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.,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR PETITIONER

Team 1

COUNSEL FOR PETITIONER

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QUESTIONS PRESENTED

I. Whether the Due Process Clause of the Fourteenth Amendment protects citizens from third-party violence endorsed and exacerbated by state actors through deliberate indifference when a city assured a citizen that a third party known to be violent would be retained overnight, and released the violent third party without notifying the citizen, allowing the third party to install two explosives on the citizen's property.

II. Whether the Takings Clause of the Fifth Amendment requires just compensation when a city, in a valid exercise of its police power, makes a tactical choice to destroy a citizen's home as the means to secure a public benefit, where the city knew its chosen method rendered the home's destruction a near certainty and the property was not otherwise facing an inevitable loss.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This case is about a promise made by the police, relied on by a domestic abuse victim, and tragically broken. On a Friday night, Sarah Jones called 911 because her violent ex-boyfriend threatened her and her ten-year-old son. R. at 2. The Laurenton Police Department responded, took the man into custody, and explicitly assured Ms. Jones he would be "locked up until at least the morning." R. at 2. Relying on that promise, Ms. Jones and her son stayed home. R. at 2.

Unbeknownst to them, the police released the man hours later pursuant to a municipal policy. R. at 2. The City never warned Ms. Jones. R. at 2. The next morning, the man returned to Ms. Jones' home and detonated a homemade bomb. R. at 2-3. Ms. Jones and her son suffered catastrophic and permanent injuries as a result. R. at 2-3. When a second bomb was discovered, the City's Bomb Squad made a tactical decision to detonate it in place on Ms. Jones' back porch. R. at 3. The bomb squad knew the procedure carried a "virtually non-existent" chance of success and would almost certainly destroy Ms. Jones' home. R. at 3. The resulting explosion leveled what was left of the Jones' residence, rendering it uninhabitable. R. at 3. The lower courts held that these facts gave rise to no constitutional claim. R. at 4.

A Mother's Call for Help and a Promise of Safety. On the evening of Friday, September 8, 2023, Sarah Jones placed a frantic 911 call. R. at 2. Her former boyfriend, Mark Baker, was at her home, intoxicated, and threatening Ms. Jones and her ten-year-old son, A.J. R. at 2. Officers of the Laurenton Police Department ("LPD") responded within minutes. When they arrived, Baker was visibly angry and threatening Ms. Jones for calling for help. R. at 2.

Fearing for her family's safety, Ms. Jones informed the officers that Baker owned a handgun and other weapons, and that he had a military background in explosives. R. at 2. She specifically asked the officers if she and A.J. should leave the house for the night. R. at 2. An officer told her that leaving would not be necessary. R. at 2. He assured her that Baker had an outstanding arrest warrant for domestic assault and promised that Baker "will be locked up until at least the morning." R. at 2. Ms. Jones trusted this direct assurance from law enforcement and remained in the house with her son. R. at 2. The officers took Baker into custody and left the premises. R. at 2.

The City Breaks its Promise and Unleashes a Known Danger. After leaving Ms. Jones' home, the officers discussed the arrest. R. at 2. The officer who made the promise to Ms. Jones was reminded of a standing City policy that required officers not to execute certain warrants when the county jail was over capacity. R. at 2. A call to jail officials confirmed the jail was full. R. at 2.

The officers made a decision. Without notifying Ms. Jones that their promise of safety was broken, they seized one of Baker's handguns and transported him to his residence. R. at 2. Baker was left alone and free. R. at 2.

Early the next morning, before sunrise, Baker acted on his threats. R. at 2. He retrieved two homemade bombs from his basement, disguised one in Amazon-marked material, and drove to Ms. Jones's home. R. at 2. Baker placed one bomb on her front porch and the other on her back porch. R. at 2. When Ms. Jones awoke, she saw the package on her front porch. R. at 2. Believing it to be an Amazon delivery and relying on the LPD's promise that Baker was in jail, she brought the package inside to open it. R. at 2.

The device detonated. R. at 3. The explosion shattered Ms. Jones's left femur, caused third-degree burns across her arms and face, and left her with permanent hearing loss. R. at 3. Her son, A.J., was standing nearby and suffered a fractured arm, lung contusions, and severe psychological trauma. R. at 3.

The City Destroys the Jones' Home. A neighbor heard the explosion and called 911. R. at 3. Paramedics arrived to stabilize Ms. Jones and A.J. before transporting them to the hospital. R. at 3. While at the scene, police officers discovered the second bomb package on the back porch and called the LPD Bomb Squad. R. at 3.

The Bomb Squad arrived and, following its protocol, deployed a robot to assess the device. R. at 3. An X-ray revealed the bomb had a remote detonation mechanism. R. at 3. Because Baker was not in custody, the squad determined the device was "not controllable" and decided to use an "energetic tool" to disrupt it. R. at 3. The squad knew that because the bomb was "highly sophisticated and set up to evade disruption, the likelihood of disruption was virtually non-existent." R. at 3.

The tool failed to disrupt the device and instead detonated it. R. at 3. The resulting explosion leveled the rear half of the single-story home, collapsed a portion of the roof, and rendered the entire structure unsafe and uninhabitable. R. at 3. A subsequent expert analysis concluded that the home was left so structurally unsound that it had to be demolished and rebuilt. R. at 3. The property damage was estimated at $385,000, in addition to the costs of temporary housing and lost personal property. R. at 3.

