

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

CESAR CUELLAR, SR. individually and as	§	
the administrator of the ESTATE OF CESAR	§	
CUELLAR, JR., and DORA CUELLAR,	§	
individually	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 5:17-cv-76
v.	§	
	§	
PRISCILLA HERNANDEZ, ESTEFANIA	§	
GONZALEZ, and THE CITY OF LAREDO	§	
	§	
Defendants.	§	

PLAINTIFF’S COMPLAINT

Plaintiffs CESAR CUELLAR, SR. and DORA CUELLAR, file this lawsuit against PRISCILLA HERNANDEZ, ESTEFANIA GONZALEZ, and THE CITY OF LAREDO and would show the Court and Jury the following in support thereof:

I.
PARTIES

A. Plaintiffs

1. Plaintiff CESAR CUELLAR, SR. is a citizen of Texas and resides in Zapata County, Texas. He was CESAR CUELLAR, JR.’s natural father and is an heir at law to his Estate.
2. Plaintiff DORA CUELLAR is a citizen of Texas and resides in Zapata County, Texas. She was CESAR CUELLAR, JR.’s natural mother, and is an heir at law to his Estate.
3. An estate administration was opened for the ESTATE OF CESAR CUELLAR, JR., and CESAR CUELLAR, SR. was named the administrator of the Estate

by the County Court of Zapata County.

4. Cesar Cuellar, Jr. was not married at the time of his death, and had no children.

5. Plaintiffs' bring this action on behalf of all possible wrongful death beneficiaries.

B. Defendants

6. Defendant PRISCILLA HERNANDEZ was an officer with the Laredo Police Department. She is sued in her individual capacity, and was acting under color of law at all relevant times. She may be served at the Laredo Police Department, 4712 Mahler Ave., Laredo, TX 78401. *Service is hereby requested at this time.*

7. Defendant ESTEFANIA GONZALEZ was an officer with the Laredo Police Department. She is sued in her individual capacity, and was acting under color of law at all relevant times. She may be served at the Laredo Police Department, 4712 Mahler Ave., Laredo, TX 78401. *Service is hereby requested at this time.*

8. Defendant, CITY OF LAREDO, is a municipality that operates the LAREDO Police Department and may be served through its City Manager, Jesus Oliveres, at 1110 Houston St., Laredo, TX 78042. *Service is hereby requested at this time.*

II.
JURISDICTION AND VENUE

9. As this case is brought pursuant to 42 U.S.C. §1983, this Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §1331.

10. This Court has general personal jurisdiction over Defendants Hernandez and Gonzalez as they reside and/or works in Laredo, Texas, and over the City of Laredo because it is a Texas municipality located within this Division and District.

11. This Court has specific *in personam* jurisdiction over Defendants because this case arises out of conduct that caused the death of Cesar Cuellar, Jr., which occurred in Laredo, Webb County, Texas, within the Southern District of Texas.

12. Venue of this cause is proper in the Southern District pursuant to 28 U.S.C. §1391(b) because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in Laredo, Texas, which is within the Southern District of Texas.

III. FACTS

13. On or around November 9, 2016, Laredo Police Department Officers shot and killed Cesar Cuellar, Jr., a Webb County Sheriff's Deputy, in his own home.

14. Gonzalez, a new hire of the department, was being trained by Hernandez that morning. They were driving around the city in their squad car, waiting to be dispatched.

15. Officers Hernandez and Gonzalez were told by their dispatcher that Cesar, Jr.'s girlfriend was worried about his welfare. They responded to his apartment.

16. Hernandez and Gonzalez were not investigating any crime Cesar, Jr. was alleged to have committed – they were only going to his apartment to check on his welfare.

17. Upon information and belief, Hernandez and Gonzalez knew that Cesar, Jr. was a Webb County Sheriff's Deputy, and was thus likely to be armed with his service weapon. Regardless of his position in law enforcement, they also knew Cesar, Jr. had a lawful right to possess a weapon in his home.

18. Upon information and belief, neither Hernandez nor Gonzalez was wearing a body microphone or body camera to make an audio recording of their encounter with Cesar, Jr. Instead, when they arrived outside his apartment, they parked their squad car in a

position where the squad car's onboard camera could not record any relevant video. The squad car's microphone, however, recorded their encounter with Cesar, Jr.

19. When Hernandez and Gonzalez arrived at his apartment door they did not knock and announce their presence. Instead, Hernandez and Gonzalez simply let themselves in to Cesar, Jr.'s home.

20. Hernandez and Gonzalez had no reason to believe knocking and announcing their presence would be dangerous or futile, as they were not at the apartment to investigate a crime, but to check on Cesar, Jr.'s welfare.

