No. 25-178

In the Supreme Court of the United States

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

Petitioner,

v.

THE CITY OF LAURENTON, ET AL.

Respondants.

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

BRIEF FOR THE PETITIONER

TEAM 11

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QUESTIONS PRESENTED

The questions presented are:

1. 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?
2. Does the Fifth Amendment require just compensation for a taking due to the destruction of property in a valid police exercise?

STATEMENT OF THE CASE

This appeal arises from a series of events in which the City of Laurenton's assurances and actions placed Sarah Jones and her ten-year-old son in grave danger, ultimately resulting in devastating injuries and the destruction of their home. Ms. Jones seeks review of the district court's grant of summary judgment on her Due Process and Takings Clause claims under 42 U.S.C. § 1983. R. at 2.

On the evening of September 8, 2023, Ms. Jones called 911 in fear for her and her son's safety because her former boyfriend Mark Baker had arrived at her home intoxicated and was threatening her and her son. R. at 3. Officers Trent and Williams from the Laurenton Police Department responded within minutes and witnessed Baker's agitation. R. at 4. Ms. Jones informed the officers that Baker owned a handgun, possessed other weapons, and had "a background in explosives from his military service." R. at 4. Concerned for her safety, she asked whether she and her son should leave for the night. R. at 3. Officer Trent assured Ms. Jones that Baker "will be locked up until at least the morning" due to an outstanding domestic-assault warrant. R. at 5. Relying on that express promise, Ms. Jones stayed home with her son. R. at 5.

Unbeknownst to Ms. Jones, the City maintained a policy that prohibited officers from executing certain warrants when the county jail was over capacity. R. at 6. After taking Baker into custody, the officers learned the jail was full, applied the policy, and transported him to his residence rather than booking him. R. at 6–7. They did not notify Ms. Jones of this change or take further steps to ensure her safety. R. at 7.

Before sunrise the next morning, Baker retrieved and packaged two homemade bombs, placing one on Ms. Jones's front porch disguised in "Amazon-marked material" and another on the back deck. R. at 9. Believing the front package to be a delivery, Ms. Jones brought it inside.

When she attempted to open it, the device detonated, shattering her femur, causing third-degree burns, and leaving her with permanent hearing loss. R. at 10. Her ten-year-old son standing nearby suffered a fractured arm, lung injuries, and lasting psychological trauma. R. at 10–11. Police responding to the explosion located the second device and summoned the bomb squad. R. at 12. Following protocol, the squad attempted to neutralize the bomb with an energetic disruption tool; the device instead detonated, collapsing the rear of the home and rendering the structure uninhabitable. R. at 13. An expert later concluded the home had to be demolished and rebuilt. R. at 14.

Ms. Jones brought suit against the City and the Laurenton Police Department, alleging that the officers' assurances and undisclosed release of Baker affirmatively increased her risk of harm in violation of the Due Process Clause, and that the intentional destruction of her home during the bomb disposal constituted a compensable taking. R. at 15–16. The district court granted summary judgment for the defendants, holding that state-created danger doctrine does not apply and that the Takings Clause does not cover destruction of property during police operations. R. at 17–18. Ms. Jones timely appealed. R. at 19. On February 14, 2025, the United States Court of Appeals for the Thirteenth Circuit affirmed the district court's judgment, holding that the Due Process Clause does not impose liability for harm caused by private actors and declining to recognize the state-created danger doctrine.On October 6, 2025, the Supreme Court of the United States granted certiorari.

SUMMARY OF ARGUMENT

This Court should reverse and remand the 13th Circuit's decision for further proceedings for any of the following sufficient reasons. First, the City of Laurenton and its officers

affirmatively created a special relationship between themselves and Jones and exacerbated the danger that resulted in Sarah Jones's life-altering injuries. The resulting actions after

they failed to warn Ms.Jones and complete Baker's arrest were foreseeable. When Ms. Jones called 911 seeking protection from her intoxicated and violent ex-boyfriend, the officers assured her that he "would be locked up until at least the morning." Relying on those assurances, she remained in her home with her ten-year-old son instead of leaving to protect themselves. The officers then failed to notify her that, under a municipal policy restricting arrests during jail overcrowding, they had released the very man she feared. That decision—made by state actors exercising official authority—directly placed Ms. Jones and her child in greater danger than they faced before police intervention. Ms. Jones had told officers that Baker had a background in explosives, owned a handgun, as well as other weapons. Baker was already upset with Jones for calling the police, and had already threatened her, all information that officers knew. "By releasing him, the officers allowed Baker's anger to fester toward Jones and enabled him to

retrieve and deploy the two homemade bombs from his residence. Experienced officers know that domestic-violence situations are among the most volatile and dangerous encounters they face.