II. PROCEDURAL HISTORY

Ms. Jones filed suit against the City of Laurenton and its police department under 42 U.S.C. § 1983. R. at 4. She alleged that the City violated her and her son's constitutional rights in two distinct instances. R. at 4. First, the City violated the Due Process Clause under the state-created danger doctrine by assuring her of Baker's confinement and releasing him without her knowledge. R. at 4. Second, that the City's destruction of her home constituted a taking, requiring just compensation under the Fifth Amendment. R. at 4. The City's liability was predicated on its official policies, including the jail-overcrowding policy and the Bomb Squad's standard operating procedures. R. at 4, n.2.

The United States District Court for the Eastern District of New Virginia granted summary judgment to the City on both claims. R. at 4. It concluded that the state-created danger doctrine is not a valid theory of liability in the Thirteenth Circuit. R. at 4. It further held the Takings Clause does not apply to property destroyed in the exercise of the City's police power. R. at 4. The United States Court of Appeals for the Thirteenth Circuit affirmed on the same grounds. R. at 1, 8. This Court granted certiorari to review both issues. R. at 13.

SUMMARY OF THE ARGUMENT

The Constitution does not permit the government to create a danger and then abandon a citizen to face the consequences. Additionally, the Constitution bars the government from sacrificing an innocent person's home for the public good without paying for it. The City of Laurenton did both. It first turned a domestic violence victim's plea for help into a state-created peril through a series of affirmative acts that led to a devastating bombing. Then, to neutralize a threat of its own making, the City deliberately destroyed her home. The Thirteenth Circuit's

holding that these actions give rise to no constitutional claim offends the core principles of the Due Process and Takings Clauses. This Court should reverse.

First, the City is liable under the state-created danger doctrine for the injuries to Sarah Jones and her son. This Court held in *DeShaney v. Winnebago County Department of Social Services* that the state has no general duty to protect citizens from private violence. But, it also made clear that liability may attach when the state affirmatively acts to create or increase a person's vulnerability to that violence. The City's police officers did not simply fail to protect Ms. Jones; they took three distinct, affirmative steps that created the danger: giving a false promise of safety, releasing a known threat pursuant to municipal policy, and failing to warn Ms. Jones that the danger had been unleashed. These conscience-shocking actions directly caused the catastrophic bombing. By refusing to adopt the state-created danger doctrine, the Thirteenth Circuit has become an outlier. This Court should join the overwhelming majority of circuits and hold that when the state lights the fuse of private violence, it cannot escape constitutional accountability.

Second, the City's subsequent destruction of Ms. Jones's home was a compensable taking under the Fifth Amendment. The central purpose of the Takings Clause, as this Court articulated in *Armstrong v. United States*, is to bar the 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." The City made a calculated, tactical choice to detonate the second bomb, knowing that the procedure would almost certainly destroy the home. This was a direct physical appropriation of private property to achieve a public purpose.

The Thirteenth Circuit's holding that this destruction was a non-compensable exercise of the "police power" creates a false dichotomy that this Court's jurisprudence has consistently rejected. Furthermore, the narrow common law doctrine of public necessity, recognized in cases like *United*

States v. Caltex, is inapplicable. That doctrine shields the government from liability only when it acts to prevent an inevitable loss. Here, Ms. Jones's home was not otherwise doomed. The City was the agent of destruction, inflicting the loss to solve a public problem. The Constitution demands it pay for what it took.

ARGUMENT AND AUTHORITIES

Standard of Review. This Court reviews a grant of summary judgment de novo. *Tolan v. Cotton*, 572 U.S. 650, 656 (2014); R. at 4, n.3. Summary judgment is proper only if "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 making this determination, a reviewing court must view all facts and draw all reasonable inferences in the light most favorable to the non-moving party, Petitioner Sarah Jones. *Tolan*, 572 U.S. at 657.

The questions presented to this Court—whether a state actor is liable under the state-created danger doctrine and whether the Takings Clause requires compensation for property destroyed pursuant to a police power exercise—are pure questions of law. Accordingly, the lower court's legal conclusions are afforded no deference and must be reviewed de novo.

I. THE CITY OF LAURENTON VIOLATED THE DUE PROCESS CLAUSE WHEN ITS OFFICERS AFFIRMATIVELY CREATED THE DANGER THAT DEVASTATED THE JONES FAMILY THROUGH A SERIES OF ACTIONS SO CULPABLE THEY SHOCK THE CONSCIENCE.

The Due Process Clause of the Fourteenth Amendment does not permit state actors to abuse their power by affirmatively placing citizens in harm's way. While the Constitution does not impose a duty on state actors to protect its citizens from private violence, it does not license the government to create or exacerbate danger. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195, 201 (1989). When the state actor "plays a part in [the] creation" of dangers, or

renders an individual "more vulnerable to them," it crosses the constitutional line from inaction to an affirmative abuse of power. *Id.* at 201.

