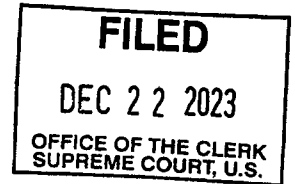


24^{No.} - 5038

ORIGINAL

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



LARRY D. FORD

PETITIONER,

V.

**MEMEMORIAL HERMANN GREATER HEIGHTS HOSPITAL
ET AL.**

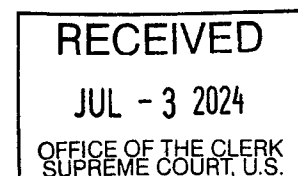
RESPONDENTS,

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

Respectfully submitted,
/s/ **Larry D. Ford**
3527 Maris Way
Humble, Texas 77338
281-636-0317

Parties To The Proceedings

Petitioner is: **Larry D. Ford, Pro Se**
Respondents are: **Memorial Hermann Greater Heights Hospital**
Memorial Hermann Hospice
Brookhollow Heights Transitional Care Center
Ibrahim Garcia-Mowatt Jr. M.D.
Carlos Reynaldo Herrera M.D.
Ana L. Leech M.D.



QUESTIONS PRESENTED

1. Whether the The Emergency Medical Treatment and Active Labor Act (EMTALA) gives rise to federal rights under § 1983?
2. Whether the Federal Nursing Home Reform Act's (FNHRA) rights against Assisted Suicide (Euthanasia), Physical and Chemical Abuse are federal rights § 1983 protects?
3. Whether the Court should overrule its numerous precedents holding that private parties may seek relief under 42 U.S.C. 1983 against persons acting under color of state law who violate certain rights that Congress has established in the Social Security Act, 42 U.S.C. 301 et seq., and other Spending Clause legislation?
4. Whether the particular provisions of the Social Security Act at issue, see 42 U.S.C. 1395i-3(c)(1)(A)(ii) and (2); 42 U.S.C. 1396r(c)(1)(A)(ii) and (2), are enforceable against publicly and privately owned hospitals and nursing homes under Section 1983?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Larry D. Ford petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, US Southern District Court of Texas.

JURISDICTION

Fifth Circuit Court: 23-20525 ; Petition for writ of mandamus; Judgment, December 11, 2023: Dismissal: See Appendix. This Court's jurisdiction is drawn from 28 U.S.C. § 1257(a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment limits a state's ability to regulate passive euthanasia (termination of medical treatment). Palliative care is protected by the Fourteenth Amendment, but the possible abuse of such care raises concerns. 42 U.S.C. § 1396r(c) (1)(A)(vi), requires nursing facilities to protect and promote the rights of each resident. Emergency Medical Treatment and Active Labor Act (EMTALA) gives rise to federal rights under § 1983. Federal Nursing Home Reform Act's (FNHRA) are rights against Assisted Suicide (Euthanasia), Physical, and Chemical Abuse. Patient Bill of Rights: H.R. 3605 – 105th Congress (1997-1998): Patients' Bill of Rights Act of 1998 protect patients both in hospitals and nursing home settings. Texas Health and Safety

Code, Section 166.45-51 states that, in Texas euthanasia is not condoned or authorized. Further, any act or omission that works toward a person's death is also illegal. 143 S.Ct. 300 (2022) Ivanka TALEVSKI, Personal Representative of the Estate of Gorgi Talevski, Deceased v. HEALTH AND HOSPITAL CORPORATION OF MARION COUNTY

REASON FOR GRANTING WRIT

The U.S. Supreme Court upholds the right of hospital patients and nursing home residents in both privately and publicly-owned facilities to file lawsuits under 42 U.S.C. §1983 for violations of rights guaranteed under the Federal Nursing Home Reform Law (FNHRA). Please See 143 S.Ct. 300 (2022) HEALTH AND HOSPITAL CORPORATION OF MARION COUNTY, et al., Petitioners, vs Ivanka TALEVSKI, Personal Representative of the Estate of Gorgi Talevski, Deceased No. 21-806. The Emergency Medical Treatment and Active Labor Act (EMTALA) was passed by the US Congress in 1986 as part of the Consolidated Omnibus Reconciliation Act (COBRA). This is also a 42 U.S. Code § 1983 federal civil rights case under the First, Fourth and Fourteenth Amendments of the United States Constitution. The Fourteenth Amendment identifies the Respondents' individual and collective, personal, malicious, and unlawful violations under color of state law of Petitioner's individual and collective rights. The

law's intent was to ensure patient access to emergency medical care and to prevent the practice of patient dumping, in which uninsured patients were transferred, solely for financial reasons, without consideration of their medical condition or stability for the transfer. And for the illicit act of EUTHANASIA, unsolicited or unwarranted. For the reasons stated above.