Standard police training teaches that threats made during domestic incidents frequently escalate once officers become involved, and in general. The officers here knew Baker was intoxicated, angry, armed, and experienced in handling explosives—yet they still released him and did so without warning Ms. Jones or providing any protective measures. Given the circumstances, the risk of retaliatory violence was not just foreseeable—it was predictable. Their failure to take even minimal precautions, such as posting a unit to monitor Baker, confirming his

secure custody, or notifying Ms. Jones of his release, directly contributed to the tragic and preventable outcome.

The actions that occurred shocked the conscience, and the actions by the state limited the appellant's freedom to act on her own behalf. The police department's conduct was not a passive failure to protect; it was an affirmative act that stripped Ms. Jones of the ability to safeguard herself. By assuring her that Baker would remain incarcerated, the City deprived her of critical information necessary to make an informed decision about her safety. In doing so, the State limited her freedom to act on her own behalf and created the peril that led to her devastating injuries. Their decision to release him without warning Ms. Jones demonstrated deliberate indifference to her safety, knowing all that they knew about what a threat he posed to her.

Second, when the government deliberately destroys an innocent owner's home to serve a public end—here, neutralizing a bomb—the Fifth Amendment requires just compensation. The Takings Clause prevents "forc[ing] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." The police power is not an exemption from the Constitution. Destruction is the most complete physical appropriation of property interests; the public benefit of eliminating danger must be financed by the public, not by the single unlucky homeowner.

Petitioner respectfully asks the Court to (1) reverse the judgment below on the Takings Clause and remand with instructions to enter judgment for just compensation (or at minimum for trial on compensation), and (2) reverse and remand on the Due Process issue for application of the state-created danger doctrine (or for trial), consistent with the standards set forth herein.

ARGUMENT

I. Appellants' Request For Application Of The State-Created Danger Doctrine Should Be Granted Because The Defendants' Created A State-Created Danger

In order to be liable under the state-created danger doctrine, the defendant must "affirmatively act to increase the threat to an individual of third-party private harm." A government official must actually have created or escalated the danger to the plaintiff and the plaintiff cannot have "voluntarily assume[d] those risks." The danger cannot be "to the general public," it must be "specific" in some "meaningful sense" to the plaintiff. The official's acts must cause the plaintiff's injury. The defendant's actions must "shock the conscience," and where a state actor had the "opportunity to reflect and make reasoned and rational decisions, deliberately indifferent behavior may suffice to 'shock the conscience.'" To show deliberate indifference, the plaintiff "must, at a bare minimum,demonstrate that [the defendant] actually knew of a substantial risk of serious harm . . . and disregarded that risk In evaluating whether the defendant's actions shocked the conscience, we also consider whether the defendants violated state law or proper police procedures and training. *Irish v. Fowler, 979 F.3d 65, 73 (1st Cir.2020)*.

A. The Police Department Affirmatively Acted To Increase The Threat To The Plaintiff, Who Did Not Voluntarily Assume The Risk, Thereby Creating A Foreseeable Injury And A Special Relationship Distinct From That Owed To The General Public.

Under the state-created danger doctrine, liability attaches where the State affirmatively creates or exacerbates a danger to a specific individual, and the resulting harm is foreseeable. The doctrine applies when the State's conduct "created or escalated the danger," the plaintiff did not voluntarily assume the risk, and the government's actions shocked the conscience. *Irish v. Maine*, 849 F.3d 521, 528–30 (1st Cir. 2017). Additionally, where officers perform a non-essential affirmative act that enhances danger to a victim, a sufficient causal connection

exists and due process liability may arise. *Rivera v. Rhode Island*, 402 F.3d 27, 37–38 (1st Cir. 2005).

