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.

Respondents.

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

BRIEF FOR RESPONDENTS

TEAM 12
Counsel for the Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

United States Court of Appeals Cases

United States Court of Federal Claims Cases

State Court Cases

Other Authorities

Constitutional and Statutory Provisions

QUESTIONS PRESENTED

1. Whether the Due Process Clause of the Fourteenth Amendment permits holding a state actor liable for injuries caused by a private party when the state's conduct is alleged to create or increase the individual's risk of harm.

2. Does the Takings Clause to the Fifth Amendment require just compensation when law enforcement damages or destroys property to protect the safety of the public during a lawful exercise of police power?

STATEMENT OF THE CASE

On Friday, September 8, 2023, Officers Trent and Williams of the Laurenton Police Department ("LPD") responded to Sarah Jones's home regarding a domestic dispute. R. at 2. When they arrived, Officers Trent and Williams saw Baker visibly angry and heard Baker threaten Jones because she called emergency responders. *Id.* Jones informed Officer Trent and Williams that Baker possessed a handgun along with other weapons and that he had a background in explosives from military service. *Id.* Officer Trent informed Jones that Baker would remain incarcerated until at least the morning because of his domestic assault arrest warrant from a nearby county. *Id.*

Officers Trent and Williams removed Baker from Jones's homes and took him into custody. *Id.* Then, following police policy, Officer Williams contacted the county jail to check if they could execute a warrant, considering the jail's capacity. *Id.* Since the jail was over capacity, the officers took Baker to his rental property and seized the handgun that Jones had informed them Baker possessed. *Id.*

The next morning, Baker brought two homemade bombs disguised in packaging to Petitioner's house, and place one on the front-porch, and the other on the back-porch. When Petitioner opened the first bomb disguised in Amazon packaging, the bomb exploded, injuring her and her son. R. at 2-3. Hearing the explosion, a neighbor called 911. R. at 3. Police arrived, noticed a second package, and called the Laurenton Bomb Squad. *Id.*

Following protocol, the Bomb Squad secured the area, ensured everyone distanced from the perimeters, and assessed the package. *Id.* The Bomb Squad Leader deployed a robot equipped with an x-ray system and an energetic tool to disrupt the bomb. *Id.* For sophisticated bombs, the energetic tool is set to detonate the explosive if disruption fails. *Id.* The x-ray revealed the bomb

was highly sophisticated, designed to evade disruption, and capable of explosion by remote-mechanism. *Id.* Because the bomb was designed to evade disruption, the disruption was unsuccessful, and the energetic tool detonated the bomb. *Id.* Petitioner's property sustained damage to its rear half and part of the roof. *Id.*

As a result, Jones filed a 42 U.S.C. § 1983 suit against the City and the Laurenton Police Department under *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978), alleging a violation of the Due Process Clause based on a state-created danger doctrine and a Taking Clause violation under the Fifth Amendment for the damage to her property without just compensation. R. at 4. The district court granted summary judgment to the City on both claims, holding that the Due Process Clause does not recognize a state-created danger doctrine, and the Takings Clause does not apply to property destroyed pursuant to the valid exercise of police power. *Id.* On appeal, the Court of Appeals for the Thirteenth Circuit affirmed the district court's ruling. R. at 2.

This Court granted the property owners' petition for writ of certiorari to determine (1) whether the Due Process Clause of the Fourteenth Amendment permits holding a state actor liable for injuries caused by a private party when a state's conduct allegedly creates or increases the risk of harm, and (2) whether the Fifth Amendment requires just compensation for a taking due to the destruction of property in a lawful police power exercise. R. at 14.

SUMMARY OF THE ARGUMENT

The state-created danger doctrine should be rejected, and the lower court decision should be affirmed. The City of Laurenton and the Laurenton Police Department cannot be held liable under *Monell* because a constitutional right has not been violated. Neither the Constitution nor this Court's precedent recognizes a state-created danger doctrine. Imposing a duty on state actors

to affirmatively protect individuals against private violence is not rooted in this nation's history, tradition, the Constitution, nor this Court's precedent.

Even under the broadest application of the state-created danger doctrine, the petitioner still fails to satisfy the required elements. The officers did not create or expose the plaintiff to an actual, particularized danger that the plaintiff otherwise would not have faced, nor did they act in deliberate indifference. To that end, adopting the state-created danger doctrine would paralyze law enforcement functions if every discretionary decision was scrutinized, essentially federalizing state tort law. Because the state-created danger doctrine is not deeply rooted in the nation's history and tradition, but rather in a few misinterpreted lines of dicta, Petitioner's claim should be dismissed.

