfund and fail to adequately support the jail as required under state and federal law to maintain minimum jail standards. The Respondents intentionally do not provide for adequate personnel, equipment, and medical support

¹ Texas Minimum Jail Standards are codified in the Tex. Admin. Code Title 37 Part 9 (§§ 251 – 301), Tex. Loc. Gov't Code § 351, and Tex. Gov't Code § 511.

to ensure that the minimum jail standards are met. Harris County has more than adequate financial resources to provide for the mandated and statutorily necessary minimum personnel and equipment to provide for a safe environment for both the employees and inmate. The Commissioners intentionally divert funds to other discretionary projects that are not essential to minimum jail standards and are not mandated by law.

Since 2018, Harris County has received over fifteen notices of noncompliance from the Texas Jail Commission. Petitioners are not asking for more funding for the sake of more funding or as part of an employment dispute, but rather, Petitioners are asking for the jail to be properly funded and maintained to the point the Harris County jail meets Texas minimum jail standards. Petitioners are not asking for improved work conditions; rather Petitioners' contention is that jail conditions will naturally improve when the jail is funded to the minimum jail standards and that poor jail conditions are a direct symptom of the intentional underfunding of the jail. There is a direct relationship between funding of the jail and the conditions of the jail.

While working in the jail environment is inherently dangerous, the inherent dangers of the job are mitigated through the compliance with the mandatory jail safety standards described under Texas law. The fact that the jail is inherently dangerous should not lessen the shocking nature of Respondents' behavior and their intentional indifference to the jail's horrid working conditions.

The inherently dangerous nature of the jail should not be used as a legal sword by government officials to prevent the law from ensuring the jails are properly funded. In this case, Harris County is acting with deliberate indifference that shocks the conscious, satisfying both the Due Process claim and the state-created danger doctrine.

Separating the acts of the individual inmates from the acts of Harris County is the key to this case. The violence in the jail cannot be simply dismissed as the choices of the third-party inmates. Behind these acts are the actions of Harris County to underfund and mismanage the jail. For example, an employee is beaten by an inmate so severely he is hospitalized for over a week and the only reason the inmate stopped the beating was because his arms got tired. Is the act of the inmate the County's fault? No, not taken by itself. However, what also happened is that the employee was ordered into a pod of maximum-security inmates that were known to be assaultive by himself because the shift was so short-handed that there was no one available for back up. This is against safety protocols and training. The reason why there is no back up? The minimum staffing standards are not being met due to systematic underfunding. Now the situation is much more attributable to the acts of Harris County. On top of this, it is not the inmate's act that caused the door to the pod to fail so that once the beating started, the other employees who responded could not open the door to save their coworker, another violation of set jail standards. That same door had also been written up for maintenance on several other occasions for the exact

same failure, but nothing had been done because of lack of funding to repair the safety door. If Texas minimum jail standards were met, the inmate may well have still lashed out at staff, but the employee would not have been harmed as severely, there would have been someone else in the pod to back up the jailer. There would have been more back up from other parts of the jail to respond through the working doors in minutes. The harmed employee would have had a small injury from one or two strikes from the inmate, and not been sent to the hospital after several dozen strikes. That is the difference between an inmate's personal action and Harris County creating dangerous working conditions that inflates the inmate's actions. The complaint is not that the inmates act violently in the jail. The complaint is that because of the acts of Harris County to run the jail below safety standards set by the state, the employees are subjected to extremely elevated levels of violence beyond what is constitutionally permissible in a jail. This is just one of dozens of examples of violence that occurred against Harris County jail staff in 2020 and 2021 as outlined in the Petitioners' action.

Due to the highly political nature of jail funding, and the constitutionally mandated and required minimum standards of the jail, this Court should grant certiorari to standardize the state-created danger doctrine and allow for state employees to hold government officials in compliance with set ministerial duties in order to force compliance with mandated safety guidelines implemented for the safety of the employees and inmates.

STATEMENT

This case arises out of an employee led petition filed in the Southern District of Texas – Houston Division alleging that their employer, Harris County, was creating an inherently dangerous workplace by not taking action to meet Texas state mandated minimum jail standards at the Harris County jail. *See* 37 Tex. Admin. Code §§ 251 – 301; and Tex. Loc. Gov’t Code § 351. Minimum jail standards are set in Texas law for the protection of the inmates housed in the jail as well as the workers and visitors to the jail. *Id.* By repeatedly not meeting jail standards, Harris County has created a needless and inherently dangerous environment for the employees of the Harris County jail. The employees as a class seek only injunctive and declaratory relief and filed under the 42 U.S.C. 1983 state-created danger doctrine to force the government officials to perform their ministerial duties to maintain minimum jail standards and prevent avoidable harms to the employees.