In *Irish*, the court determined that the doctrine of a state-created danger requires that the defendant affirmatively act to create or exacerbate the danger to a specific individual. *Id*. at 74. Here, the court decided that the defendant must have created or escalated the danger. *Id*. In *Irish*, the court found that the police department was liable under the state-created danger when they left a voicemail on the plaintiff's violent ex-boyfriend's phone, causing him to become enraged, kidnap the plaintiff and murder her friend who was trying to help her escape. *Id*. at 68. Here, the police department would not provide protection to the plaintiff because they did not have the "manpower," and the detectives did not tell Irish about their decision to deny her request for protection until an hour later. *Id*. at 73. The court found that this affirmative act by the police department not to give the plaintiff protection and their other actions increased the threat of harm and allowed him to kidnap her and shoot the man who helped her try to escape from him, in the neck. *Id*. at 73. In *Irish*, the court determined that a jury could conclude that defendants violated plaintiffs' substantive due process rights. *Id*. at 80.

Similarly, in our case, the appellant was told that Baker would be apprehended. The officers' assurance of safety, followed by the silent release of an armed, enraged domestic-violence suspect with explosives expertise, directly increased Ms. Jones's danger. Due to overcrowding, similar to the manpower issue in *Irish*, the suspect was not apprehended and was free to make the bombs that were later planted in the appellant's house. Just as the police in *Irish* made the deadly outcome foreseeable, so did the Laurenton officers' actions in permitting Baker to act on his anger and specialized skills.

In *Rivera*, the court warned that if an officer performed a non-essential affirmative act which enhanced a danger, a sufficient causal connection existed between that act and the plaintiff's harm and the officer's actions shocked the conscience. This court reviewed the contours of the doctrine as described above, and then held that Iris Rivera had not made out a viable state-created danger claim against the defendant officers because the acts taken by defendants were essential to the investigation and performed appropriately.*Id*. at 37. The court did not find that the officer should be liable for placing a witness or victim in harms way during an investigation. *Id*. at 78. The court in *Rivera* held that the state actions must shock the conscience of the court. *Id*. at 19. Of course, whether behavior is conscience shocking varies with regard to the circumstances of the case. *Id*. at 36.

Here, as in *Rivera*, the police officers' actions further placed the victim in harm's way because officers are well-trained in domestic violence situations and know that they tend to escalate. They already knew that Baker was angry with the appellant for calling the police on him for threatening both her and their ten-year-old son, and they knew that he had threatened her because of it. Here, officers knew that Baker owned weapons, including a handgun, and had a background in explosives from his military service. Their actions created an enhanced danger because the suspect knew that he was going to be possibly apprehended, and knew that she had called the cops on him after already getting into an altercation with her. Despite this knowledge, they assured Ms. Jones he would be "locked up until morning," then released him without warning, creating a foreseeable and heightened risk of retaliation.

The City will undoubtedly argue that releasing Baker was essential to comply with its jail-overcrowding policy barring execution of certain warrants. But *Rivera* makes clear that the relevant question is not only whether one act was constrained by policy, but whether officers

then undertook or failed to undertake, preventable, non-essential actions that increased the danger. Even assuming the release itself was compelled, the decision not to warn Ms. Jones, not to station an officer near her home, and not to monitor Baker's movements were discretionary choices, none of which would have violated the overcrowding policy. These omissions were non-essential acts that exacerbated the danger and reflected deliberate indifference to a known, acute threat. These non essential acts exacerbated and heightened the risk for Ms. Jones, and gave Baker an open door to create the damage that he did.

Their words and conduct caused Ms. Jones to reasonably rely on their assurances of safety, leaving her without reason to take further precautions to protect herself. This reliance distinguishes her from the general public and establishes a direct, individual relationship under which the State assumed a duty to protect her from the very danger it helped create. Once the officers intervened, provided specific guidance, and deprived her of the freedom to act on her own behalf, Ms. Jones became more than a member of the public, she became a person uniquely dependent on the State's protection.