STATEMENT

This is a PETITION underscoring and pointing to 42 U.S. Code §1983 federal civil rights case under the First, Fourth, and Fourteenth Amendments of the United States Constitution. These Amendments show forth the Respondents' individual and collective personal, malicious, and unlawful violations under color of federal and state law. Petitioner Larry D. Ford on behalf of the wrongful death and negligent medical care of his mother Mrs.Doris Jean Ford (Deceased) files this petition in an attempt to reach the intrinsic and existential **appeal** of the UNITED STATES of AMERICA'S Supreme Court Justices.

1. On or about 7:00 PM, September 14, 2015 Doris Jean Ford was admitted to the ER of Memorial Hermann Greater Heights Hospital from Brookhollow Transitional Heights Care Center [NOW CLOSED] (Formerly Lexington Place Nursing Home).
2. Dr. Garcia who Petitioner Larry D. Ford discovered one week later was the medical

director of Brookhollow Transitional Heights Care Center. Dr. Garcia stated that the Brookhollow Transitional Heights Care Center (Nursing Home starving and dehydrating Doris Jean Ford was unacceptable). After Doris Jean Ford was stabilized at Memorial Hermann Greater Heights Hospital but not ready for discharge according to Dr. Garcia he said it was out of his hands in that Doris Jean Ford has to be discharged and returned to Brookhollow Transitional Heights Care Center where she then struggled to thrive and maintain life. She was returned to the Memorial Hermann Greater Heights Hospital's ER a few days later. (See Appendix – CHRONOLOGICAL ORDER OF ABUSIVE CARE- MRS. DORIS JEAN FORD)

3. Respondents' nursing staff and doctors, acting on behalf of Respondents, Memorial Hermann Greater Heights Hospital et al. held themselves out as competent to provide an acceptable level of care.

4. The Respondents' nursing staff and doctors negligently and carelessly performed or supervised said duty upon the patient contributing to permanent damage leading to the eventual death of the patient.

5. Mrs. Doris Jean Ford did not ambulate. She required total staff support for bed mobility, transfers from bed to wheelchair, getting around in her wheelchair, dressing, toilet use, personal hygiene, bathing, provision of food and water, and medication

management. Despite her physical limitations, she was cognitively intact and had no memory impairment.

6. While a resident at Brookhollow Transitional Care, Mrs. Doris Ford was the victim of elder abuse and neglect in three areas: 1) failure to provide care and treatment to ensure adequate hydration and nutrition. 2) Failure to protect from health and safety hazards posed by male residents who preyed on Mrs. Doris Jean Ford; and 3) wrongfully discharging Mrs. Doris Ford to return to an unsafe and uninhabitable nursing home (BROOKHOLLOW TRANSITIONAL CARE CENTER - **NOW CLOSED**) was unthinkable. The Department of Public Health investigated the circumstances regarding Mrs. Doris Jean Ford's bruises, contusions and They issued a citation for Brookhollow Transitional Care treatment of Mrs. Doris Jean Ford's uninhabitable and unsafe nursing home and hospital environment for causing emotional and physical distress requiring intervention by local police and ultimately requiring Mrs. Doris Ford to be admitted to Memorial Hermann Northwest Hospital Emergency Room. The DPH found Brookhollow and Memorial Herman Northwest Hospital violated 42 Code of Federal Regulations parts 483.15 subdivisions (c)(3)-(5) and (7). In issuing the Type A citation, the DPH further found these violations placed Mrs. Doris Jean Ford in imminent danger that death or serious harm would have resulted or a substantial probability that death or serious physical harm would result.

