REGENT UNIVERSITY SCHOOL OF LAW

25th ANNUAL LEROY R. HASSELL, SR. NATIONAL
CONSTITUTIONAL LAW MOOT COURT COMPETITION

No. 25-178

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2025

SARAH JONES, INDIVIDUALLY
AND ON BEHALF OF HER MINOR SON, A.J.

Petitioner,

V.

THE CITY OF LAURENTON, ET AL.

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

No. 24-19087

SARAH JONES, individually
and on behalf of her minor son, A.J.

Appellant,

v.

THE CITY OF LAURENTON,
THE CITY OF LAURENTON POLICE DEPARTMENT,

Appellees.

Appeal from the United States
District Court for the Eastern
District of New Virginia
Roy Ashland, District Judge,
Presiding

Argued and Submitted November 18, 2024
Before CHANDLER, HART, and MERRITT, Circuit Judges.

CHANDLER, Circuit Judge:

Sarah Jones appeals the district court's grant of summary judgment in favor of the City of Laurenton, New Virginia and the Laurenton Police Department on her claims under 42 U.S.C. § 1983 alleging violations of the Due Process Clause and the Takings Clause. Jones contends that the defendants affirmatively created the danger that led to severe injuries to her and her son stemming from a bombing at her home. She further alleges that the City's subsequent destruction of her home during a bomb disposal operation constituted a compensable taking. We lament the

tragic nature of the events Jones has endured, but the question before us is whether they give rise to liability under the Constitution. For the reasons set forth below, they do not, and we affirm.

I. BACKGROUND

On the evening of Friday, September 8, 2023, Sarah Jones placed a frantic 911 call to report that her former boyfriend, Mark Baker, was intoxicated and threatening both her and their ten-year-old son, A.J. Officers Trent and Williams from the Laurenton Police Department ("LPD") responded to Jones's home within minutes. When they arrived, Baker was visibly angry that Jones had called the police and threatened her because of it.

Jones told the officers that Baker owned a handgun, other weapons, and had a background in explosives from his military service. She asked if she and A.J. should leave for the night, but Officer Trent assured her that Baker "will be locked up until at least the morning" because he had an outstanding arrest warrant for domestic assault in neighboring Holbrook County. After leaving the premises with Baker in custody, Trent told Williams what he had said to Jones. Williams reminded Trent that they could not detain Baker without first confirming compliance with a standing City policy requiring officers not to execute certain warrants when the county jail was over capacity. Officer Williams called county jail officials who verified that the current jail population was over capacity. Without notifying Jones, the officers seized Baker's handgun and transported him to a house that he was renting, leaving him there alone.

Early the next morning before sunrise, Baker retrieved two homemade bombs from the basement in his rental home, packaged them both, including one in Amazon marked material, and took them to Jones's home. He placed one bomb package on the front porch and another on the back porch. When she awoke, Jones spotted the package on the front porch. Believing it to be an Amazon delivery, she brought the package inside. As soon as Jones attempted to open the

package, the device detonated, shattering her left femur, causing third-degree burns over her arms and face, and leaving her with permanent hearing loss. Her son, standing nearby, suffered a fractured arm, lung contusions, and severe psychological trauma. This explosion also caused minor damage to the house's front porch.

Hearing the explosion, a neighbor called 911. Police and paramedics arrived, stabilized Jones and A.J., and transported them to the hospital. While on the scene, officers observed the second package on the back porch and called the LPD Bomb Squad.

The Bomb Squad arrived on the scene and secured the area, ensuring everyone was at a safe distance before assessing the package. Following protocol, the squad leader deployed a robot equipped with an X-ray system and an energetic tool[1] that the robot attached to the package. The X-ray disclosed that the package was an explosive with a remote detonation mechanism. Because the maker of the bomb was not in custody, and the device was therefore not controllable, the squad had to use the energetic tool to attempt to disrupt the device before it was detonated remotely. Because the device was highly sophisticated and set up to evade disruption, the likelihood of disruption was virtually non-existent. As expected, the tool did not disrupt the explosive and thus detonated it.

The resulting explosion leveled the rear half of the single-story residence, collapsed part of the roof, and rendered the structure unsafe and the house uninhabitable. A deposed expert testified that the house was so structurally unsound that it had to be demolished and rebuilt, estimating the damage to the property at $385,000. Baker further suffered costs of temporary housing and personal property loss.

[1] This tool attempts to disrupt an explosive and detonates it if disruption is not successful.