The City of Laurenton crossed that line. Its officers responded to Ms. Jones' desperate 911 call, took her violent ex-boyfriend into custody, and explicitly promised he would be "locked up until at least the morning." R. at 2. Relying on that promise, Ms. Jones and her son stayed home. But, the City broke its promise. R. at 2. Pursuant to a municipal policy, the officers released the known abuser—who had a history with explosives and an outstanding warrant for domestic assault—without warning Ms. Jones. R. at 2. This chain of affirmative acts created a deadly peril that did not previously exist, leading directly to a bombing that left Ms. Jones and her son with catastrophic, permanent injuries. R. at 2–3.

This conduct is precisely what the state-created danger doctrine prohibits. The state-created danger doctrine was developed to hold state actors liable for knowingly placing an individual in danger. *Fisher v. Moore*, 73 F.4th 367, 372 (5th Cir. 2023). The lower court erred by rejecting this doctrine, incorrectly treating it as a fringe theory born from dicta. R. at 6. In reality, the doctrine is long-standing, based on the history and tradition of the Due Process Clause, and recognized by nearly every circuit court to consider it. This Court should reverse the Thirteenth Circuit and guarantee that when a state actor's conduct foreseeably endangers a citizen and shocks the conscience, the Constitution provides a remedy.

A. The State-Created Danger Doctrine was Developed by the Circuit Courts Based on the History and Tradition of State Actor Liability under the Due Process Clause.

The state-created danger doctrine emerged as a reaction to state actors' endorsement of violence against its people. *See Doe v. Covington Cnty. Sch. Dist.*, 675 F.3d 849 (5th Cir. 2012). The lower court's finding that the state-created danger doctrine was developed from two sentences

in *DeShaney* is a misunderstanding, because this doctrine easily predates *DeShaney* by a decade. R. at 6. In actuality, this Court in *DeShaney* endorsed this preexisting doctrine established by the circuit courts.

Further, the lower court widened a nonexistent split between the circuits. R. at 6-7. Aside from the lower court, the only other circuits that have not explicitly applied the state-created danger doctrine are the Fifth and Eleventh circuits, which simply have declined to answer the question. *Fisher*, 73 F.4th at 372. The only unresolved issue between the circuit courts is the specific wording of the core elements in the doctrine. *Irish v. Fowler*, 979 F.3d 65, 74 (1st Cir. 2020). This Court has the opportunity to set the state-created danger doctrine in stone to provide justice for survivors like Ms. Jones and her son in the future.

1. The state-created danger doctrine effectuates the plain text and historical purpose of 42 U.S.C. § 1983, which was enacted to provide a remedy against state actors who cause citizens to be subjected to constitutional violations.

The lower court disregarded the history and purpose of the Fourteenth Amendment and 42 U.S.C. 1983 in its misunderstanding of the foundation of the state-created danger doctrine. The purpose of the Fourteenth Amendment is to afford fundamental privileges to all citizens of the United States including: "*protection by the Government*; the enjoyment of life and liberty…." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 670 (1978) (quoting Representative Shellabarger's use of *Cordfield v. Coryell*, 6. F. Cas. 546 (C.C.E.D. Pa. 1825)). Despite the ratification of the Fourteenth Amendment, the fundamental liberties of black Americans were continuing to be threatened by private actors, particularly, the Ku Klux Klan. David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 375 (2001); UNITED STATES CONGRESS, THE ENFORCEMENT ACTS (Scott Yenor, ed., Teaching American History, 1871). And,

Congress recognized that the gruesome conduct of the Klan thrived at the hands of local officials, who either tolerated or even acted complicitly with this private actor. David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 375 (2001).

In response, Congress passed the Enforcement Act of 1871 to enforce and uphold the integrity of the Fourteenth Amendment. UNITED STATES CONGRESS, THE ENFORCEMENT ACTS, (Scott Yenor, ed., Teaching American History, 1871). When constructing the Enforcement Act, Congress broadened the language to apply beyond the abuses of Klan-related activities to all people who are subjected "to deprivations of constitutional rights to life and liberty." David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 376 (2001). The Enforcement Act was then codified into 42 U.S.C. § 1983, carrying the remedy of constitutional violations into the modern age. *Id.,* at 375. This Court used this exact legislative history when finding that the term "person" in Section 1983 included local governments in *Monell v. Dep't of Soc. Sers. Id.,* 436 U.S. at 665-69. ("Congress did specifically provide that A's tort became B's liability, if B caused A to be subject another to a tort.").

The plain text of Section 1983 also supports the tradition of holding state actors liable for causing injuries to people by private actors. The plain reading of 42 U.S.C § 1983 imposes liability who "subjects, or *causes to be subjected*, any citizen…to the deprivation of any rights, privileges, or immunities secured by the Constitution…." 42 U.S.C. § 1983 (emphasis added). This "causes to be subjected" language was intended to address the abuses by private actors allowed and endorsed by state officials. David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 375 (2001) (citing *Monell*, 436 U.S. at 665 n.11).

2. This Court's analysis in *DeShaney* provided the foundational distinction for the state-created danger doctrine by separating unprotected state inaction from unconstitutional state action that creates or enhances danger.

The state-created danger doctrine was clearly established by the time this Court heard *DeShaney*, with its first usage as early as 1979. David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 376 (2001); *see also White v. Rochford,* 592 F.2d 381 (7th Cir. 1979); *Bowers v. De Vito*, 686 F.2d 616 (7th Cir. 1982); *Escamilla v. Santa Ana*, 796 F.2d 266 (9th Cir. 1986); *Wells v. Walker,* 852 F.2d 368 (8th Cir. 1988). The lower court was incorrect in its finding that the state-created danger doctrine relied on dicta because this Court endorsed the preexisting distinction between state inaction and affirmative acts in its reasoning in *DeShaney*. R. at 6.