1. Petitioner Larry D. Ford is an adult resident citizen of Harris County, Texas and a surviving son of Doris Jean Ford, deceased. Memorial Hermann Greater Heights Hospital, Memorial Hermann Hospice and Brookhollow Heights Transitional Care Center are for profit companies, organized and existing under the laws of the State of Texas, with their principal place of business in Houston, Texas. 2. Respondents, at all times relevant herein, was conducting and doing business in Houston, Texas, where patients were received and treated at Memorial Hermann Greater Heights Hospital, Memorial Hermann Hospice and Brookhollow Heights Transitional Care Center. While caring for and treating Doris Jean Ford, the acts performed by physicians, nurses, and
6other agents and employees of Respondents were in connection with their duties at
Memorial Hermann Greater Heights Hospital, Memorial Hermann Hospice and
Brookhollow Heights Transitional Care Center and they were acting within the scope of
their employment and/or agency. Accordingly, Respondents are responsible and
vicariously liable for the negligent acts and omissions of its physicians, nurses, agents
and/or employees, as hereinafter described, under the doctrines of respondeat superior,
apparent agency, actual agency, and express agency.

3. At all times relevant herein, Brookhollow Transitional Heights Care Center was a for-profit company, organized and existing under the laws of the State of Texas, with its

principal place of business in Houston, Texas. Upon information and belief, Respondents, at all times relevant herein, were conducting and doing business in Houston, Texas, where patients were received and treated at Memorial Hermann Greater Heights Hospital & Brookhollow Transitional Heights Care Center. While caring for and treating Doris Jean Ford, the acts performed by physicians, nurses, and other agents and employees of Respondents were in connection with their duties at Memorial Hermann Greater Heights Hospital, Memorial Hermann Hospice and Brookhollow Heights Transitional Care Center and they were acting within the scope of their employment and/or agency. Accordingly, Respondents are responsible and vicariously liable for the negligent acts and omissions of its physicians, nurses, agents and/or employees, as hereinafter described, under the doctrines of respondeat superior, apparent agency, actualagency, and express agency.

4. At all times relevant herein, Respondents Memorial Hermann Greater Heights Hospital, Memorial Hermann Hospice and Brookhollow Heights Transitional Care Center are for-profit companies, organized and existing under the laws of the State of Texas, with its principal place of business in Houston, Texas. Upon information and belief, Respondents, at all times relevant herein, was conducting and doing business in Houston, Texas, where patients were received and treated at Memorial Hermann Greater

Heights Hospital, Memorial Hermann Hospice and Brookhollow Heights Transitional Care Center. While caring for and treating Doris Jean Ford, the acts performed by physicians, nurses, and other agents and employees of Respondents were in connection with their duties at Memorial Hermann Greater Heights Hospital, Memorial Hermann Hospice and Brookhollow Heights Transitional Care Center and they were acting within the scope of their employment and/or agency. Accordingly, Respondents are responsible and vicariously liable for the negligent acts and omissions of its physicians, nurses, agents and/or employees, as hereinafter described, under the doctrines of respondeat superior, apparent agency, actual agency, and express agency.

5. Upon information and belief, at all times relevant herein, Respondent Dr. Ibrahim A. Garcia Mowatt, M.D.. (hereinafter “Dr. Garcia”) was a resident of Texas and was duly licensed to practice medicine by the State of Mississippi. Dr. Garcia practiced medicine at Memorial Hermann Greater Heights Hospital, and Brookhollow Heights Transitional Care Center in Houston, Texas, where patients were received and treated. Dr. Garcia was, upon information and belief, at all relevant times an employee and/or agent of Memorial Hermann Greater Heights Hospital & Brookhollow Transitional Heights Care Center and did further independently practice medicine. (Dr. Garcia – ‘WORST DOCTOR IN HOUSTON)’SEE DOCTORS’ REVIEWS:

https://www.vitals.com/doctors/Dr_Ibrahim_Garcia-Mowatt.html Dr. Garcia:

Malpractice Lawsuit: 2007 – Settled out of Court. Three or more complaints filed - 2015-2016 – with the Texas Medical Board

6. Upon information and belief, at all times relevant herein, Respondent Dr. Carlos Reynaldo Herrera, M.D. (hereinafter “Dr. Herrera”) was a resident of Texas and was duly licensed to practice medicine by the State of Texas. Dr. Herrera practiced medicine at Memorial Hermann Heights Northwest Hospital & Brookhollow Transitional Heights Care Center in Houston, Texas, where patients were received and treated. Dr. Herrera was, upon information and belief, at all relevant times an employee and/or agent and did further independently practice medicine. Dr. Herrera documented, (1) “I never ordered morphine for Mrs. Doris Ford.” (2) “Her Blood Glucose Level is normal. I made a mistake with the KENNEDY ULCER diagnosis.”