Jones filed suit under 42 U.S.C. § 1983 against the City of Laurenton and the Laurenton Police Department (collectively, the "City"), alleging that the City was liable under (1) the Due Process Clause for affirmatively creating the danger that led to her injuries, and (2) the Takings Clause for destroying her home without just compensation.[2] In support of her due process claim, Jones pointed to the officers' decision to return Baker to his home rather than arrest him on the outstanding warrant, pursuant to the municipal jail-overcrowding policy, and their assurances that he would remain in custody overnight. As for the Takings Clause claim, she argued that the City's resulting decision to detonate the second device foreseeably destroyed her home.

The district court granted summary judgment to the City on both claims, concluding that there is no state-created danger theory under the Due Process Clause and that the Takings Clause does not apply to destruction of property undertaken in the exercise of the police power. Jones timely appealed.[3]

II. DISCUSSION

A. State-Created Danger Doctrine

Jones first asserts that the City violated her substantive due process rights under the so-called "state-created danger" doctrine. She contends that the officers affirmatively increased her vulnerability to private violence by: (1) telling her that Baker would be retained at jail overnight;

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[2] Both claims are asserted against the City under *Monell v. Dep't of Social Services*, 436 U.S. 658, 690 (1978), based on (1) the City's policy and instruction to officers not to arrest and detain Baker despite his outstanding warrant, and (2) the Bomb Squad's standard operating procedure that led to the detonation of a device in place coupled with alleged deficiencies in training. The City has not disputed the existence of either policy or whether the *Monell* standard for liability has been met.

[3] We review a district court's grant of summary judgment de novo. Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In reviewing the record, we draw all reasonable inferences in favor of the non-moving party, *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014), here, the plaintiff.

(2) returning Baker to his home rather than arresting him on the outstanding domestic assault warrant, pursuant to a standing City policy not to execute such warrants when the county jail was over capacity; and (3) not informing her that Baker had been released. She further alleges that the police policy—coupled with the officers' assurance that Baker would remain in custody overnight—directly contributed to the bombing that followed, which caused severe injuries to her and her son.

We sympathize with the terrible circumstances of this case. But we have never adopted the state-created danger doctrine, and, because it is not properly rooted in the Due Process Clause, we decline to do so today.

The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. While the Clause has a procedural dimension, it also contains a substantive component that "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (citation omitted).

The Supreme Court has made clear that "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989). "The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security." *Id.* Except where the State has restrained an individual's liberty such that she cannot act on her own behalf—the "special relationship" context—the Constitution imposes no affirmative duty to protect against private violence. *See id.* at 199-202; *Fisher v. Moore*, 73 F.4th 367, 371 (5th Cir. 2023).

Some of our sister circuits have recognized an additional exception to the no-duty rule, known as the state-created danger doctrine. This doctrine imposes liability when the State affirmatively acts to create or increase the risk of private violence. *See, e.g.*, *Irish v. Fowler*, 979 F.3d 65, 73-74 (1st Cir. 2020). But as the Fifth and Eleventh Circuits have observed, the Supreme Court has never endorsed this doctrine, and its doctrinal footing is weak. *See, e.g.*, *Fisher*, 73 F.4th at 374; *Waddell v. Hemerson*, 329 F.3d 1300, 1305–06 (11th Cir. 2003).

The circuits that have adopted the state-created danger doctrine rely entirely on a single sentence in *DeShaney*, in which the Court observed that the State "played no part in [the] creation, nor did it do anything to render [the plaintiff] any more vulnerable to" the dangers that he faced. *See, e.g.*, *Estate of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 493 (6th Cir. 2019) (Murphy, J., concurring) (quoting *DeShaney*, 489 U.S. at 201). One sentence wrenched out of context is inadequate ground on which to build a doctrine. The State's affirmative duty to protect an individual from private violence only arises when the State "restrain[s] the individual's freedom to act on his own behalf." *DeShaney*, 489 U.S. at 200. In proper context, the *DeShaney* sentence is better understood as a continued explanation of the deprivation-of-liberty exception that the Court had just articulated.

Even the circuits that recognize the state-created danger doctrine have begun to question its validity. *See, e.g.*, *Johnson v. City of Phila.*, 975 F.3d 394, 405 (3d Cir. 2020) (Porter, J., concurring) ("But I write separately to explain my view that our full Court should revisit the state-created danger doctrine."). The state-created danger doctrine risks converting virtually every flawed law-enforcement decision into a constitutional tort, thereby federalizing large swaths of state negligence law. Courts applying the doctrine have developed varied and sometimes conflicting multi-factor tests, creating inconsistent liability standards for local

officials. *See Murguia v. Langdon*, 73 F.4th 1103, 1112–13 (9th Cir. 2023) (Bumatay, J., dissenting). The proper remedy for such harm should, instead, be through the democratic process and state remedial statutes.

Because we decline to adopt the state-created danger doctrine, Jones's substantive due process claim fails as a matter of law. The district court's dismissal of this claim was proper.