The severity and circumstances of the injuries of the explosion that occurred after Baker sent the bombs to Ms. Jones' house, shock the conscience and underscore the constitutional magnitude of the State's conduct. Ms. Jones suffered catastrophic harm inside her own home, where any reasonable person would expect safety, particularly after being assured by police that the threat had been neutralized. The explosion shattered her femur, burned her body, and permanently damaged her hearing, while her ten-year-old son endured painful injuries and lasting psychological trauma simply for standing near his mother. This was not random violence or an unforeseeable event. It was the direct product of the State's false assurances and its deliberate decision to release a violent, trained individual without warning the very person he

had threatened. Coupled by the assurances made by the police that he would by locked up, such a betrayal of trust by the very department that is supposed to be protecting the public, followed by preventable, life-altering violence against a mother and child, demonstrates an egregious mistake by the state, and resulting damage shocks the conscience.

B. The State Limited The Appellant's Freedom To Act On Her Own Behalf And Their Actions Shocked The Conscience And The Officers Had The Opportunity To Reflect And Make A Rational Decision And Acted with Deliberate Indifference to Jones's Potential Peril.

In *DeShaney*, the Petitioner is a boy who was beaten and permanently injured by his father, with whom he lived. Respondents are social workers and other local officials who received complaints that the petitioner was being abused by his father and had reason to believe that this was the case, but nonetheless did not act to remove the petitioner from his father's custody. *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. The court in *DeShaney* stated that the affirmative duty to protect arises from the limitation that it has imposed on his freedom to act on his own behalf. *Id*. at 199.

Here, by contrast, the Laurenton officers expressly assured Ms. Jones that Baker "would be locked up until at least the morning" after arresting him on an outstanding warrant, and then silently released him pursuant to the jail-overcrowding policy. The police department limited the appellant's ability to protect herself and limited her freedom to act on her own behalf to protect herself. Here, the appellant was unaware that Baker was released and that she was in any danger. A reasonable person would believe that if someone is apprehended for committing a crime that they will be incarcerated, especially when they are informed by a law enforcement official.

This, in tandem with the fact that she had informed the officers of Baker's past criminal incidents, as well his intimate knowledge of bomb- making expertise due to prior military involvement, led the Petitioner to a reasonable conclusion that she would be safe once Baker was taken into custody. Here, she was not afforded the opportunity to protect herself. Here, if Ms. Jones had known that he was not in jail she may have had the opportunity to go stay elsewhere for the night until he was able to be placed in custody, however because she was not aware, she was limited on her actions to protect herself and her land and was unable to act on her own behalf to try to protect herself from the oncoming tragedy. This affirmative representation deprived Ms. Jones of the ability to act on her own behalf, satisfying the *DeShaney* principle that a duty arises where the State "has imposed limitations upon [an individual's] freedom to act for himself." *Id*. at 200.

Conclusion (Issue I)

It is true that, as a general matter, the Due Process Clause does not obligate the State to protect individuals from private harm. But this case does not involve a mere failure to protect. It involves affirmative police conduct that created a foreseeable and specific danger, and deprived Ms. Jones of the ability to protect herself or make any meaningful decisions to protect herself and her son. When officers assured Ms. Jones that her violent ex "would be locked up until at least the morning," and then released him without warning Ms. Jones, they did more than decline to act, they affirmatively influenced her decisions, limited her freedom to act on her own behalf, and placed her in a more vulnerable position than before State involvement. The following actions were foreseeable.

II. The Fifth Amendment Requires Just Compensation When Police Deliberately Destroy An Innocent Owner's Home To Serve A Public Purpose

To prevail on an inverse-condemnation claim under the Fifth Amendment, a plaintiff must show (1) a taking of private property (including direct physical appropriation or destruction), and (2) that the taking was for public use; when those conditions are satisfied, just compensation is required. The Takings Clause exists to prevent 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." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

The Clause is not limited to formal eminent domain; courts confront these questions when the government destroys or disables property during police operations, and the lower courts are divided on whether the Takings Clause applies in that setting.

Several circuits have held that destruction or retention of property pursuant to police powers categorically falls outside the Takings Clause. For example, Seventh Circuit and Federal Circuit holdings evinced a rule 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 County*, 635 F.3d 331, 336 (7th Cir. 2011). See also, *AmeriSource Corp. v. United States*, 525 F. 3d 1149, 1154 (Fed. Cir. 2008).