In *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, social workers and local officials knew a child was being abused by his father and did not act to remove the child from his father's custody. *Id*., 489 U.S. at 191. As a result, the child was beaten and permanently injured. *Id.* The child and his mother subsequently brought a Section 1983 claim against the county, alleging that her son's due process rights were violated when no official intervened to protect him against his father's violence. *Id.,* 489 U.S. at 193. This Court found that there is "nothing in the language of the Due Process Clause itself [that] requires the State to protect the life, liberty, and property of its citizens against the invasion by private actors," affirming the denial of the child's Section 1983 claim. *Id.,* 489 U.S. at 195.

The lower court cherry-picked this basic constitutional principle and ignored the distinction that this Court made in the reasoning of the *DeShaney* to deny Ms. Jones and her son's claims. R. at 5-6; *DeShaney*, 489 U.S. at 201. This Court found that the county in *DeShaney* was not liable

because "it played *no part* in [the dangers'] creation, nor did it do anything to render him any more vulnerable to them." *Id.,* 489 U.S. at 201 (emphasis added). The lower court argued that this distinction only applied to the special relationship exception, which is the deprivation of liberty triggering the due process clause through situations like incarceration. R. at 5-6; *DeShaney*, 489 U.S. at 200. By hyper-fixating on the special relationship exception in the *DeShaney* case, the lower court is guilty of the same "wrench[ing sentences] out of context" that it accuses Petitioners of. R. at 6.

This Court analyzed the special relationship exception in *DeShaney* because the family there argued that the county created a special relationship by proclaiming its intention to protect the child. *DeShaney*, 489 U.S. at 197. So, the family in *DeShaney* alleged the affirmative duty arose from the *special relationship* as opposed to state-created danger doctrine. *Id.* In fact, the mother and child conceded that the county played no part in creating the danger the child faced. *Id.* The county also conceded that had it acted affirmatively to increase the danger to the child, then an analysis of the state-created danger doctrine would have taken place.[1] David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 362 (2001). What was left for this Court was to acknowledge that there *are* in fact circumstances where state actors have affirmative duties of care, but ultimately found that—because there was no affirmative creation of danger from the county—the circumstances in *DeShaney* were not one of them. *DeShaney*, 489 U.S. at 198.

[1] Counsel for the county stated in oral arguments that: "I believe that the important factor to be looked at is whether or not the state action can fairly be said to have increased the risk of harm to that child. If the answer to that threshold question is 'yes,' then I believe we have a state action in a constitutional sense." David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 362 (2001).

This Court's holding in *DeShaney* was consistent with both traditional common law and constitutional law: that while there is no duty to rescue, there are still consequences in worsening the plight of victims. David Pruessner, *The Forgotten Foundation of State-Created Danger Claims*, 20 REV. LITIG. 357, 363-64 (2001) (referencing Restatement (Second) of Torts 56 (1965); PROSSER & KEETON ON TORTS 378-82 (William Lloyd Prosser et al., ed., 5th ed. 1984)). *DeShaney* did not disturb the state-created danger doctrine; this Court's differentiation between state action and inaction endorsed the work of the circuit courts in holding state actors accountable. *DeShaney,* 489 U.S. at 201.

3. The state-created danger doctrine is a mainstream constitutional principle adopted by an overwhelming majority of federal circuits.

The circuit split regarding the state-created danger doctrine has been fabricated; ten circuit courts have explicitly adopted the doctrine and the holdovers have sidestepped an outright rejection. *Irish v. Fowler*, 979 F.3d 65, 73 (1st Cir. 2020) (collecting cases). For example, in 2023, the Fifth Circuit in *Fisher v. Moore* declined to rule out the state-created danger doctrine. *Id.*, 73 F.4th 367, 372 (5th Cir. 2023). There, a student assaulted his classmate when their school allowed them to wander freely around the school, despite knowing that a similar incident had occurred between those students before. *Id.*, 73 F.4th at 368. The court found that "[e]ven though…the state-created danger doctrine is not clearly established in our circuit, we have not categorically *ruled out* the doctrine either…." *Fisher*, 73 F.4th at 372.

The lower court also cited the Eleventh Circuit as a dissenter to the state-created danger doctrine, but that court also remains open. R. at 6. In *Wyke v. Polk Cnty. Sch. Bd.*, a mother sued her child's school because her child had committed suicide after two unsuccessful attempts on school property. *Id*., 129 F.3d 560, 563 (11th Cir. 1997). The court, despite denying the mother's

claim, still found that "[t]he language of *DeShaney* [did] indeed 'leave room' for state liability where the state creates a danger or renders an individual more vulnerable to it." *Id.*, 129 F.3d at 567.

For almost half a century, the circuit courts have made the logical conclusion that state actors should be held liable for affirmatively endangering its citizens under Section 1983. Ms. Jones and her son should not be denied relief for living in the one jurisdiction that has declined to accept this clearly established doctrine.