Petitioners filed their original petition in the Southern District of Texas seeking to enforce Texas jail safety standards through the state-created danger doctrine and other claims on September 20, 2021. Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim on October 11, 2021. Plaintiff timely filed a response on December 3, 2021. Additionally, Respondents filed a motion to stay discovery on February 2, 2022, which was granted on March 2, 2022, after an oral hearing. To date, no discovery has occurred in this case. An unpublished memorandum and order conditionally

granting the October 11, 2021, motion to dismiss was issued on April 22, 2022. In an over thirty-page memorandum, the district judge outlined the horrific conditions of the Harris County jail but concluded that, as employees who have the choice to quit, they do not have a special relationship with the Respondents to effectuate a state-created danger claim in the Fifth Circuit.

In response to the conditional order, Petitioners filed their First Amended Complaint on June 20, 2022, in order to clarify their position that civil service protected jailers and staff should have the ability to seek relief under the state-created danger doctrine in the Fifth Circuit. Respondents filed a second motion to dismiss under rule 12(b)6 on July 15, 2022. Petitioners timely filed a response on Sept 12, 2022, seeking to defend their claims. The district court entered an unpublished Memorandum and Order on November 17, 2022, dismissing Petitioners federal claims.

Petitioners filed notice of appeal on December 16, 2022, in order to seek clarification of the applicability of the state-created danger doctrine and other due process rights on civil service protected jailers who are suffering violence due to the systematic and intentional underfunding of the jail. Petitioners filed their appeal into the Fifth Circuit Court of Appeals on April 24, 2023. Respondents filed a response on June 23, 2023. Petitioners filed a reply brief on July 13, 2023. The Fifth Circuit originally granted oral argument on August 22, 2023, which was ultimately rescheduled to November 6, 2023. On October 30, 2023, the parties received notice canceling

oral argument followed by the Fifth Circuit entering their unpublished opinion upholding the district courts June 20, 2022, memorandum and order. Petitioners now seek the writ of certiorari to settle the circuit split regarding the state-created danger doctrine.

This petition timely followed.

REASONS FOR GRANTING THE PETITION

This case is about ensuring there is a mechanism under the law to guarantee that Texas counties adequately fund jails to the minimum safety standards as required under Texas law. There are three points that support the Petitioners' conclusion. First, the circumstances of this case are different than other cases that have been presented and the 42 U.S.C. 1983 state-created danger doctrine should be applied. Second, the Fourteenth Amendment and 42 U.S.C. 1983 support Petitioners' substantive due process claim for relief. Lastly, public policy supports judicial intervention and minimum jail standards should be enforced.

The facts in this case are very similar to the facts presented in *Alberti v. Klevenhagen*, where Harris County was found to be constitutionally noncompliant in the running of its jails. *Alberti v. Klevenhagen*, 46 F.3d 1347 (5th Cir. 1995). That litigation lasted decades with Harris County failing time and again to meet state and constitutional standards. Once Harris County met standards, Federal oversight ended, but it was not long before

the contravention of constitutional standards started again. The employees of the Harris County jail and the inmates have suffered for almost thirty years while Harris County government officials intentionally refuse to adequately fund and staff the jail in order to meet minimally set jail standards.

One of the key disputes at the district court and at the Fifth Circuit was whether or not the Petitioners are “known” or not. The Petitioners’ key contention is that they are known, because they are a discrete number of individuals, only those employed at the jail. It is a definable and distinct group. The underfunding of jail has created problems so pervasive that all employed suffer harm while working in the jail when the jail is being run below state mandated safety standards.

Another key point of contention is if the funding of the jail is too far down the “causal chain” as stated by the district court. Petitioners have never shied away from the fact that the inmates are dangerous and that there is an inherent danger in working at the jail. Rather, it has always been Petitioners’ contention that the minimum jail standards, as codified in Texas law, were designed to create a threshold for the risk. Falling below the minimum jail safety standards creates unnecessary risk. This is analogous to safety standards on construction sites. The safety standards create a known safety threshold that workers can rely upon but it does not take away all risk.

Further, in following Respondents’ arguments

and the district courts' memorandum and order to their logical end, Harris County is free to fund the jail at zero dollars. It would be an entirely discretionary act. At zero dollars, there would be zero employees and the inmates would be housed in a building with no electricity, no air conditioning, no supervision, and no safety practices. This would clearly continue to violate Texas jail standards, the inmates' Eighth Amendment rights, and would rightfully be viewed as cruel and unusual punishment. Therefore, it is constitutionally and statutorily mandatory that the jails be properly and minimally funded, giving rise to the Respondents' ministerial duty to properly fund the jail to meet jail standards in order to provide for statutory protects for employees and inmates.