B. Takings Clause

Jones next alleges that the destruction of her home during the detonation of the back-porch device was a taking pursuant to the Fifth Amendment. We disagree.

The Fifth Amendment's Takings Clause, applicable to the states through the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. The Supreme Court has long recognized a distinction between the government's exercise of the eminent domain power and the police power. *See Mugler v. Kansas*, 123 U.S. 623, 668–69 (1887). When the government acts to preserve public safety, it exercises its police power, not its power of eminent domain.

The Supreme Court has not directly addressed the issue that Jones raises. *See Baker v. City of McKinney*, 145 S. Ct. 11, 13 (2024) (Sotomayor, J., statement concurring in the denial of certiorari). Other circuits, however, have held that "the Takings Clause does not apply when property is retained or damaged as the result of the government's exercise of its authority pursuant to some power other than the power of eminent domain." *Johnson v. Manitowoc Cnty.*, 635 F.3d 331, 336 (7th Cir. 2011). Our sister circuits have applied this principle to reject Takings Clause claims where police have destroyed property in the course of neutralizing dangerous threats. *See, e.g.*, *Lech v. Jackson*, 791 F. App'x 711, 715–16 (10th Cir. 2019).

For example, in *Lech*, police destroyed a family home while attempting to apprehend an armed fugitive. *Id.* at 713. The Tenth Circuit held that such destruction, though regrettable, was an exercise of the police power and categorically not a taking. *Id.* at 719. "[W]hen the interference at issue is physical, rather than regulatory, in nature," the distinction between the police power and the power of eminent domain is dispositive. *Id*. at 716–17. We find that reasoning persuasive.

Here, the Bomb Squad's detonation of the device was undertaken to neutralize what officers reasonably believed to be an immediate threat to life. "[S]uch damage is not a taking for public use" because "the property has not been altered or turned over for public benefit." *Bachmann v. United States*, 134 Fed. Cl. 694, 696 (2017).

Because the destruction here was a direct interference with physical property pursuant to the City's police power to protect public safety, the Takings Clause does not apply. The district court properly dismissed this claim.

III. CONCLUSION

The events of this case are tragic, and the injuries and losses Jones has suffered are profound. But our role is to apply the Constitution, not to create remedies for every wrong. The judgment of the district court is affirmed.

AFFIRMED

HART, J., concurring:

I join the Court's opinion in full. I write separately to note that the public-necessity doctrine, recognized in *United States v. Caltex*, 344 U.S. 149, 154–56 (1952), provides an additional, independent basis for dismissal of the Takings Clause claim. Under that doctrine, which aligns with common law principles, no compensation is owed when property is destroyed

in good faith to prevent imminent public disaster. *Id.* at 154. While *Lech v. Jackson*, 791 F. App'x 711, 717 (10th Cir. 2019), and the cases that follow it treat police-power destruction of physical property as outside the Takings Clause altogether, the facts here fit comfortably within necessity jurisprudence. *See Baker v. City of McKinney*, 84 F.4th 378, 385–88 (5th Cir. 2023).

MERRITT, J., dissenting:

I respectfully dissent from the Court's disposition of both claims. In my view, the Constitution provides remedies when government officials affirmatively create a foreseeable risk of deadly harm, and when the costs of public-safety actions are imposed entirely on an innocent property owner. By declining to adopt the state-created danger doctrine, and by embracing an overbroad categorical exemption from the Takings Clause, the majority closes the courthouse doors in precisely the kinds of extraordinary circumstances where constitutional accountability for the misconduct of state and local officials is most needed.

State-Created Danger Doctrine

The majority's refusal to recognize the state-created danger doctrine leaves this Circuit an outlier and, in my view, abdicates our responsibility to give effect to the Due Process Clause in circumstances where government conduct affirmatively endangers its citizens.

In *DeShaney*, the Court refused liability under the Due Process Clause when the State's role was limited to inaction—a failure to intervene to protect a child from his father's abuse. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 193, 196–97 (1989). In explaining the absence of liability, the Court emphasized that the state had "played no part in [the] creation" of the danger faced by the plaintiff, "nor did it do anything to render him any more vulnerable." *Id.* at 201.

Consistent with this principle, nearly every circuit to confront the question has adopted the state-created danger doctrine, recognizing that *DeShaney* anticipated liability where the state, through its own affirmative acts, creates or heightens a danger that results in harm. *See Irish v. Fowler*, 979 F.3d 65, 73 (1st Cir. 2020) (collecting cases). This approach repudiates the majority's erroneous assertion that the State is liable for a private act of violence only if a special relationship exists between the state and the plaintiff. Again, nearly unanimously, the circuits have recognized two exceptions to the general rule that the Due Process clause does not impose upon the State a duty to protect its citizens, when: (1) "the state affirmatively places the plaintiff in danger by acting with deliberate indifference to a known or obvious danger (the state-created danger exception);" or (2) "a special relationship exists between the plaintiff and the state (the special-relationship exception)." *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023) (citation omitted).