B. The City Violated Ms. Jones and Her Sons' Due Process Rights Under the State-Created Danger Elements Developed by the Circuit Courts.

As the state-created danger doctrine has developed, the circuits have utilized different vocabulary for the same test. R. at 5-6; *see also Irish*, 979 F.3d at 73. While the language between circuits vary, the core elements stay the same: (1) an affirmative action by a state actor to create or exacerbate a danger that (2) goes beyond mere negligence. *Irish*, 979 F.3d at 73-74. This Court should iron out the core elements of the state-created danger doctrine using the abhorrent actions the City took to endanger Ms. Jones and her son.

1. The City took three distinct affirmative acts that together created a lethal situation for Ms. Jones: it made a false promise of safety, released a known abuser, and concealed his release.

A majority of the circuits have found that the first element of the state-created danger doctrine is an affirmative act by a state actor[2]. The City took three affirmative actions to place Ms. Jones and her son in danger: (1) promising Ms. Jones that her abuser would be retained in jail

[2] *See Irish*, 979 F.3d at 73; *Lombardi v. Whitman*, 485 F.3d 73, 79-81 (2d Cir. 2007); *Sanford v. Stiles*, 456 F.3d 298, 304-05 (3d Cir. 2006); *Doe v. Rosa*, 795 F.3d 429, 439-42 (4th Cir. 2005); *McQueen v. Beecher Cmty. Sch.,* 433 F.3d 460, 468-69 (6th Cir. 2006); *D.S. v. East Porter Cnty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015); *Avalos v. City of Glenwood*, 382 F.3d 792, 799 (8th Cir. 2004); *Fraternal Order of Police Dep't of Corr. Labor Comm. v. Dist. of Columbia*, 375 F.3d 1141, 1146 (D.C. Cir. 2004).

overnight; (2) returning the abuser to his residence despite an outstanding domestic assault warrant; and (3) failing to inform Ms. Jones of his release. R. at 4-5. Together, the City's actions caused Ms. Jones and her son to suffer severe, permanent injuries and psychological trauma at the hands of their abuser. Almost every circuit court would agree that each of these actions placed Ms. Jones and her son in a vulnerable position—satisfying the first core element of the state-created danger doctrine.

Pulling the rug out from a victim after making false promises of safety is an affirmative action under state-created danger doctrine. *Kennedy v. Ridgefield City*, 439 F.3d 1055, 1058 (9th Cir. 2006). In *Kennedy v. Ridgefield City*, a family reported to the police that their daughter had been molested by their neighbor, and were concerned about their neighbors' known violent tendencies. *Id.,* 439 F.3d at 1057. The officer assured the mother that she would be given notice before any police contact with the neighbors—a promise he broke a few weeks later. *Id.*, 439 F.3d at 1058. When the mother learned of the broken promise, she told the police that she was afraid the neighbors would retaliate after learning of her report. *Id.* That night, the family relied on the police's further assurances of safety and stayed the night with the intention to leave the next morning. *Id.* Before they could leave, early in the morning, the neighbor broke into the family's house and killed the father and daughter while they slept. *Id.*

The court found that breaking the promise by informing the neighbors of the mother's report without warning her created an opportunity for danger that otherwise would not have existed. *Id.*, 439 F.3d at 1063. Further, the court found that the later assurances of safety was "an additional and aggravating factor, making them more vulnerable to the danger he had already created." *Id.*

Here, the City's officers created a danger that otherwise would not have existed for Ms. Jones and her son by arresting and releasing their abuser. R. at 2. Like the victims in *Kennedy*, Ms. Jones asked if her family should leave for the night out of concern for their safety. R. at 2. The officers assured Ms. Jones that she and her son would be safe. R. at 2. Also like *Kennedy*, the officers were aware that the abuser was angry that his victims sought police intervention, yet still took the affirmative action of releasing him to the public. R. at 2. And, the officers aggravated the harm they created by assuring Ms. Jones of her safety and then breaking their promise. R. at 2. Relying on the officers' broken promise, she and her son stayed the night and acted as they normally would have—retrieving a package that could have cost her their lives. R. at 2-3.

2. The officers acted with deliberate indifference that shocks the conscience by ignoring red flags and emboldening a violent domestic abuser.

This Court has established time and again that mere negligence falls below the culpability required for a substantive due process violation. *Davidson v. Cannon*, 474 U.S. 344 (1986); *Daniels v. Williams*, 474 U.S. 327 (1986). In response, the lower courts have adopted the "shocks the conscious" standard from this Court's precedent to distinguish from ordinary negligence.[3] *See County of Sacramento v. Lewis*, 533 U.S. 833, 846-47 (1998) (collecting cases); *see also Rochin v. California*, 342 U.S. 162, 172 (1952). Deliberate indifference can satisfy this standard. *Rivera v. Rhode Island*, 402 F.3d 27, 32 (1st Cir. 2005); *Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, 577 F.3d 415, 431 (2d Cir. 2009). This Court has defined deliberate indifference as "disregard[ing] a known or obvious consequence of his actions." *Bryan County v. Brown*, 520 U.S. 397, 410

[3] *See Irish*, 979 F.3d at 73; *Lombardi*, 485 F.3d at 79-81; *Sanford*, 456 F.3d at 304-05; *Doe*, 795 F.3d 439-42; *East Porter*, 799 F.3d at 798; *Ulrig v. Harder,* 64 F.3d 567, 574 (10th Cir. 1995); *Fraternal Order of Police*, 375 F.3d at 1146.