If the jails must be funded, then the argument becomes to what level and who can enforce that funding. In *Alberti*, the Fifth Circuit essentially agreed that inmates can enforce jail standards to ensure that jail conditions are humane. *See Alberti*, 46 F.3d at 1347. Now, Petitioners, the workers of the jail, are asking the courts to do the same, ensure that the jail conditions are humane for their benefit as well as the inmates. What makes the workers of jails fundamentally different than any other worker, is that Texas statutes and the Eighth Amendment intrinsically requires someone to work the jail in order to provide the humane conditions promised by the Constitution and state law. If society wishes to confine individuals both pre and post-conviction, then the Constitution requires someone to work the confinement. This is what is difficult to accept in this case, the reality that employment at the jail is

mandatory in our society. While employment in the jail may be voluntary to an individual, it is mandatory for someone to be there. That is the uniqueness of this action, the employees as a class wish to enforce jail standards under the knowledge that it is not about what has happened to any one individual but what happens to anyone who wear the uniform and works in the notoriously dangerous Harris County jail.

Therefore, Petitioners respectfully disagree with the district court's assertion that this is an employment case, when this is really an enforcement action through multiple branches of 42 U.S.C. 1983.

I. THE NECESSITY OF THE STATE-CREATED DANGER DOCTRINE TO RESOLVE POLITICAL UNDER-FUNDING OF THE JAIL AND TO BRING THE JAIL BACK TO CONSTITUTIONAL STANDARDS.

Each federal appellate court has a different interpretation of the state-created danger doctrine that was first recognized in *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989) (holding that the state had no duty to act affirmatively to protect its citizens in a case where a boy was killed by his father who was known to the child welfare authorities as an abuser). The First, Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have outright accepted the "state-created danger" theory as a valid avenue of protecting a citizen's substantive due process rights, however each has developed a unique test for

identifying such a claim. There is a split in Circuits on what is required to form a special relationship between the private individual and the state actor and how the state actor creates the danger to the individual. *See* Chemerinsky, Erwin, “The State-Created Danger Doctrine,” 23 *Touro L. Rev.* 1 (2007) (discussion of the state-created danger doctrine). The Fifth Circuit has steadfastly declined to recognize a state-created danger doctrine of 42 U.S.C. 1983 liability. *See McClendon v. City of Columbia*, 305 F.3d 314, 326, n. 8 (5th Cir. 2002); *Beltran v. City of El Paso*, 367 F.3d 299 (5th Cir. 2004); *Lester v. City of Coll. Station*, 103 F. App’x 814, 815 (5th Cir. 2004); *Bustos v. Martini Club Inc.*, 599 F.3d 458, 466 (5th Cir. 2010); and *Cook v. Hopkins*, 795 F.App’x. 906 (5th Cir. 2019). In this case, the employees are petitioning that due to the deliberate actions of Harris County, state mandated minimum jail standards are not being met which puts the employees in extreme danger. There is a specific causal link between the actions of Harris County and the danger experienced by the employees of the Harris County jail as a class.

Conduct found to support the state-created danger doctrine, under substantive due process, is when the conduct of the government shocks the conscience. *DeShaney* 489 U.S. at 199-200. Conscience shocking behavior has been described as conduct that “violates the decencies of civilized conduct;” conduct that is “so brutal and offensive that it [does] not comport with traditional ideas of fair play and decency;” conduct that “interferes with rights implicit in the concept of ordered liberty;” and