Others reject a categorical exemption and hold that police-power actions can trigger the Clause. See Fourth Circuit: "Government actions taken pursuant to the police power are not per se exempt from the Takings Clause." *Yawn v. Dorchester County*, 1 F.4th 191, 195 (4th Cir. 2021).

The Fifth Circuit recently declined to adopt a broad police-power exception and instead recognized only a narrow "objectively necessary" exception, rooted in history, for truly exigent circumstances. *Baker v. City of McKinney*, 84 F.4th 378, 379 (5th Cir. 2023).

The Court has acknowledged a narrow necessity doctrine—wartime or citywide conflagration—where destruction is necessary (often inevitable) to prevent catastrophe. *Bowditch* held that there was no compensation when firefighters destroyed a building to stop a conflagration; *Caltex* held no compensation for wartime destruction to keep resources from an invading enemy. *Bowditch v. Boston*, 101 U.S. 16, 18 (1879); *United States v. Caltex, Inc.*, 344 U.S. 149 (1952).

But those cases do not resolve ordinary police operations; the necessity involved there was not merely tactical but "inevitable." *Baker v. City of McKinney*, 145 S. Ct. 11, 12 (2024).

A. There Is No Categorical "Police Power" Exemption from the Takings Clause; at Most There Is a Narrow, Historically Grounded Necessity Exception.

The categorical rule urged by some lower courts—no compensation whenever police cause the damage—cannot be reconciled with the text and purpose of the Fifth Amendment. The Clause applies whenever the government takes property for a public end; the sovereign power invoked (eminent domain vs. police) is not dispositive. That is why the Fourth Circuit has correctly stated that police-power actions are "not per se exempt" from the Clause. *Yawn v. Dorchester County*, 1 F.4th 191, 195 (4th Cir. 2021).

The Fifth Circuit's more recent approach underscores the same point: it rejected a blanket exemption and limited non-compensation to situations where it was "objectively necessary" for officers to damage property in an active emergency to prevent imminent harm to persons. *Baker v. City of McKinney*, 84 F.4th 378, 379 (5th Cir. 2023). In other words, even that court—which ruled against the homeowner—recognized that the police-power label does not end the takings inquiry.

By contrast, cases like *Johnson v. Manitowoc County*, *AmeriSource Corp. v. United States*, and *Lech v. Jackson* illustrate the flawed reasoning that has come to dominate lower court treatment of the so-called "police power exemption." In each of these cases, the courts treated the invocation of the police power as a complete defense to Takings Clause liability, ending the constitutional inquiry at the threshold. This reasoning not only lacks textual support in the Fifth Amendment but also conflicts with the historical understanding of "takings" at the Founding and the fairness principle at the heart of *Armstrong v. United States*, 364 U.S. 40 (1960). These decisions improperly elevate governmental purpose over constitutional protection—replacing the bright-line rule of compensation for physical appropriation with an undefined and inconsistent carveout.

In *Johnson*, police investigating a high-profile homicide executed several search warrants on a rental property owned by Roland Johnson. During their search, officers tore up carpet, removed furniture, and jackhammered portions of the garage floor, leaving the property in a state of disrepair. When Johnson sought compensation under the Fifth Amendment, the Seventh Circuit held that no taking had occurred because the officers acted under the State's "police power" rather than its power of eminent domain. The court reasoned that searches and seizures conducted pursuant to criminal investigations were categorically outside the Takings Clause. In other words, because the government was enforcing the criminal law—a classic police-power function—the damage was not a "taking for public use." The court thus avoided any inquiry into whether fairness or justice demanded compensation for an innocent owner who bore the costs of a public investigation. The *Johnson* approach effectively allows the government to destroy or disable private property whenever it acts in a law-enforcement capacity, leaving victims like Ms. Jones with no remedy.