(1997). Deliberate indifference is highly circumstantial and shocks the conscious only when actual deliberation is practical. *Lewis*, 523 U.S. at 851.

When domestic violence is a known danger, deliberate indifference shocks the conscious. *Okin*, 577 F.3d at 431. Here, officers received a call that a violent ex-boyfriend threatened Ms. Jones and her son, arriving to see him visibility angry and actively threatening her. R. at 2. The officers were aware that the abuser had a warrant out for his arrest for domestic assault. R. at 2. The officers were aware that he owned multiple weapons and had a military background in explosives. R. at 2. Despite these warnings and Ms. Jones' concern, the officers chose to release him, only confiscating one handgun. R. at 2.

Deliberate indifference like the City's officers showed Ms. Jones can also embolden private parties to commit violence and increase danger. *Okin*, 577 F.3d at 426. In *Okin v. Vill. of Cornwall-on-Husdon Police Dep't*, officers failed to respond and report multiple calls for help from a domestic violence victim. *Id.,* 577 F.3d at 420-426. The court found that sustained inaction in the face of potential acts of violence can rise to a level of an affirmative condoning of violence, "even if there is no explicit approval or encouragement." *Id.,* 577 F.3d at 428.

An officer's dismissive and indifferent attitude in the face of domestic violence "rachet[s] up the threat of danger" by galvanizing the abusers. *Id.*, 577 F.3d at 430. That is precisely what happened here. When the City's officers released an abuser from an arrest for domestic violence, they communicated to him that the City was indifferent to his previous violent acts. *See Id.*, 577 F.3d at 428-429. The officers communicated that he would "not be arrested, punished, or otherwise interfered with" for future acts of violence, emboldening him to follow through on his threats to Ms. Jones' family. *Id.* The officers' deliberate indifference further strengthened the first core

element of the state-created danger doctrine, as it affirmatively increased the danger Ms. Jones and her son faced.

With all these red flags, "[i]t requires no inferential leap…to conclude that the officers' actions demonstrate a willful disregard of the obvious risks of a domestic violence situation…." *Id.*, 577 F.3d at 432. The City's officers affirmatively created and increased the danger Ms. Jones and her son faced, shocking the conscious with their deliberate indifference. As a result, Ms. Jones and her son suffered catastrophic and permanent injuries, and deserve a remedy under the state-created danger doctrine.

II. THE CITY OF LAURENTON IS REQUIRED UNDER THE FIFTH AMENDMENT TO COMPENSATE MS. JONES BECAUSE THE DESTRUCTION OF HER HOME FOR PUBLIC SAFETY FORCED HER ALONE TO BEAR A BURDEN THAT, IN ALL FAIRNESS AND JUSTICE, SHOULD BE BORNE BY THE PUBLIC AS A WHOLE.

The Fifth Amendment's guarantee of just compensation is a fundamental constitutional right, not a matter of legislative grace. Its central purpose is to bar the 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." *See Armstrong v. United States*, 364 U.S. 40, 49 (1960). The City of Laurenton made a deliberate, tactical choice to destroy Ms. Jones' home to ensure the safety of the community. R. at 3. While the City's goal was laudable, the public, not Ms. Jones alone, must bear the cost of achieving it. Because the City's action imposed a direct and devastating public burden on an innocent individual, the Takings Clause commands that just compensation be paid.

A. The Takings Clause Protects Individuals from Bearing Disproportionate Public Burdens.

The Fifth Amendment's Just Compensation Clause serves a fundamental purpose: it prevents the government from imposing on a single individual the full cost of a public benefit. *Armstrong*, 364 U.S. at 49. This principle of fairness is the bedrock of takings jurisprudence. The

clause does not prohibit the government from taking property for the public good; rather, it secures compensation in the event of an otherwise proper interference. *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012). The inquiry focuses directly on the "severity of the burden that government imposes upon private property rights," not the importance of the governmental interest being advanced. *Lingle v. Chevron U.S.A. Inc.,* 544 U.S. 528, 539 (2005)**.** It is a condition placed on the exercise of state power, ensuring that the government does not finance public objectives by sacrificing the property of its individual citizens

When the government acts for a public purpose that results in the destruction of private property, that action constitutes a "public use" that triggers the duty to compensate. This Court rejects rigid formulas in its takings analysis, having "[t]ime and again" refused to adopt "blanket exemptions from the Fifth Amendment's instruction." *Ark. Game & Fish Comm'n*, 568 U.S. at 36-37. Indeed, lower courts recognize that the entire regulatory takings doctrine "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 Houston*, 214 F.3d 573, 578 (5th Cir. 2000). Thus, actions taken under the police power to protect public safety and neutralize threats are quintessential government actions for the benefit of the public. Even the court in *Bachmann v. United States*, a case the Thirteenth Circuit relied upon, acknowledged that when police damage property to apprehend a fugitive, they do so "deliberately for the public's safety, to protect the public from a wanted suspect." *Bachmann v. United* States, 134 Fed. Cl. 694, 697 (2017). The public receives the benefit of safety and security; the Takings Clause simply ensures the public also pays the fair, associated cost.