conduct that “is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Doe v. Covington County School Board*, 675 F.3d 849, 867-868 (5th Cir. 2012); *quoting Cnty of Sacramento v. Lewis*, 523 U.S. 833, 846–47 & n. 8 (1998). Many cases that have applied the standard have involved the use of extreme force by police officers or other state actors. *See Checki v. Webb*, 785 F.2d 534, 535–36, 538 (5th Cir. 1986) (state trooper intentionally used his vehicle to terrorize motorist and passenger); *Shillingford v. Holmes*, 634 F.2d 263, 264–65 (5th Cir. 1981) (police officer intentionally struck tourist because he was photographing the police officer and fellow officers apprehending a boy on the street during a Mardi Gras parade), abrogated on other grounds by *Valencia v. Wiggins*, 981 F.2d 1440 (5th Cir. 1993); *see also Neal ex rel. Neal v. Fulton Cnty. Bd. of Educ.*, 229 F.3d 1069, 1071, 1075–76 (11th Cir. 2000) (student blinded in one eye when a coach intentionally hit him in the head with a metal weight); *Rogers v. City of Little Rock, Ark.*, 152 F.3d 790, 797 (8th Cir. 1998) (rape of a woman at her house by a police officer after he stopped her for a traffic violation); *Hemphill v. Schott*, 141 F.3d 412, 418–19 (2d Cir. 1998) (police officer provided assistance to a third party in shooting the plaintiff). As one court has summarized, “[t]he burden to show state conduct that shocks the conscience is extremely high, requiring stunning evidence of arbitrariness and caprice that extends beyond mere violations of state law, even violations resulting from bad faith to something more egregious and more extreme.” *J.R. v. Gloria*, 593 F.3d 73, 80 (1st Cir. 2010) (citation and internal quotation marks omitted).

In order to bring the jail back into constitutional standards, the state-created danger doctrine should be applied to address the dangers of the Harris County jail that are solely created by Harris County. It is important to identify the exact issues that the Petitioners are complaining about. It is not the violence of the individual inmates or that Harris County has put the employees into contact with the inmates. As the Fifth Circuit has noted in *de Jesus Benavides v. Santos*, 883 F.2d 385 (5th Cir. 1989), inmate violence is a consequence of working in the jail. In this case, what is being complained about is that the Harris County jail is in a permanent state of failing the Texas jail standards, which is causing a deprivation of the employees' constitutional rights. It is this state of failure that Petitioners are looking to remedy.

American Manufacturers Mutual Insurance Company v. Sullivan, 526 U.S. 40 (1999), explained that “§ 1983 excludes from its reach ‘merely private conduct, no matter how discriminatory or wrongful.’” *Id.* at 50. It is important to separate between the private conduct of an individual inmate versus Harris County's action of underfunding the jail, thereby directly causing the harms and dangers to the employees. In *Scanlan v. Tex. A&M Univ.*, 343 F.3d 533 (5th Cir. 2003), the Fifth Circuit separated this requirement into two different elements to analyze the sufficiency of a § 1983 claim.

First, the Respondents must use their authority to create a dangerous environment for the plaintiffs. *Id.* at 537-538. Here, the Texas jail

standards create a minimum standard that Harris County has a ministerial duty to meet and uphold. Tex. Loc. Gov't Code § 351.001 states that the Commissioners Court of a county shall provide safe and suitable jails for the county. Tex. Loc. Gov't Code § 351.002 states that each county jail must comply with the minimum jail standards. As outlined in Petitioners' Original Petition at district court, Chapter 351 of the Tex. Loc. Gov't Code outlines numerous requirements Harris County must follow that are designed for the safety of the employees, visitors, and inmates of the jail. Harris County is the only one with the authority to run the jail and it is their management that has directly led to the dangerous environment in the jail that shocks the conscious. But for the actions of Harris County of continuous and blatant noncompliance with state jail standards, thousands of assaults on staff and dozens of inmate deaths may have been avoided. Since the filing of this action in district court, sixty inmates have died in the Harris County jail, making it one of the most dangerous county jails in the country.

Second, the defendants must act with deliberate indifference to the plight of the plaintiffs. *Scanlan*, 343 F.3d at 538. The Petitioners have shown that Harris County had actual knowledge of the jail conditions. Harris County has received over fifteen letters from the Texas Jail Commission since 2018 outlining deficiencies in the jail that directly affect the safety of the employees and the inmates, to include citations for understaffing below minimum standards. The Petitioners have also shown how Harris County is aware of the hundreds of assaults

that have occurred against the employees in the jail in 2021 alone. It is the Petitioners' position that deliberate indifference can be inferred by the sheer knowledge of harm that the employees have been subject to and the proof of the continued harm that the Harris County Commissioners Court has not corrected. *See United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947) (articulating the Learned Hand Formula, which holds that an actor is negligent if the burden of taking precautionary measures is outweighed by the probability of a loss multiplied by the magnitude of such a loss. The burden of remedial measures must be extremely slight when compared to the likelihood and magnitude of the resulting harm.)

Therefore, Petitioners' request that this Court resolve the circuit split in favor of the state-created danger doctrine being applied across all of the circuits to show that when the government intentionally underfunds the jail and creates inhumane conditions in the jail, there is a legal check to bring the jail back into compliance.