21. Hernandez and Gonzalez entered the apartment, and immediately saw Cesar, Jr.'s Webb County Sheriff's utility belt sitting on a table in the apartment. They saw his service weapon was not in its holster.

22. Hernandez and Gonzalez looked around the living room and kitchen, viewing virtually all of Cesar, Jr.'s apartment.

23. No one else was in the apartment, but the bedroom door was closed.

24. Cesar, Jr., from inside the bedroom, heard the two strangers in his home, and yelled at them to "get out!" and told them he was armed.

25. Neither Hernandez nor Gonzalez told Cesar, Jr. anything about why they were at his apartment. They did not even say they were police.

26. Instead of leaving, despite learning that Cesar, Jr. plainly did not consent to the officers' entry and search of his home, Hernandez and Gonzalez remained inside the apartment. At this time, Cesar, Jr. was no threat to any person.

27. Inexplicably, Hernandez and Gonzalez drew their guns, and pointed them at the bedroom door.

28. Cesar, Jr. opened his bedroom door, with his service weapon in his hand, pointed down towards the ground.

29. Cesar, Jr. appeared stunned, like a deer in headlights, with two officers pointing guns directly at him. He did not move, and his arm never left his side.

30. Cesar, Jr.'s mother, Mrs. Cuellar, came upon the scene, looked into her son's home, and saw him standing outside his bedroom with officers pointing their guns at him. Mrs. Cuellar yelled "don't shoot, he's a cop!"

31. Ignoring Mrs. Cuellar, and without giving Cesar, Jr. an opportunity to drop the weapon, and despite knowing that Cesar, Jr. had done nothing threatening whatsoever, Hernandez fired two shots at Cesar, Jr., striking him in the chest and abdomen. Tellingly, Gonzalez did not fire her weapon.

32. Mrs. Cuellar watched as the officers shot and killed her son who had done nothing wrong or threatening.

33. Losing massive amounts of blood and suffering in great pain, Cesar, Jr. was taken to a nearby hospital, where he died from internal gunshot injuries.

34. Instead of investigating Hernandez and Gonzalez's conduct, the Laredo Police Department opened a utterly baseless "assault on a public servant" investigation into Cesar, Jr.'s conduct.

35. Following the shooting, upon information and belief, Hernandez and Gonzalez consulted with lawyers before telling police investigators and public what happened.

36. Upon information and belief, neither Hernandez nor Gonzalez had any training in crisis intervention, or suicide prevention. Without such training, crisis

intervention calls – especially where the subject was legally armed – become extremely dangerous for officers and citizens.

37. Chief of Police Raymond Garner is the policymaker for the City of Laredo with regard to police policies, training, and staffing.

38. Chief Garner well knew that officers would frequently be called to check the welfare of citizens. Likewise, Chief Garner knew or should have known that his officers lacked crisis intervention training.

39. Furthermore, based on media reports, the Laredo Police Department utilizes deadly force when responding to citizens who are in crisis. In fact, over a year before Cesar, Jr. was shot to death, Laredo Police Department officers shot a man known to be severely mentally ill over sixty times because he was holding a BB gun (even though independent witnesses told the officers the BB gun was not a real weapon). After fatally shooting the man dozens of times, surveillance video captured two officers congratulating each other with a “fist bump.” No officers were ever disciplined for this use of excessive, deadly force.

IV. CLAIMS

A. §1983 EXCESSIVE FORCE CLAIMS AGAINST DEFENDANT HERNANDEZ

40. Plaintiff incorporates by reference all of the foregoing and further alleges as follows:

41. Defendant Hernandez, who was acting under color of law, shot Cesar Cuellar, Jr. when he posed no threat of serious bodily injury or death to anyone. In fact, Hernandez knew Cesar, Jr. was a police officer, armed with his service weapon, in his own

home, and not pointing the gun at anyone when she fired the fatal shots.

42. As a consequence, Hernandez's use of force against Cesar, Jr. was clearly excessive to the need, objectively unreasonable in light of established law, and directly caused his death. Therefore, Officer Hernandez's actions violated Cesar, Jr.'s Fourth and Fourteenth Amendment rights to be free from excessive force/unreasonable seizure.

43. As a direct and proximate result of Defendant Hernandez's actions, Cesar, Jr. suffered greatly before dying. Plaintiffs lost their twenty-five-year-old son and the anguish they feel, and will feel for the rest of their lives, is truly horrific. They are devastated beyond words.

44. Furthermore, Mrs. Cuellar was a bystander to her son's horrific death, and contemporaneously experienced the fatal injuries to him.