The Fifth Amendment's Takings Clause does not provide just compensation when law enforcement damages property in a lawful exercise of police power to protect the safety of the public. History, tradition, and historical precedent illustrate that the Bill of Rights provides broad strokes of rights, but it does not provide a remedy supporting property over life. This Court has determined that when officers damage property to protect the health, welfare, and safety of the public, just compensation is not required. *Mugler v. Kansas*, 123 U.S. 623, 688–69 (1887). Alternatively, the public-necessity doctrine provides an independent basis for affirming, and is also grounded in history, tradition, and historical precedent. Under the necessity doctrine, just compensation is not required when law enforcement necessarily damage property to prevent imminent danger to protect the public. *United States v. Caltex*, 344 U.S. 149 (1952).

Finally, affirming the Thirteenth Circuit's decision does not leave property owners without a remedy. First, established limits on the police power are imposed by the Due Process Clause. Next, courts can review claims of an officer's bad faith damage of property through

traditional tort mechanisms without invoking the Takings Clause. Lastly, the necessity doctrine is narrow by its nature; it's limits are its own safeguard.

Thus, Petitioners' claims must be dismissed because (1) the state created sanger doctrine is not deeply rooted in the nation's history and tradition, and (2) no claim for just compensation exists within the case the petitioner has brought forth by using only the Takings Clause of the Fifth Amendment. Accordingly, this Court should affirm.

ARGUMENT

I. THE DUE PROCESS ARGUMENT FOR A "STATE-CREATED DANGER DOCTRINE" IS NOT DEEPLY ROOTED IN THIS NATION'S HISTORY AND TRADITION BUT RATHER IN A FEW MISINTERPRETED LINES OF THIS COURT'S DICTA.

A. This Court's Cabined Holdings Under The Due Process Clause Foreclose Relief For Petitioner And The Lower Courts' Decision Should Be Affirmed.

A Due Process claim against a municipality must fail unless an official policy "causes" an employee to "violate another's constitutional right." *Monell*, 436 U.S. at 690. This Court has said that to state a claim under *Monell*, a claimant must show more than a mere state tort but rather that "the act can be characterized as arbitrary or conscience shocking in a constitutional sense." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 128 (1992). In that sense, the Due Process Clause "is not a guarantee against incorrect or ill-advised personnel decision[s]." *Id.* at 129 (quoting *Bishop v. Wood*, 426 U.S. 341 (1976)).

Petitioner's claims rests upon the City's standing policy of not executing "certain warrants when the county jail was over capacity." R. at 2. Petitioner merely alleges that three different actions taken by Officers Trent and Williams, based upon this standing order violate her constitutional rights: (1) telling Respondent that Baker would be jailed overnight; (2) that Baker was returned to his home instead of being arrested; and (3) that Respondent was not notified of his release. Petitioner's claim must fail because the Constitution does not require an individual to be

arrested because they have an outstanding warrant. *Hoffa v. U.S.*, 385 U.S. 293 at 310 (1966) ("There is no constitutional right to be arrested."). Petitioner has failed to show more than an "incorrect or ill-advised personnel decision" which failed in *Collins*. *See Collins*, 503 U.S. at 128.

Petitioner has failed to demonstrate that the City of Laurenton and Officers Trent and Williams "affirmatively creat[ed] the danger that led to her injuries[.]" R. at 4. Nor can the omission to inform Petitioner that Baker had been released properly be characterized as arbitrary or conscience shocking in a constitutional sense. While Petitioner may have a state tort claim, "the Due Process Clause 'does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society[.]'" *Collins*, 503 U.S. at 128 (quoting *Daniels v. Williams*, 474 U.S. 327 (1986). Thus, these law enforcement decisions fail to demonstrate a Due Process Clause violation.

Furthermore, when a right is not expressly referenced in the United States Constitution, a claimant must show that the right is somehow implicit in the constitution's text. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 235 (2022). To guide that analysis, this Court asks "whether the right is 'deeply rooted in [our] history and tradition' and whether it is essential to our Nation's 'scheme of ordered liberty.'" *Id.* at 237 (quoting *Timbs v. Indiana*, 586 U.S. 146 (2019). Moreover, this Court has been "reluctant" to create new rights out of the fear that the Due Process Clause will be "transformed into the policy preferences of the Members of this Court." *Id.* at 239-40 (citations omitted).