Similarly, in *AmeriSource Corp.*, the Federal Circuit applied the same categorical logic to deny compensation for property destroyed during a criminal seizure. The plaintiff, a pharmaceutical distributor, sold prescription drugs to a pharmacy whose operators were later indicted for unlawful distribution. Pursuant to the investigation, federal agents seized AmeriSource's inventory and stored it for several years while criminal proceedings unfolded. By the time the case concluded, the drugs had expired and were worthless. AmeriSource sued, arguing that the government's retention and destruction of its lawful property constituted a taking. The court rejected the claim, reasoning that the seizure was executed under the police power and thus not for a "public use" within the meaning of the Fifth Amendment. The court offered no principled justification for why the method or purpose of governmental action should determine constitutional coverage, nor did it consider whether fairness required that the burden be shared by the public rather than the innocent owner. As a result, AmeriSource was left to absorb the total loss for conduct undertaken solely for the public benefit—an outcome fundamentally at odds with the Takings Clause's text and history.

The Tenth Circuit's decision in *Lech v. Jackson*, 791 F. App'x 711, 711 (10th Cir. 2019), extends the same reasoning to its most extreme form. In *Lech*, a fugitive attempting to evade arrest barricaded himself inside an innocent family's home. Police surrounded the residence and, over the course of a nineteen-hour standoff, deployed tear gas, explosives, and armored vehicles to dislodge the suspect. When the dust settled, the Lech family's home was reduced to rubble. The homeowners brought an inverse-condemnation claim, asserting that the destruction of their home for the public purpose of apprehending a dangerous criminal required just compensation. The Tenth Circuit disagreed. Echoing *Johnson* and *AmeriSource*, it held that because the officers acted under the State's police power, their conduct could never constitute a "taking." The court

did not deny that the destruction served the public; rather, it concluded that any damage "incidental to the exercise of the police power" was categorically beyond the reach of the Takings Clause. This logic effectively nullifies the constitutional safeguard whenever the government acts under the banner of law enforcement—a domain as broad as it is undefined.

These cases share the same analytical flaw: they treat the police power as a kind of constitutional talisman, extinguishing Fifth Amendment protection the moment the government invokes it. By collapsing the Takings inquiry into a single question—whether the action was law enforcement rather than eminent domain—these courts disregard the Clause's core purpose: to ensure that the costs of public benefits are borne by the public, not isolated individuals. They also misread the Supreme Court's historical "necessity" precedents, which excused compensation only in circumstances of unavoidable destruction, such as wartime or conflagration—not ordinary policing. As the Fifth Circuit recently recognized in *Baker v. City of McKinney*, 84 F.4th 378 (5th Cir. 2023), there is no constitutional basis for a categorical police-power exemption. *Baker*'s rejection of that doctrine, along with the Fourth Circuit's similar stance, underscores the need for this Court to restore coherence to Takings jurisprudence by reaffirming that physical destruction for a public purpose, regardless of the sovereign power invoked, demands compensation.

Johnson, *AmeriSource*, and *Lech* represent a misreading of the Takings Clause that sacrifices its fundamental fairness principle to an unbounded conception of police power. Their reasoning permits the government to impose the costs of public safety exclusively on the unlucky homeowner whose property happens to be in the way. That result is irreconcilable with the constitutional text and this Court's consistent admonition that the Takings Clause prevents

government from "pressing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong*, 364 U.S. at 49.

Even if this Court were to accept the reasoning of *Johnson*, *AmeriSource*, or *Lech*, none of those decisions would dictate the same result here. Each of those cases involved materially different circumstances—situations in which the government either temporarily held property as part of a lawful criminal process or acted in the face of an immediate and uncontrollable threat. By contrast, the destruction of Ms. Jones's home occurred after the danger to human life had already been neutralized, when police had full control over the scene and ample time to consider alternative measures. R. at 12–13. The City's conduct was deliberate, planned, and not driven by imminent necessity. Even under the most restrictive versions of the "police power" doctrine adopted in those lower court decisions, Laurenton's actions fall outside their reach.