On or about 10:30 AM January 23, 2015, Willet Williams, LVN placed an IV into the musculature of Mrs. Doris Jean Ford’s arm. The arm began to swell. The incompetence was such that Mrs. Ford’s arm began to swell very large. Mrs. Doris Ford was rushed next door to Memorial Hermann Greater Heights Hospital with a swollen are, dehydrated, malnourished, with blunt force trauma and contusions to her face and head.

7. Upon information and belief, at all times relevant herein, Respondent Dr. Ana L. Leech, M.D. (hereinafter “Dr. Leech). On or about April 13, 2018 at the order of Dr.

Leech and by the administering nurse, MORPHINE was administered until Mrs. Doris Jean Ford had neither blood pressure or pulse. She was pronounced DEAD.

8. The acts and omissions giving rise to this lawsuit all occurred in Houston, Harris County, Texas. This Court has proper jurisdiction and venue over this action and the parties hereto pursuant to 42 USC Section 1983- Civil Action for Deprivation of Rights. This lawsuit is timely filed pursuant to applicable Texas law.

9. Petitioner has complied with the provisions of Texas Code mailing written notice of claim to all Respondents giving notice of Petitioner's intention to file this lawsuit for medical negligence. The notice requirements of Texas Code have been satisfied.

10. On or about 7:00 PM, September 14, 2015 Doris Jean Ford was admitted to the ER of Memorial Hermann Greater Heights Hospital from Brookhollow Transitional Heights Care Center (Formerly Lexington Place Nursing Home).

11. For 12 hours Doris Jean Ford received insufficient pressors or fluid to increase her blood pressure. At 7:00 AM Doris Jean Ford was near death. At approximately 7:30 AM the hospital nurse said "I thought you guys were trying to let her go (Die). It was obvious she had not checked Doris Jean Ford's chart. Doris Jean Ford was then admitted to Memorial Hermann Greater Heights Hospital's ER. There were more than four more Memorial Hermann Heights Northwest Hospital ER visits per month. Memorial Hermann Greater Heights Hospital accused Brookhollow Transitional Heights

Care Center for the contusions and blunt force injuries and Brookhollow Transitional Heights Care Center accused Memorial Hermann Greater Heights Hospital for the contusions and blunt force trauma.

12. Petitioner Larry D. Ford discovered one week later that Dr. Garcia was the medical director of Brookhollow Transitional Heights Care Center. Dr. Garcia stated that the Brookhollow Transitional Heights Care Center (Nursing Home starving and dehydrating Doris Jean Ford was unacceptable). After Doris Jean Ford was stabilized at Memorial Hermann Greater Heights Hospital but not ready for discharge according to Dr. Garcia he said it was out of his hands in that Doris Jean Ford has to be discharged and returned to Brookhollow Transitional Heights Care Center where she then struggled to thrive and maintain life. She was returned to the Memorial Hermann Greater Heights Hospital's ER a few days later.

13. Respondents' nursing staff and doctors, acting on behalf of Respondents, Memorial Hermann Greater Heights Hospital, held themselves out as competent to provide an acceptable level of care.

14. The Respondents' nursing staff and doctors negligently and carelessly performed or supervised said duty upon the patient contributing to permanent damage leading to the eventual death of the patient.

15. Petitioner, Larry D. Ford hereby sues for any and all actual damages allowed by law for all past damages contributing to the death of Doris Jean Ford.

16. Petitioner, hereby sues for any and all actual damages allowed by law.

17. Petitioner further seeks recovery for pre-judgement interests, costs of court and post-judgement interest.

18. Petitioner hereby demands a trial by jury and tenders the appropriate affidavit.

(a) **WHEN A DEMAND IS MADE.** When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless: (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial. (a) **Right Preserved.** The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) **Demand.** On any issue triable of right by a jury, a party may demand a jury trial by: (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and (2) filing the demand in accordance with Rule 5(d).

(c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time

ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury. Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated (2019), Looking at a sample of high-risk emergency room claims that hospitals submitted to CMS, the OIG estimated that in 2016, one in five high-risk hospital emergency room Medicare claims for treatment were the result of potential abuse or neglect in nursing facilities. Id. at 1, 8. It also found that facilities failed to report more than 84% of these incidents to the state survey agencies although the law requires such reports. Id. at 12. It further found that CMS had unclear guidelines that contributed to nursing facilities failing to report abuse. Id. So regulatory enforcement alone cannot hold government-run facilities accountable for violating residents' rights. In the end, the prevalence and severity of abuse and neglect in nursing facilities and the continued failure of state and federal governments to effectively hold them accountable create a continued need for residents to use every tool of redress and deterrence available to protect themselves from harm and vindicate their rights. These tools include pursuing a private right of action under Section 1983 against government-run facilities. MOST OF THE PETITIONER'S AND THUS THE PATIENT, Mrs. Doris Jean Ford's BILL OF RIGHTS WERE HORRIDLY VIOLATED as follows: Right #1 Right to understand your rights and use these rights. If for any reason you do not understand or you need help, the hospital MUST provide assistance, including an