Similarly, this Court held that the Due Process Clause does not create an affirmative duty, *i.e.* positive rights, to protect the life, liberty, and property of its citizens against private actors. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989). As this Court explained, the Due Process Clause is intended to prevent the government from abusing its powers

or becoming an instrument of oppression. *Id.* at 196. This Court has only recognized an affirmative obligation to protect an individual where there is a "special relationship" such as in situations where the State has taken that person into custody and holds them against their will. *Id.* at 199-200. As Petitioner here was not in custody, but rather unrestrained and within her own home, her claim falls well outside the realm of an affirmative obligation and thus must fail.

In *DeShaney*, this Court dealt with the issue of "when, if ever, the failure of a state or local governmental entity or its agents to provide an individual with adequate protective services constitutes a violation of the individual's due process rights[.]" *Id.* at 194. DeShaney was just three years old when Wisconsin authorities first learned that he might be the victim of child abuse. *Id.* at 192. After an initial investigation, the local authorities did not pursue the allegations further. *Id.*

The following year, DeShaney was admitted to a local hospital with "multiple bruises and abrasions" which was suspected to be the result of child abuse. *Id.* This time, local authorities convened a "Child Protection Team" which, again, found insufficient evidence of child abuse. *Id.* Over the next year, state authorities learned of multiple hospital visits and multiple cases of suspicious injuries but still failed to take action. *Id.* at 192-93. Two years after state authorities first suspected that DeShaney was a victim of child abuse, he was admitted to the hospital again with a life-threatening coma which required emergency brain surgery. *Id.* at 193.

The *DeShaney* Court found that "[j]udges and lawyers, like other humans, are moved by natural sympathy in a case like this to find a way for [the victim.]" *Id.* at 202. But instead of finding in favor of him, this Court held that "it is well to remember once again that the harm was inflicted not by the State of Wisconsin, but by [the victim's] father." *Id.* at 203. This Court's reasoning focused on the type of claim DeShaney brought: a Due Process Clause as opposed to a state tort claim. *Id.* at 201-02. While the Court held that Wisconsin could change its state tort law to include

liability in such instances, this Court was unable to "thurst upon" Wisconsin liability because his claim "simply [did] not constitute a violation of the Due Process Clause." *Id.* at 203.

Similarly, where a law enforcement officer explicitly promises an individual that a would-be attacker be incarcerated overnight, there is not the "special relationship" the *Deshaney* Court spoke of and, thus, no liability. *Pinder v. Johnson*, 54 F.3d 1169, 1175 (4th Cir. 1995). Pinder was the victim of domestic violence which resulted in Ames, the perpetrator, being arrested and Pinder being told he would be "locked up overnight." *Id.* at 1172. This arrest was made in light of knowledge that the Ames "had just been released from prison after being convicted of attempted arson at Pinder's residence some ten months ago." *Id.* Yet, the arraigning judge decided to release Ames on his own recognizance due to the low level of charges against him. *Id.* Once released, Ames went back to Pinder's home where he set fire to it, which resulted in the death of Pinder's three children. *Id.*

The Fourth Circuit held that the "special relationship" the *Deshaney* Court required was not met. *Id.* at 1174. The court reasoned that the very affirmative duty the *Deshaney* Court rejected was the duty Pinder sought to rely on. *Id.* The court found that Pinder had not established a custodial relationship because she was "never incarcerated, arrested, or otherwise restricted in any way." *Id.* at 1175. The court rejected assigning liability because the law enforcement officer was not "aware[] of a specific risk or from promises of aid." *Id.*

Here, Petitioner's argument is premised upon nearly identical underlying facts: Officer Trent assured Petitioner that Baker would be arrested until the morning but instead, because of jail overcrowding, he was released without the knowledge of Petitioner. Like in *DeShaney* and *Pinder*, Petitioner here has alleged that the State had an affirmative obligation to protect her and that law enforcement's actions "directly contributed to the bombing[.]" R. at 5. Yet, who commits the injury

matters and, here, like in *Deshaney*, it is well to remember that the harm was not inflicted by the City of Laurenton nor Officers Trent or Williams, rather it was Baker. Nor was there a "special relationship" created because Petitioner was "never incarcerated, arrested, or otherwise restricted in any way." *Pinder*, 54 F.3d at 1175.