**B. §1983 INVASION OF PRIVACY CLAIM AGAINST DEFENDANTS
HERNANDEZ AND GONZALEZ**

45. Plaintiff incorporates by reference all of the foregoing and further alleges as follows:

46. Defendants Hernandez and Gonzalez did not knock on Cesar, Jr.'s door, or otherwise announce their presence before entering the apartment.

47. Knocking and announcing their presence would not have endangered Hernandez and Gonzalez, or any other person, and would not have inhibited the investigation of any crime.

48. Hernandez and Gonzalez did not have a reasonable suspicion that knocking and announcing would be dangerous or futile, or inhibit investigation of a crime.

49. After Hernandez and Gonzalez heard Cesar, Jr. ask them to leave the apartment, they did not.

50. Hernandez and Gonzalez violated Cesar, Jr.'s Fourth and Fourteenth Amendment rights by entering his apartment without knocking and announcing, and failing to leave when they learned they were in his apartment without his consent.

51. As a direct and proximate cause of the illegal search and entry, Cesar, Jr.'s right to privacy was violated, and he was fatally shot.

C. §1983 *MONELL* CLAIM AGAINST THE CITY OF LAREDO UNDER FEDERAL LAW

52. Plaintiff incorporates by reference all of the foregoing and further alleges as follows:

53. The City of Laredo, had the following policies and/or practices in place when Hernandez shot and killed Cesar, Jr.:

- Failing to train officers to knock and announce before entering an apartment during a “check welfare” call.
- Failing to train officers in responding to potentially suicidal subjects.
- Failing to train officers regarding citizens’ right to bear arms in their own homes.
- Failing to train officers in crisis intervention techniques.
- Using excessive force against citizens who are legally armed in their own homes.
- Using excessive deadly force.

54. Each of the policies delineated above was actually known, constructively known and/or ratified by the City of Laredo and its policymakers and was promulgated with deliberate indifference to Cesar Cuellar, Jr.'s Fourth and Fourteenth Amendment rights under the United States Constitution. Moreover, the known and obvious consequence of these policies was that City of Laredo police officers would be placed in

recurring situations in which the constitutional violations described within this complaint would result. Accordingly, these policies also made it highly predictable that the particular violations alleged here, all of which were under color of law, would result.

55. Consequently, the policies delineated above were a moving force of Plaintiff's constitutional deprivations and injuries, and proximately caused severe damages.

V. DAMAGES

56. Defendants deprived Cesar, Jr. of his civil rights under the United States Constitution and under federal law. Moreover, these acts and omissions by Defendants, their agents, employees, and/or representatives, proximately caused and/or were the moving force of the injuries and damages to Plaintiffs and proximately caused and/or were the moving force of the wrongful death of Cesar, Jr. Accordingly, Plaintiffs in their individual capacities, and Cesar, Sr. in his capacity as administrator of the Estate of Cesar, Jr., asserts claims under 42 U.S.C. §1983 and the Texas wrongful death and survivorship statutes.

57. Plaintiff, Cesar Cuellar, Sr., in his capacity as administrator of the Estate of Cesar, Jr., has incurred damages including, but not limited to, the following:

- physical pain and mental anguish suffered by Cesar Cuellar, Jr. before he died;
- medical expenses; and,
- funeral and burial expenses.

58. Plaintiff, Cesar Cuellar, Sr., in his individual capacity asserting wrongful death claims, has incurred damages including, but not limited to, the following:

- past and future medical expenses;

- past and future mental anguish; and
- past and future loss of companionship, society, services, and affection with his son.

59. Plaintiff, Dora Cuellar, in her individual capacity asserting wrongful death claims, has incurred damages including, but not limited to, the following:

- pain and mental anguish for contemporaneously experiencing the serious bodily injury to her son;
- past and future medical expenses;
- past and future mental anguish; and
- past and future loss of companionship, society, services, and affection with her son.

VI.
JURY DEMAND

60. Pursuant to Federal Rule of Civil Procedure 48, Plaintiff hereby requests a jury trial.

VII.
PRAYER FOR RELIEF

61. Accordingly, Plaintiff asks that judgment be awarded against Defendant for
- 1) compensatory damages against all Defendants, jointly and severally,
 - 2) Punitive damages as to Defendant Hernandez only,
 - 3) attorneys' fees, including reasonable and necessary expenses such as expert fees, pursuant to 42 U.S.C. § 1988,
 - 4) costs of court;
 - 5) judgment at the highest rate allowable under the law; and
 - 6) all other relief to which Plaintiff is justly entitled.

Respectfully submitted,

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