II. IN THE ALTERNATIVE, THE PETITIONERS' SUBSTANTIVE DUE PROCESS RIGHTS WERE VIOLATED.

Under 42 U.S.C. 1983, Petitioners have also shown that Harris County violated their substantive due process rights by intentionally underfunding the jail. Essentially, Harris County is depriving Petitioners of their qualified immunity while denying

various constitutionally protected interests of the Petitioners. The state-created danger doctrine and substantive due process are two parallel theories that both lead to the same result, that Harris County must adequately fund the jail.

The government must have a legitimate government interest in the deprivation of constitutional rights to avoid 42 U.S.C. 1983 liability. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). As a historical matter, the Due Process Clause was “intended to secure the individual from the arbitrary exercise of the powers of government.” *Hurtado v. California*, 110 U.S. 516, 527 (1884) (*quoting Bank of Columbia v. Okely*, 17 U.S. (4 Wheat.) 235, 244 (1819)); *see also* Edward S. Corwin, “The Doctrine of Due Process of Law Before the Civil War,” 24 Harv. L. Rev. 366, 368 (1911). The Due Process Clause was meant “to protect the people from the State, not to ensure that the State protected them from each other” and “was intended to prevent government ‘from abusing its power, or employing it as an instrument of oppression.’” *DeShaney*, 489 U.S. at 196 (*quoting Davidson v. Cannon, supra*, 474 U.S. 344, 348 (1986)).

Harris County does not have a legitimate governmental objective in underfunding the jail thereby forcing the jail to fail standards. Harris County argues that the funding of the jail is a purely discretionary act. This argument is misplaced in two ways. First, it ignores that its discretion is limited by standards set forth in law and regulated by the Texas Jail Commission. These laws, as well as the

constitutional duty that Harris County has to properly run the jail, create a ministerial duty. Second, just because government officials act, does not inherently make the act a legitimate government action if that action is shocking to the conscience. *See Cnty. of Sacramento*, 523 U.S. at 833.

The duty to properly fund the county jail to meet minimum Texas jail standards stems from law not from the discretion of Harris County. There is minimal funding necessary to meet such standards. The power of a court to compel official action by a mandatory order was limited to the enforcement of nondiscretionary, plainly defined, and purely ministerial duties. *See Decatur v. Paulding*, 39 U.S. (1 Pet.) 496, 514-17 (1840); *Work v. Rives*, 267 U.S. 175, 177 (1925); *Wilbur v. United States*, 281 U.S. 206, 218 (1930). Therefore, under the substantive due process clause, Petitioners seek the enforcement of the minimum funding of the Harris County jails by the governing officials.

III. PUBLIC POLICY WARRANTS THAT THE COURTS ENFORCE LEGAL PROTECTIONS TO ENSURE THE ADEQUATE FUNDING OF JAILS ACROSS THE COUNTRY.

Judicial intervention in this case is needed for the safety of the inmates, the employees, and the public. Without the courts to enforce the minimal funding of the jail, politicians will continue to underfund jails across the country creating an unnecessary public harm.

One of the points that is lost is that Respondents are creating a system where no individual should actually work in the jail, but yet they are constitutionally required by law to staff someone in those positions. Harris County cannot keep employees, yet they refuse to take the necessary steps to meet jail standards. Harris County has created working conditions so terrible that their net gain in hiring for 2022 was in the negative. The employees only seek this injunctive relief action to force Harris County government officials to do their non-discretionary ministerial duty to properly fund the Harris County jail to comply with minimum jail standards. The intentional underfunding of the jail by government officials creates a cascading problem of fewer qualified employees working in an increasingly dangerous environment resulting in more employee, guest, and inmate casualties. The inmates in *Alberti v. Klevenhagen* complained on these exact issues and now the employees are making the same complaints. *See Alberti*, 46 F.3d at 1347. Harris County government officials should be forced to comply with the set minimum jail standards.

While working in the jail environment is inherently dangerous, the inherent dangers of the job are mitigated through mandatory safety standards, such as the inmate to jailer ratio. The fact that the jail is inherently dangerous should not lessen the shocking nature of Respondents' behavior and indifference to the inhumane jail conditions that persist throughout the Harris County jail. Public policy does not support the continuing deterioration of

the Harris County jail and the inhumane conditions that persist. The workers of the jail should be granted a legal means to point out these deficiencies and have them rectified for the good of the public.

The Harris County jail must exist, and it must be properly funded and managed in order to reasonably protect the employees and inmates as set by law. The employees as a class should be able to force injunctive and declaratory relief against Harris County and its governing officials when Harris County though the *ultra vires* actions of its official are not abiding by the laws that are designed to protect employees as well as inmates.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

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