Like *Pinder*, law enforcement offered explicit promises that Baker would be taken off the streets. R. at 2. Unlike *Pinder*, where the victim communicated that a court of law had convicted the individual of the crime he would commit once again, here Petitioner only told law enforcement of Baker's military background in explosives which was not actionable. There simply was no way for law enforcement to know—or predict—that because Baker had a professional background in explosives that he would employ that training against Petitioner. Thus, where Petitioner was not in custody, but rather voluntarily within the confines of her own home, *DeShaney* forecloses relief for Petitioner.

As a result, under this Court's jurisprudence and its progeny within the federal circuits, Petitioner has failed to meet the burden of demonstrating a Due Process violation and this Court should affirm the lower courts.

B. Even If This Court Adopts The "State-Created Danger Doctrine," Petitioner's Claim Fails As They Did Not Establish That Law Enforcement Acted With Deliberate Indifference.

Several Circuit Court of Appeals have created differing "State-Created Danger Doctrine" relying on a few lines of dicta from this Court's *DeShaney* opinion. *Fisher v. Moore*, 73 F.4th 367 (5th Cir. 2023) ("[D]espite widespread acceptance of the [state-created danger] doctrine [in other circuits], the circuits were not unanimous in [the doctrine's] 'contours' or its application."); *Cf. Montgomery v. City of Ames*, 749 F.3d 689, 694-95 (8th Cir. 2016) ("Our precedent establishes, however, that the Constitution requires a State to protect a person in two circumstances: when the person is in the State's custody, and when the State created the danger to which the individual is

subjected."). Yet even if this Court were to adopt the "State-Created Danger Doctrine," Petitioner's claim would still fail because it does not meet even the broadest application.

The Ninth Circuit's most recent iteration of the "State-Created Danger Doctrine," which the dissent described as "out of step even with our broad state-created danger doctrine[,]" would not encompass the City of Laurenton nor Officers Trent or William's actions. *Murguia v. Langdon*, 61 F.4th 1095, 1126 (9th Cir. 2023) (Ikuta, S., dissenting). The *Murguia* court posited two requirements: (1) that the doctrine only applied where there is "affirmative conduct on the part of the state in placing the plaintiff in danger" and (2) the states acts with "'deliberate indifference' to a 'known or obvious danger.'" *Id.* at 1111 (quoting *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082 (9th Cir. 1996)).

The first requirement necessitates a showing that the officer's "affirmative actions created or exposed [the plaintiff] to an actual, particularized danger that [they] would not otherwise have faced." *Id.* (quoting *Martinez v. City of Clovis*, 943 F.3d 1260 (9th Cir. 2019)). This requires looking at whether the "officers left the person in a situation that was more dangerous than the one in which they found him." *Id.* (quoting *Munger*, 227 F.3d 1082). Finally, the injury sustained by the plaintiff must have been foreseeable, given the "particular circumstances." *Id.* (quoting *Martinez*, 943 F.3d 1260).

Here, that requirement is simply not met as Officer Trent nor Officer Williams never took affirmative steps that created or exposed Petitioner to an actual particularized danger that she would not have faced otherwise. When the officers arrived on the scene, Petitioner informed them that "Baker owned a handgun, other weapons, and had a background in explosives from his military service." R. at 2. The officers took the affirmative step of confiscating Baker's handgun, which helped to mitigate the express danger that Petitioner relayed to the officers. Officers could

not have, nor should they have assumed, that Baker would have possessed illegal explosives merely because of his military background.

Even Petitioner's contention that telling her that he would be jailed overnight, and instead had returned him to his home without informing Petitioner of his release does not cross that threshold. The crux of that argument rests on the premise that Officers Trent and Williams needed to incapacitate Baker to prevent him from using devises that the officers did not know he had or inform Petitioner of his release. But based on the Nineth Circuit's expansive reading of the state-created danger doctrine, the claim still fails to show that Petitioner was in more danger after their interactions with the officers and that their actions created the foreseeable danger of injury in that circumstance. Baker could have used the explosives before officers arrived which forecloses the argument that Petitioner was in more danger after their interaction. Moreover, the City nor the officers in no way created the possibility of using explosives to injure Petitioner.