B. The City's Deliberate Destruction of Ms. Jones' Home to Neutralize a Public Threat is a Quintessential Public Burden on an Innocent Individual.

The City made a tactical choice to sacrifice Ms. Jones' private home to achieve the undisputed public benefit of neutralizing a dangerous threat. R. at 3. This was not an accident. The LPD Bomb Squad, following its standard protocol, knew that its chosen method—using an "energetic tool" to detonate a highly sophisticated explosive device—carried a "virtually non-existent" likelihood of simple disruption. R. at 3. The Squad proceeded with the expectation that the bomb would detonate, and the direct and foreseeable result was the destruction of Ms. Jones' home. R. at 3. 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." R. at 3. This physical destruction of an innocent person's home for the common good is precisely the kind of government action the Taking's Clause was written to address.

This was a direct physical appropriation of Ms. Jones's property for public use. The City did not merely regulate the use of her property; it physically destroyed a substantial portion of it as the very means to its public safety end. The Thirteenth Circuit, relying on *Bachmann v. United States,* reasoned that such destruction is not a taking because "the property has not been altered or turned over for public benefit." R. at 8. This interpretation adopts an overly literal and flawed view of what constitutes a "public benefit." This Court has never adopted such a crabbed view of "public use," which focuses on the public's ultimate benefit, not its literal possession of the property. *See Armstrong*, 364 U.S. at 48 (holding the total destruction of the value of a lien for the government's benefit is a taking). The benefit to the public was not possessing the rubble of Ms. Jones' home; the benefit was the safety and security achieved by eliminating a bomb threat. The destruction of the home was the price of that public benefit.

To hold otherwise would lead to absurd results. The lower court's logic would allow the government to seize and burn a citizen's car to form a roadblock against a fugitive, but owe no compensation because it did not "turn over" the ashes for public use.

The City effectively appropriated Ms. Jones' home, using its destruction as the very instrument to secure a public benefit. By forcing Ms. Jones to bear this cost alone, the City has appropriated her private property for the public's welfare as if it had seized her land to build a police station. The Constitution demands a different result. When the public reaps the benefit of a government action, the public must also shoulder the burden. *Armstrong*, 364 U.S. at 49.

C. The City's Exercise of Its Police Power Does Not Immunize from Its Constitutional Obligation to Pay Just Compensation.

The Thirteenth Circuit wrongly concluded that because the City acted pursuant to its police power, the Takings Clause "does not apply." R. at 8. This holding creates a false dichotomy between the police power and the power of eminent domain, treating the former as a categorical shield from constitutional accountability. This Court has never endorsed such a sweeping exemption. The government cannot escape the Fifth Amendment's command simply by affixing the "police power" label to an action that physically destroys an innocent person's home for the public's benefit.

1. This Court has consistently rejected categorical exemptions from Taking Clause scrutiny.

This Court's takings jurisprudence rejects rigid categorical rules in favor of a fact-intensive inquiry into fairness and justice. As this Court made clear in *Ark. Game & Fish Comm'n v. United States*, it has "[t]ime and again" rejected arguments "deployed to urge blanket exemptions from the Fifth Amendment's instruction." *Id.*, 568 U.S. at 36-37. The Takings Clause requires a careful,

case-by-case assessment of the government's action and the burden it imposes, not a simple sorting exercise into doctrinal silos. *Id.*, 568 U.S. at 37.

The lower court's bright-line rule—that any action taken under the police power is per se exempt from the Takings Clause—is precisely the kind of blanket exemption this Court has refused to adopt. Other circuits have rightly rejected this approach. The Fourth Circuit, for example, held that "[g]overnment actions taken pursuant to the police power are not per se exempt from the Takings Clause," a principle it described as "axiomatic in the Supreme Court's jurisprudence." *Yawn v. Dorchester Cnty.*, 1 F.4th 191, 195 (4th Cir. 2021).

Indeed, the entire doctrine of regulatory takings 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.*, 214 F.3d at 578 (citing *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922)). While the government may regulate property under its police power without paying compensation, when an action physically destroys property for a public benefit, a constitutional line is crossed. The relevant question is not *which power* the government invoked, but *what burden* it imposed on the private property owner.

2. The physical destruction of property is a taking, regardless of the government power exercised.

The Thirteenth Circuit's reliance on cases like *Lech v. Jackson* is misplaced because those cases create a rigid distinction between police power and eminent domain that this Court's precedent does not support. *Id.*, 791 F. App'x 711 (10th Cir. 2019). Particularly, this error is stark in cases of direct physical destruction. *Id.* In *Lech*, the Tenth Circuit held that the destruction of a home to apprehend a fugitive was an exercise of police power and therefore "categorically not a taking." R. at 7 (citing *Lech*, 791 F. App'x at 715-16). This reasoning is flawed. It incorrectly

assumes that an action cannot simultaneously be an exercise of the police power *and* a compensable taking. This Court has made clear that whether a government action is a valid exercise of the police power is a separate question from whether that action "so frustrates property rights that compensation must be paid." *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 425 (1982).