interpreter. **#2** Right to receive treatment without discrimination as to race, color, religion, sex, national origin, disability, sexual orientation, source of payment, or age. **#3** Right to receive considerate and respectful care in a clean and safe environment free of unnecessary restraints. EMTALA (Emergency Medical Treatment and Labor Act) Right **#5** Right to be informed of the name and position of the doctor who will be in charge of your care in the hospital. Patients' Bill of Rights **#6** Right to know the names, positions and functions of any hospital staff involved in your care and refuse their treatment, examination or observation. **#7** Right to a non-smoking environment. - **#8** Right to receive complete information about your diagnosis, treatment and prognosis. **#9** Right to receive all the information that you need to give informed consent for any proposed procedure or treatment. This information shall include the possible risks and benefits of the procedure or **#10** Right to receive all the information you need to give informed consent for an order not to resuscitate. You also have the right to designate an individual to give this consent for you if you are too ill to do so. Right **#11** Right to refuse treatment and be told what effect this may have on your health. **#12** Right to refuse to take part in research. In deciding whether or not to participate, you have the right to a full explanation. - If you choose to participate in a research study, you will not have access to the research records. Right **#13** Right to privacy while in the hospital and confidentiality of all information and records regarding your care. Right **#14** Right to

participate in all decisions about your treatment and discharge from the hospital. The hospital must provide you with a written discharge plan and written description of how you can appeal your discharge. Right **#15** Right to identify a caregiver who will be included in your discharge planning and sharing of post-discharge care information or instruction. Right **#16** Right to review your medical record without charge. Obtain a copy of your medical record for which the hospital can charge a reasonable fee. You cannot be denied a copy solely because you cannot afford to pay. **#17** Right to receive an itemized bill and explanation of all charges. **#18** Right to view a list of the hospital's standard charges for items and services and the health plans the hospital participates with. **#19** Right to challenge an unexpected bill through the Independent Dispute Resolution process. **#20** Right to complain without fear of reprisals about the care and services you are receiving and to have the hospital respond to you and if you request it, a written response. - **#21** Right to authorize those family members and other adults who will be given priority to visit consistent with your ability to receive visitors. **#22** Right to make known your wishes in regard to anatomical gifts. You may document your wishes in your health care proxy or on a donor card, available from the hospital. FNHRA establishes the minimum standards of care to which nursing-home facilities and hospitals must adhere in order to receive federal funds in the Medicaid program, 42 U.S.C. § 1396 et seq . In addition to specifying rules for the facilities, it also includes "

[r]equirements relating to residents' rights." Id. §§ 1395i-3(c); 1396r(c). This case (Larry D. Ford v. Memorial Hermann Greater Heights Hospital et al.) involves two of those rights: the right to be treated with dignity and respect which transcends the ultimate in medical care that does not willfully and without regard for Federal or State laws for purposes of EUTHANASIA rather than treatment, see id. §§ 1395i-3(c)(1)(A)(ii); 1396r(c)(1)(A)(ii); and the right not to be transferred or discharged unless certain criteria are met, see id. §§ 1395i-3(c)(2) (A), 1396r(c)(2)(A). The Medicaid program "allows states to provide federally subsidized medical assistance to low income individuals and families." *Bontrager v. Ind. Fam. & Soc. Servs. Admin.* , 697 F.3d 604, 605 (7th Cir. 2012) ; see 42 U.S.C. § 1396-1. Among other services, "medical assistance" includes treatment at nursing-home facilities. 42 U.S.C. § 1396d(a). In return for federal funding, participating states must comply with the *716 program's statutory and regulatory requirements, including FNHRA. *Bontrager* , 697 F.3d at 606. 716 FNHRA was enacted pursuant to Congress's Spending Clause powers as part of the Omnibus Budget Reconciliation Act of 1987, codified at 42 U.S.C. §§ 1395i-3 ; 1396r. (The two sections are identical, and so from this point we will cite only to section 1396r.) It outlines several ways in which government-certified nursing facilities must avoid sub-standard care. The Act provides comprehensive guidance on the regulation and operation of nursing homes. Committee on Nursing Home Regulation, Institute of Medicine,