The second requirement, which the court described as "a stringent standard of fault," necessitates the presence of deliberate indifference "that the municipal actor disregarded a known or obvious consequence of his action." *Id.* (quoting *Patel v. Kent School Dist.*, 648 F.3d 965 (9th Cir. 2011)). Importantly, "this standard is higher than gross negligence and requires a culpable mental state." *Id.* This standard requires that the officer "know[] that something *is* going to happen but ignore[] the risk and expose [the plaintiff] to it." *Id.* (quoting *L.W. v. Grubbs*, 92 F.3d 894 (9th Cir. 1996)).

That requirement fares even worse as Petitioner has failed to demonstrate a culpable mental state. To satisfy this stringent standard, Petitioner would have had to demonstrate that the officers knew that Baker would use illegal contraband, that they ignored the risk, and exposed Petitioner to it. To the contrary, Officers Trent and Williams acted upon the one actionable danger

communicated to them: Baker possessed weapons. Before releasing Baker, officers took his handgun from his home. Consequently, the second requirement similarly fails to meet the threshold.

Thus, even under the broadest state-created danger doctrine, Petitioner's claim fails, and this Court should affirm the lower courts' decision.

C. Creating such a judicial doctrine will chill law enforcement's willingness to intervene, create uncertainty about their required duties, and open up state actors to liability in a myriad of routine situations.

The doctrine of judicial restraint is required whenever this Court is asked to "break new ground" under substantive due process. *Collins*, 503 U.S. at 125. This is because the Due Process Clause is not a "guarantee of certain minimal levels of safety and security[,]" but rather "as a limitation on the State's power to act[.]" *Id*. at 126. If this Court were to find in favor of Petitioner, every seemingly innocuous police encounter may become a potential source of liability if the arrestee—or person who *could have* been arrested—causes an injury upon a victim or is injured themselves at a later time.

Discretionary decisions by government actors will be "inescapably imperfect" but finding liability "for every injurious consequence of their actions would paralyze the functions of law enforcement." *Pinder*, 54 F.3d at 1175. The fluidity that is inherent to law enforcement's efforts—which may make injury to a third party more likely—cannot become the source of liability or federal courts risks holding "the state []liable for every crime committed by the prisoners it released." *Id.* Here, Baker was released because the jail in which he would have gone was at full capacity and a standing policy precluded his arrest. R. at 2. Officers Trent and Williams exercised their "inescapably imperfect" discretion to adhere to the standing policy and not inform Petitioner of Baker's release. *Id.* But it was Baker, not Officers Trent and Williams nor the City of Laurenton that injured Petitioner.

Even where law enforcement officers create a danger, such issues are best served through state tort law. *Wood v. Ostrander*, 879 F.2d 583, 606 (9th Cir. 1989) (Carroll, E., dissenting). The dissent reasoned that state tort law, and not the federal courts, are the proper arena to decide if and how assistance should have been provided. *Id.* Judge Carroll reasoned that questions of law enforcement procedure for offering assistance—which will devolve into highly factual matters—should not be analyzed under the Due Process Clause but rather state tort law. *Id.*

In sum, this Court's municipal liability doctrine forecloses relief of this claim and a new judicial "state created danger doctrine" will expose municipalities to liability in a myriad of ways that will further strain local and state budgets. *Stare decisis*, under *Monell, Deshaney,* and its progeny deny Petitioner's claims. Thus, this Court should affirm the lower courts' decision and uphold the dismissal.

II. THIS COURT SHOULD AFFIRM THE THIRTEENTH CIRCUIT'S DISMISSAL BECAUSE THE TAKINGS CLAUSE DOES NOT REQUIRE JUST COMPENSATION IN A VALID EXERCISE OF POLICE POWER TO PROTECT THE PUBLIC.

The Constitution does not convert every act of public rescue into a compensable taking. When officers act in good faith to neutralize an imminent threat to life, they do not take. *See Bachmann v. United States*, 134 Fed. Cl. 694, 696 (2017). They protect. The Thirteenth Circuit correctly held that Petitioner was not entitled to compensation for property damaged while the City deactivated a live bomb.

First, the damage of property to protect the welfare and safety of the community during an active bombing did not effect a compensable taking under the Fifth Amendment. Although isolated language in the Thirteenth Circuit's opinion, R. at 7, might suggest a broad rule, the court's ultimate holding was more limited. *Id.* The court did not attempt to address all applications of police power, but only the City's police power to damage property "undertaken to neutralize what officers reasonably believed to be an immediate threat to life." R. at 8. In doing

so, the court limited its holding to law enforcement actions that destroy physical property to preserve public safety, consistent with history, tradition, and historical precedent. R. at 7. Thus, the court properly focused on the nature of the City's act that caused the damage, rather than only on its classification as an exercise of the police power. R. at 8. The City of Laurenton asks this Court to continue to recognize that actions undertaken to protect the public, safety, and welfare of the public during a lawful exercise of police power does not effect a compensable taking under the Fifth Amendment.