In *Johnson*, the destruction at issue was incidental to an ongoing criminal investigation. Police executed multiple search warrants inside an occupied residence belonging to a criminal suspect, removing floor panels and carpeting while seeking evidence of murder. The damage arose as a byproduct of those searches—an evidentiary measure directly tied to the enforcement of the criminal law. The officers there neither appropriated nor destroyed the entire property; they caused localized damage that was necessary to collect evidence in a live investigation. Here, by contrast, Laurenton police destroyed an entire home belonging to a non-suspect after the emergency had ended. Ms. Jones and her son were not subjects of a warrant or investigation, and their house was not searched for evidence but leveled in a planned detonation. R. at 12–14. Thus, even if *Johnson* correctly denied compensation for incidental evidentiary damage, its rationale cannot justify the total, intentional annihilation of an innocent homeowner's dwelling undertaken for the public's benefit.

The same is true of *AmeriSource Corp. v. United States*. There, the government lawfully seized pharmaceuticals pursuant to a criminal prosecution and held them in evidence storage until their expiration. The company's loss resulted from the lawful evidentiary retention of items tied to a criminal enterprise; the seized goods themselves were contraband or potential exhibits. *AmeriSource* thus turned on the principle that seizure of evidence from a suspect as part of a valid criminal proceeding does not require compensation. In Ms. Jones's case, however, no one alleged that her property was evidence, contraband, or subject to seizure. The City did not store her home pending trial—it detonated it. The property was destroyed not as part of a judicial process but as a tactical convenience in a controlled environment where all human occupants had been evacuated. R. at 11–13. The rationale of *AmeriSource*, which concerns the government's temporary evidentiary custody of criminal assets, cannot excuse the permanent obliteration of an innocent third party's property.

Lech presents the closest analogy but remains factually and legally distinct. In *Lech*, an armed fugitive barricaded himself inside the plaintiffs' home and exchanged fire with police for nearly twenty hours. The house was structurally destroyed in the process of extracting a dangerous and unpredictable suspect actively using the home as a fortress. The Tenth Circuit emphasized that the officers faced an immediate and uncontrollable threat to life; their use of armored vehicles and explosives was a direct response to ongoing violence. Here, the opposite is true. When Laurenton's bomb squad destroyed Ms. Jones's home, the suspect was no longer present, the homeowners had been rescued, and the area was secure. R. at 11–12. There was no standoff, no barricaded gunman, and no active exchange of fire—only a single inanimate explosive device resting on an empty porch. R. at 12–13. The decision to detonate that device in place, knowing it would level the structure, was tactical, not emergent. Even if *Lech* was

correctly decided on its unique facts—an open gun battle threatening lives—it offers no refuge to the City of Laurenton, whose destruction of Ms. Jones's home was wholly discretionary and avoidable.

Taken together, *Johnson*, *AmeriSource*, and *Lech* each rest on factual predicates absent here: ongoing criminal investigations, seizures of evidence, or immediate life-threatening circumstances. None involved a cleared, unoccupied home destroyed for convenience after the emergency had passed. R. at 12–13. Even under the logic of those cases—which this Court should reject—the City's conduct exceeds the narrow scope of actions that could plausibly fall within a police-power exception. Ms. Jones's case presents the paradigmatic example of a compensable taking: an innocent owner's private property deliberately destroyed for a public purpose after the danger to persons was gone. The Constitution does not permit the government to disclaim its duty to pay merely by invoking "police power" as a post hoc justification for a calculated decision to sacrifice one citizen's home for the safety of all.

B. The Takings Clause's Original Meaning and This Court's Fairness Principle Require Compensation for Deliberate Public-Use Destruction.

From the Founding forward, the Clause secures a fairness principle: when public ends require private sacrifice, "fairness and justice" demand that the burden be spread across the public. *Id*. That is not limited to condemnation to build a road. It includes direct physical appropriation or obliteration of property for a public end—like neutralizing a bomb endangering the community.

The modern cases echo this: When government action directly appropriates or physically invades/destroys property, the per se takings framework is triggered; the question is not whether the government acted lawfully but who bears the cost of a public good. That is precisely the

concern the Fifth Amendment was designed to address, and it remains unresolved by this Court in the police-destruction context—prompting Justice Sotomayor to note the "serious question" whether the government may destroy private property under its police power without paying just compensation. *Baker*, 145 S. Ct. 11 at 12.