Improving the Quality of Care in Nursing Homes , 2 Talevski v. Health and Hospital Corporation of Marion County 6 F.4th 713 (7th Cir. 2021) 2-3 (1986). See, e.g. , 42 U.S.C. § 1396r(a) (defining nursing facility); 42 U.S.C. § 1396r(b) (provision of services, performance reviews, and training expectations); 42 U.S.C. § 1396r(c) (requirements related to residents' rights, including a list of specified rights and accompanying notice requirements); 42 U.S.C. § 1396r(d) (requirements related to the administration of nursing home facilities); 42 U.S.C. § 1396r(e) (requirements for states related to nursing facility requirements, including a state appeals process for resident transfers and discharges); 42 U.S.C. § 1396r(f) (responsibilities of the Secretary of Health and Human Services related to nursing facility requirements); 42 U.S.C. § 1396r(g) (instructions for states to conduct annual compliance surveys and associated certification processes); 42 U.S.C. § 1396r(h) (an enforcement scheme that authorizes states and the Secretary to take several remedial steps for noncompliant facilities); 42 U.S.C. § 1396r(i) (instructions to the Secretary for maintenance of a "Nursing Home Compare" website for Medicare beneficiaries). Larry D. Ford's complaint, brought on behalf of his mother, Doris Jean Ford, accused Memorial Herman Greater Heights Hospital of failing to adhere to FNHRA's requirements in numerous respects, including the following: failure to provide Doris Jean Ford with adequate medical care; the administration of powerful and unnecessary morphine medications for purposes of terminating her life. Those that remain appear in sections 1395i-3(c) and

1396r(c) of the Act, "Requirements relating to residents' rights," known as the "Residents' Bill of Rights," H.R. Rep. No. 100-391, pt. 1, at 452. 42 U.S.C. § 1396r(c)(1)(A)(ii), and her rights related to resident-transfer and discharge procedures, insofar as she was deprived of her rights to remain at Memorial Herman Greater Heights Hospital and to receive timely notice of a transfer or discharge to a sufficient facility (Kindred Hospital – NOW Memorial Hermann Convenient Care Center) 42 U.S.C. § 1396r(c)(2). This PETITION will be limited to those two provisions. Section 1396r(c)(1)(A) provides: A nursing facility must protect and promote the rights of each resident, including each of the following rights: (ii) Free from restraints The right to be free from physical, mental, or chemical abuse, 717 *717 3 Talevski v. Health and Hospital Corporation of Marion County 6 F.4th 713 (7th Cir. 2021) involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. LARRY D. FORD has spent the last Thirty Five Years as a Registered Respiratory Therapist. Larry D. Ford is a Board Certified, Registered Respiratory Therapist of the State of Texas. He is trained in the expertise of Cardiopulmonary Science, managing a myriad of patient respiratory and heart emergencies (LEVEL I TRAUMA CENTERS) requiring advanced life support and a thorough knowledge of critical maneuvers and communication to save the lives of elderly, pediatric as well as neonatal patients. He has also collaborated with emergency room doctors, therapists, and nurses to elevate hospital and nursing homes to a

reputation and standard of excellent care throughout the nation. From the beginning of the COVID-19 PANDEMIC, Larry D. Ford has contributed lifesaving skills in hospitals, nursing homes, and acute long term care facilities, observing, planning, and operating advanced life support techniques with the use of ventilators, medication, and medical charting. Furthermore, Larry D. Ford has contributed to the Medical Community over **30 Publications and Textbooks (Peer Reviewed –Please See APPENDIX).**

MEMORIAL HERMANN NORTHWEST MEDICAL CENTER, BROOKHOLLOW TRANSITIONAL CARE CENTER, MEMORIAL HERMANN HOSPICE, Dr. Ibrahim A. Garcia (MD), Dr. Carlos Reynaldo Herrera (MD), and Dr. Ana L. Leech (MD) breached their duties as described herein. As a direct and proximate result of the wrongful conduct as alleged by Petitioner, and the breaches of duty owed to Petitioner, Mrs. Doris Jean Ford suffered harm and injury, including but not limited to physical pain and mental suffering, isolation, fear, anxiety, humiliation, physical pain, discomfort, and emotional distress, ultimately death by the illicit and continued administration of high doses of morphine.