For example, the First Circuit in *Irish* held that officers may be liable when their actions "enhance a danger" to a foreseeable victim. 979 F.3d at 75. The Second and Ninth Circuits have likewise recognized that when police conduct renders a person more vulnerable to private violence than she otherwise would have been, due process is implicated. *See Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, 577 F.3d 415, 428 (2d Cir. 2009); *Wood v. Ostrander*, 879 F.2d 583, 594–96 (9th Cir. 1989).

The case at bar illustrates the importance of the state-created danger doctrine. The officers here did not merely fail to protect Jones; they assured her she was safe, physically removed Baker from her presence, and then returned him to freedom without notifying her. Those decisions, and the policy behind them, created the peril that materialized hours later. As

the Supreme Court observed in *DeShaney*, the Constitution may impose liability when the State plays a part in the creation of the danger. *See* 489 U.S. at 201.

The majority's institutional-concern argument is overstated. Courts regularly distinguish between ordinary negligence and conduct that "shocks the conscience." The doctrine, properly applied, targets only the latter. There are a number of elements that have been uniformly recognized by the circuits adopting the doctrine. *See Irish*, 979 F.3d at 73–74. The distinctions necessary to apply the doctrine are not too difficult for the court to analyze. And by refusing to recognize the doctrine, we signal to our citizens that when government action lights the fuse of foreseeable private violence, the courthouse doors will be slammed shut.

Takings Clause

The Fifth Amendment "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). The government, under the cloak of the police power, should not be permitted to require some individuals to bear such a burden. The majority's opinion does exactly that.

The categorical rule that destruction of property in the exercise of police power can never be a taking cannot be squared with Supreme Court precedent that has repeatedly declined to exempt whole categories of government action from Takings Clause scrutiny. *See, e.g.*, *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 36–37 (2012) (explaining that the Court has "[t]ime and again" rejected arguments "deployed to urge blanket exemptions from the Fifth Amendment's instruction"); *see also Yawn v. Dorchester Cnty.*, 1 F.4th 191, 195 (4th Cir. 2021) ("That Government actions taken pursuant to the police power are not per se exempt from the Takings Clause is axiomatic in the Supreme Court's jurisprudence."). Further, the Supreme

Court's regulatory takings jurisprudence "is premised on the notion that a city's exercise of its police powers can go too far, and if it does, there has been a taking." *John Corp. v. City of Hous.*, 214 F.3d 573, 578 (5th Cir. 2000).

For these reasons, the more well-reasoned opinions of our sister circuits have rejected the categorical non-taking rule. *See, e.g.*, *Baker v. City of McKinney*, 84 F.4th 378, 383–84 (5th Cir. 2023). The Fourth Circuit, for example, refused to treat public-safety measures as per se immune, instead examining whether the harm was the intended or foreseeable result of government action. *Yawn*, 1 F.4th at 195. I believe this approach is most consistent with the Supreme Court's Takings Clause precedent.

Under the Fourth Circuit framework, there can be no serious dispute that the destruction of Jones's home was a foreseeable result of the City's chosen course—the in-place detonation of an explosive device situated against the structure. The City intentionally employed a method that it knew would damage, if not obliterate, a substantial portion of the property, rendering the entire property unusable. That direct and foreseeable consequence of government action is precisely the type of burden the Takings Clause precludes being imposed on a single individual.

Even if there is a public-necessity exception to the Takings Clause, it is not applicable here. *See Baker v. City of McKinney*, 93 F.4th 251, 257 (5th Cir. 2024) (Elrod, J., dissenting from denial of rehearing en banc).

I would join the overwhelming weight of authority recognizing the state-created danger doctrine, reject a categorical exemption from the Takings Clause, and remand both claims for further proceedings.

Dated: February 14, 2025

IN THE
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No. 25-178

OCTOBER TERM 2025

SARAH JONES, INDIVIDUALLY
AND ON BEHALF OF HER MINOR SON, A.J.

Petitioner,

v.

THE CITY OF LAURENTON, ET AL.,

Respondents.

ORDER GRANTING WRIT OF CERTIORARI

The Petition for Writ of Certiorari is hereby GRANTED.

IT IS ORDERED that the above captioned cause be set down for argument in the October Term of 2025, limited to the following issues:

I. Under the Due Process Clause of the Fourteenth Amendment, is a state actor liable pursuant to the state-created danger doctrine for injuries inflicted by private parties when the state affirmatively creates or increases the danger to an individual?

II. Does the Fifth Amendment require just compensation for a taking due to the destruction of property in a valid police power exercise?

Dated: September 1, 2025