The critical factor is the nature of the government's intrusion, not the label attached to its authority. When the government physically destroys property—as it did here—it has effected a taking in the most literal sense. *See Yawn*, 1 F.4th at 195 (analyzing a police power action by examining whether the harm was the "intended or foreseeable result of government action"). Such a direct physical appropriation "is a taking without regard to the public interests that it may serve." *Loretto*, 458 U.S. at 426**.** The City's action was not a mere regulation of use; it was the intentional application of destructive force that foreseeably and completely destroyed the utility of Ms. Jones' home. R. at 3. Unlike cases involving the seizure of contraband or the abatement of a public nuisance where the property itself is the source of the harm, Ms. Jones' home was an innocent bystander to the danger the City sought to neutralize. *See Mugler v. Kansas*, 123 U.S. 623, 669 (1887) (explaining that a prohibition on a noxious use of property is not a taking). The City did not destroy Ms. Jones' home because it was a nuisance; the City used the home's destruction as the very tool to secure a public benefit, the neutralization of a dangerous explosive. R. at 3. This places the burden of providing for the common good squarely on Ms. Jones' shoulders, a result the Takings Clause was written to prevent. *Armstrong*, 364 U.S. at 49.

D. The Common Law Doctrine of Public Necessity Does Not Justify Denying Compensation When the Government Deliberately Sacrifices Innocent Property That Is Not Otherwise Doomed.

The Thirteenth Circuit's concurrence, and the City's defense, improperly seek refuge in the narrow common law doctrine of public necessity. R. at 8. This doctrine was developed to shield individuals from tort liability in emergencies. It has no application where the government makes a tactical choice to destroy an innocent person's property that was not otherwise facing certain destruction. The necessity doctrine immunizes action taken to avert an imminent and inevitable disaster, such as a fire or advancing army. It does not create a constitutional loophole allowing the government to force an individual to bear the cost of a public benefit when the government itself is the source of the destruction.

1. The necessity doctrine applies only when destruction of the property is inevitable.

This Court's precedent applying a necessity exception is narrowly confined to situations where the destroyed property was already fated for destruction by an independent force. In *United States v. Caltex (Philippines), Inc.*, this Court held that no compensation was due when the Army destroyed private oil terminals to prevent their imminent capture by an invading enemy during wartime. *Id.*, 344 U.S. 149, 155-56 (1952). The Court reasoned that the loss "must be attributed solely to the fortunes of war, and not to the sovereign." *Id.* The property was effectively already lost to the owner; the Army's action merely determined *how* it would be lost.

Similarly, the classic common law example of necessity—demolishing a house to create a firebreak—is premised on the fact that the house is in the path of an uncontrollable and inevitable conflagration and would have been destroyed anyway. *See Baker v. City of McKinney*, 84 F.4th 378, 385-88 (5th Cir. 2023) (discussing historical fire cases). In both scenarios, the government's

intervention does not cause the loss but rather redirects an already inevitable destruction for the greater public good.

That is not what happened to Ms. Jones. Her home was not in the path of an advancing army or a raging fire. But for the Bomb Squad's deliberate actions, her home would have remained perfectly intact. The threat was a bomb *on* her property, but the destructive force that leveled her home was wielded by the City itself as a tactical choice. The City did not merely hasten an inevitable loss; it inflicted the loss to solve a public problem. This deliberate sacrifice of one person's property for the benefit of all is the very definition of a taking for public use.

2. A tactical choice to destroy property for the public good is a compensable taking.

When the government intentionally destroys property not as a last resort against inevitable loss, but as a chosen method to secure public safety, it is acting for a public use and must pay for what it takes. The harm to Ms. Jones' property was not an incidental consequence of the City's actions; it was the direct and foreseeable result of the City's chosen strategy. The Bomb Squad knew that detonating the device was the likely outcome of its actions. R. at 3. It chose this path to protect the community, effectively appropriating Ms. Jones' home as the instrument to achieve that public safety goal.

To expand the narrow necessity doctrine to cover such tactical choices would create a rule that swallows the Fifth Amendment. It would mean that any time the government acts in an "emergency," it can destroy private property with impunity and force innocent individuals to bear the full cost of public safety. This would turn the Takings Clause on its head, sanctioning the very sort of disproportionate burden the Clause was designed to prevent. *Armstrong*, 364 U.S. at 49. The City had a duty to protect the public, but it also had a constitutional duty to make whole the

innocent citizen whose property it sacrificed in the public's name. The Takings Clause ensures that the public, which benefited from the destruction of Ms. Jones's home, is the one that pays for it**.** By refusing to do so, the City has violated the Fifth Amendment.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit. First, the City of Laurenton is liable for the devastating injuries to Ms. Jones and her son under the state-created danger doctrine. Through a series of conscience-shocking affirmative acts—a false promise of safety, the release of a known threat pursuant to municipal policy, and a failure to warn—the City transformed a plea for help into a catastrophic danger.

Second, the City's subsequent destruction of Ms. Jones's home was a compensable taking under the Fifth Amendment. The City made a tactical choice to sacrifice private property for the public good, forcing an innocent individual to bear a burden that, in all fairness and justice, should be borne by the public as a whole. Accordingly, Petitioner prays that this Court reverse the judgment of the Thirteenth Circuit and remand the case for further proceedings.

Respectfully submitted,

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COUNSEL FOR PETITIONER

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APPENDIX "A"

CONSTITUTIONAL AMENDMENTS

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.