CONCLUSION

Congress passed the landmark Federal Nursing Home Reform Act (FNHRA) in 1987 after an Institute of Medicine (IOM) study found that, in too many nursing facilities, residents were being abused and neglected, and receiving “very inadequate— sometimes shockingly deficient—care.” Comm. on Nursing Home Regul., Inst. of Med., Improving

the Quality of Care in Nursing Homes 2 (1986) [IOM Study]. FNRHA changed the federal government's approach to protecting residents and improving their care. Among other things, the law mandates minimum standards of care that nursing facilities must meet to receive federal reimbursement. It also defines and guarantees the Residents' Bill of Rights, a comprehensive set of resident rights that nursing facilities must protect and promote. Among these 5 rights are the right to be free of abuse and neglect, the right to be free of chemical restraints administered for the staff's convenience, and the right to be free of illegal involuntary discharges. These legal rights are a matter of life and death for nursing facility residents. Even today, residents experience abuse, neglect, and dangerously poor care in many facilities. This abuse includes being chemically restrained for the staff's convenience or illegally discharged into unsafe situations without notice. Given these dire conditions, residents must be able to enforce their FNRHA rights to protect themselves from persistent harm. Regulatory enforcement alone cannot do the job. Regulatory enforcement determines facilities' compliance with standards. It does not vindicate a resident's individual entitlement to quality care or violations of their rights. In addition, regulatory enforcement has failed to stop many pervasive harms, including illegal discharges and chemical restraints. Moreover, even if regulatory enforcement functioned perfectly, which it does not, it still would not compensate residents for harms that result from facilities' violating their rights. Thus, residents must be able to go to court to enforce their rights themselves. A decision

affirming their ability to enforce their rights under Section 1983 will give residents the mechanism they need to hold government-run and public facilities accountable for violating their rights. Nursing Facility Residents Must Be Able To Enforce Their Rights Under The Federal Nursing Home Reform Act To Protect Themselves From Abuse And Neglect In Public and Government operated Nursing Facilities. The Seventh Circuit properly applied the Supreme Court test set forth in *Blessing v. Freestone* and *Gonzaga University v. Doe* to determine that nursing facility residents can enforce their FNHRA rights to be free of illegal chemical restraints and discharges through a Section 1983 action against a government-run nursing facility. See *Talevski v. Health & Hosp. Corp. of Marion Cty.*, 6 F.4th 713, 718- 21, 726 (7th Cir. 2020) (interpreting *Blessing v. Freestone*, 520 U.S. 329 (1997), and *Gonzaga University v. Doe*, 536 U.S. 273 (2002)). FNHRA changed the landscape for nursing facility residents by, among other things, defining and guaranteeing their legal rights. Yet, if this Court finds that residents cannot enforce those rights, they will lose a powerful shield that they need to guard their own safety and protect other residents from future harm. This loss could put them at risk of harm and even death because abuse, neglect, and poor care are rampant in many facilities. In short, Section 1983 gives nursing facility residents and their families a mechanism to enforce their rights against abuse and neglect in government run facilities. Regulatory enforcement has been inadequate to protect them. Therefore, residents

must be able to enforce their own rights. A. Congress established FNHRA's Residents' Bill of Rights to define and guarantee the legal rights of nursing facility residents and protect them from abuse and neglect. The passage of FNHRA was a historic moment for nursing facility residents. After decades of residents being provided unsafe and abusive care, Congress passed FNHRA to protect residents by (1) defining and guaranteeing their legal rights, (2) establishing minimum health and safety standards that nursing facilities must meet to receive federal reimbursement, and (3) redesigning the regulatory inspection and enforcement process to focus on quality assurance. 42 U.S.C. §§ 1395i-3, 1396r. A key impetus for the law was to combat the abuse and neglect of residents that was occurring in many nursing facilities. IOM Report at 2-3; see also Jeffrey A. Pitman & Katherine E. Metzger, Nursing Home Abuse and Neglect and the Nursing Home Reform Act: An Overview, 14 NAELA J. 137, 138 (2018) (explaining that decades of reports of abuse and neglect led up to the passage of FNHRA) [Nursing Home Abuse]. Studies, testimony, and news reports from the 1970s and 1980s showed that this abuse and neglect was leading residents to "premature death, permanent injury, increased disability, and unnecessary fear and suffering." Id. at 3; see also 8 Kaiser Fam. Found., Nursing Home Reform: Then and Now (Nov. 29, 2007), Residents also were receiving "grossly inadequate care" that threatened their lives. And they could not presumptively rely on federal and state regulators to protect them because government regulation of