C. The Historic "Necessity" Exception Is Narrow and Does Not Swallow the Rule.

Bowditch and *Caltex* reflect a limited doctrine: when destruction is necessary and effectively inevitable to prevent catastrophe, compensation has been denied. *Bowditch v. Boston*, 101 U. S. 16, 25 (1879). *United States v. Caltex (Philippines), Inc.*, 344 U. S. 149, 73.

But even in highlighting those cases, the record acknowledges they do not answer the ordinary policing question, precisely because the destruction there was "necessary, but not inevitable." *Baker*, 145 S. Ct. 11 at 12. The extension of those cases to routine or even acute domestic police operations "remains an open question." *Id*.

The Fifth Circuit's "objectively necessary" carveout attempts to reflect that history without erasing the Clause. *Id*. But even that court emphasized it was declining a categorical police-power exemption. *Id* at 13. Justice Sotomayor has underscored the constitutional stakes: if the government can avoid compensation whenever it must act to protect the public, then the homeowner alone bears the cost of a public benefit—contrary to *Armstrong*. *Id*.

D. The City's Deliberate Detonation of Ms. Jones's Home Was a Public-Use Taking.

Here, officers intentionally used an energetic disruption tool on the second device, and the foreseeable (indeed, expected) detonation "collapsed the rear of the home and rendered the structure uninhabitable," leading to full demolition. R. at 12–14. The purpose of the operation was to protect the public and first responders—an undisputed public use. The government thus

converted/destroyed an innocent homeowner's property for the public's benefit. Under the Fifth Amendment's text and fairness principle, compensation is required.

Nor does the police-power label change the constitutional analysis. As the Fourth Circuit has held, police-power actions are "not per se exempt" from takings scrutiny, and the Fifth Circuit rejected any such categorical rule. *Yawn*, 1 F.4th at 195. To the extent Respondents invoke *Bowditch* or *Caltex*, those cases involved community conflagration or wartime, where destruction was unavoidable; they "do not resolve" scenarios like this, where destruction was chosen as the tactic and its extension to such cases "remains an open question." *Baker*, 145 S. Ct. at 13.

Finally, even under the Fifth Circuit's narrower "objectively necessary" approach—which this Court has not endorsed—the City is not entitled to a categorical win. That exception is limited to damage that is objectively necessary in an active emergency to prevent imminent harm to persons. *Baker*, 84 F.4th at 388. The undisputed facts here show that no such exigency existed. By the time the Laurenton Police Department's bomb squad arrived, both Ms. Jones and her ten-year-old son had already been evacuated and transported to the hospital. R. at 11–12. The surrounding area had been secured, and the house stood entirely vacant when the squad initiated its "disruption" procedure. R. at 12. Officers had established a perimeter and ordered all residents to remain clear of the block, meaning there was no threat of imminent harm to any person. R. at 13. Despite this, the squad elected to deploy an energetic disruption tool directly on the second package while it remained inside the structure, rather than attempting off-site neutralization or containment. R. at 12–13. The record further reflects that the device had been stable for several hours; there is no indication of any countdown mechanism or remote trigger that required immediate detonation. R. at 13. In short, the City's decision to destroy the house was not a

split-second response to save lives but a calculated tactical choice made after the danger to human life had passed. Whether that decision was "objectively necessary" under *Baker*—as opposed to one of several available and safer alternatives—is, at the very least, a question of fact inappropriate for resolution on summary judgment. But under the proper, originalist understanding of the Fifth Amendment, that inquiry is unnecessary. When the government deliberately destroys an innocent owner's property for a public end—especially where no immediate peril to persons exists—the Takings Clause commands one simple and just rule: the public must pay.

Conclusion (Issue II)

The Court should hold that the City's destruction of Ms. Jones's home constituted a compensable taking and reverse, remanding for the determination of just compensation.

CONCLUSION

For the Due Process issue, the Court should reverse and remand for application of the state-created danger doctrine (or for trial) under the standards set forth in Petitioner's argument.

For the Takings issue, the Court should reverse and remand with instructions that destruction of Ms. Jones's home constituted a compensable taking under the Fifth Amendment, with further proceedings limited to just compensation.

Dated: November 8, 2025

Respectfully submitted,

/s/ Counsel for Petitioner Sarah Jones