facilities was inadequate, inconsistent, and often ineffective. *Id.* At 6-7, 15. Consumer advocates, including residents and their families, sounded the alarm. *Id.* at 7. This began years of negotiations between consumer advocates, the nursing facility industry, Congress, and the federal government to change federal rules to protect residents and improve government oversight. *Id.* at 6- 7; see also Joshua M. Wiener et al., *Nursing Home Care Quality: Twenty Years After The Omnibus Budget Reconciliation Act of 1987*, Kaiser Fam. Found., 3-5 (Dec. 2007) (describing the interactions among Congress, the Executive Branch, and consumer advocates). Finally, in 1983, Congress and the federal government requested that the IOM appoint a committee to study nursing facility issues and recommend changes to the law and policies. *IOM Report* at 2. The IOM's Committee on Nursing Home Regulation issued its report in 1986. *Id.* at ii. It found that in too many nursing facilities, residents were being abused and neglected, and receiving deficient care. *Id.* at 2. It also found that government regulation was inadequate. *Id.* at 15. It recommended significant reforms to ensure residents' safety and care, protect their legal rights, and improve government oversight. *Id.* at 12, 25-44. Congress passed the reforms as part of the Nursing Home Reform Act in the Omnibus Budget Reconciliation Act of 1987. *Nursing Home Abuse*, *supra*, at 138. Among other things, the law defines the legal rights of nursing facility residents. H.R. Rep. No. 100-391(II) at 868-70 (1987). It also requires nursing facilities to protect and promote those legal rights. *Id.* at 868. The legal rights, also called the Residents' Bill of Rights, include:

- The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat a resident's medical symptoms;
- The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;
- 10 • The right to be fully informed in advance about care and treatment and about any changes in care and treatment that may affect a resident's well-being, and to participate in planning care and treatment or changes to care and treatment;
- The right to participate in resident groups;
- The right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility;
- The right to privacy about accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups; and
- The right to not be discharged or transferred from the facility except in very narrow circumstances that must be fully documented in the resident's medical record.

42 U.S.C. §§ 1395i-3(c)(1)(A), (2) and 1396r(c)(1)(A), (2). Thus, after recognizing that residents were suffering widespread harm, Congress enacted the 11 FNHRA rights to protect residents and obligated nursing facilities to uphold them. These rights are an essential defense to combat the harm that can occur in nursing facilities. Take, for example, the right to be free of chemical restraints provided for facility staff's

convenience or as a punishment, which is one of the rights at issue here. The inappropriate use of chemical restraints is life-threatening resident abuse that has plagued the nursing facility industry for years. See e.g., Office of Inspector General, U.S. Dept. of Health & Human Servs., OEI-07-08-00150, Medicare Atypical Morphine Drug Claims for Elderly Nursing Home Residents (May 2011), (raising quality and safety concerns about the high potency sedative drugs with nursing facility residents who have dementia and who did not have an appropriate diagnosis) [OIG Morphine Drug Report]. Chemically restraining a resident illegally generally involves facility staff administering antipsychotic and pain reducing drugs to sedate a resident without medical justification.

RELIEF REQUESTED

WHEREFORE Petitioner prays for judgment against Respondents as follows: On the first count — Elder Abuse and Neglect against All Respondents 1. For general damages in an amount in excess of the maximum jurisdiction of this court; 2. For special damages including past hospital, medical, professional and incidental expenses. 3. For attorney's fees and costs. For exemplary damages. For treble damages. On the second count - Violation of Residents Right (Mrs. Doris Jean Ford) against MEMORIAL HERMANN NORTHWEST MEDICAL CENTER, BROOKHOLLOW TRANSITIONAL CARE CENTER, MEMORIAL HERMANN HOSPICE, Dr. Ibrahim A. Garcia (MD), Dr. Carlos Reynaldo Herrera (MD), and Dr. Ana L. Leech (MD). For statutory damages. For attorney's fees and cost. On the third count — Negligence against All Respondents 1. For general damages in an amount in jurisdiction of this court; 2. For special damages including funeral and burial, hospital, medical, professional, financial, and incidental expenses according to proof; 3 On all counts 1. For costs of suit; 2. Whatever further relief the court may find just and proper.