Second, the public necessity doctrine does not require just compensation where property is necessarily damaged to protect from imminent danger to persons. In deciding to safely detonate the second bomb before it went off in its own, the City necessarily damaged the property to protect the safety of a neighborhood, surrounding officers, and the community. Petitioner has not contested the legitimacy of the city's decision to detonate the second device under the Due Process Clause. Instead, she brought this claim for compensation under only the Takings Clause, R. at 4, which is plainly not due under the Fifth Amendment, and has no basis in history, tradition, or precedent.

Since no claim for just compensation exists within the case the petitioner has brought forth by using only the Takings Clause of the Fifth Amendment, the Thirteenth Circuit's decision was correct, and Petitioner's claim must be dismissed. This Court should affirm.

A. No Just Compensation is Required Under the Takings Clause Because Law Enforcement Actions that Damage Property to Protect the Safety of the Public Do Not Effect a Compensable Taking.

The Fifth Amendment's Takings Clause, applicable to the states through the Fourteenth Amendment, provides that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. Just compensation is defined as "a payment by the

government for property it has taken under eminent domain." Just Compensation Definition, *Black's Law Dictionary* (12th ed. 2024), *available at* Westlaw. The Clause does not, however, require payment for property loss due to the government's valid exercise of its police power to protect the health, welfare, and safety of the people. *See Mugler v. Kansas*, 123 U.S. at 688–69.

When alleging a taking, the nature of the government's action is critical, because claimants must show that property was taken for public use by lawful action. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 488–89 (1987). This Court and the circuit courts alike have shown considerable hesitancy to classify law-enforcement actions as compensable takings.

1. Law-Enforcement Actions Undertaken to Protect Public Safety Are Not an Exercise of Eminent Domain Requiring Compensation Under the Takings Clause.

The police power extends to government actions undertaken "for the protection of health, welfare, morals, and safety of the people." *Mugler*, 123 U.S. at 688–69. When the State acts to preserve public safety, it is not burdened with the condition that it must compensate property owners for losses sustained in the process. *Id.* at 669. When properly exercised, the police power authorizes the destruction or damage of property under limited circumstances without implicating the Takings Clause. *See AmeriSource Corp. v. United States*, 525 F.3d 1149, 1154–55 (Fed. Cir. 2008).

Many government-authorized physical invasions will not amount to takings because they are "consistent with longstanding background restrictions on property rights, including traditional common-law privileges to access private property." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 146 (2021); *see also Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1028–29 (1992). These "background principles" define the circumstances under which property is "enjoyed under an implied limitation and must yield to the police power" without triggering

compensation. *See Lucas*, 505 U.S. at 1027 (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922)). When property poses a danger to life or safety, the government may destroy or damage it to protect the public without effecting a compensable taking. *See id.* at 1029 n.16 (quoting *Bowditch v. Boston*, 101 U.S. 16, 18 (1880)).

This Court has recognized two categories of takings that require compensation under the Takings Clause: physical takings and regulatory takings. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147–48 (2021). A physical taking occurs when the government appropriates private property for its own use or for another person's use. *Id.* at 148. For example, by recurring flooding as a result of building a dam, *id.*, or by requiring landlords to install cable boxes to the outside of apartment buildings. *Id.* at 151. On the other hand, a regulatory taking occurs when the government imposes a regulation that restricts an owner's ability to use his own property. *Id.* at 148. For example, by enacting a restrictive zoning ordinance. *Id.*

By contrast, the government may require property owners to cede a right of access as a condition of receiving certain benefits without causing a taking. *Id.* Under this framework, "government health and safety inspection regimes will generally not constitute takings." *Id.* at 146. Thus, when government action requires property owners to cede a right as a condition of public safety, the government action does not constitute a taking, and just compensation is not required.

2. The Federal Circuits Have Consistently Declined to Extend the Takings Clause to Actions Arising from the Police Power Rather Than Eminent Domain.

"'Police power should not be confused with eminent domain.'" *Lech v. Jackson*, 791 F. App'x 711, 717 (10th Cir. 2019) (citing *Lamm v. Volpe*, 449 F.2d 1202, 1203 (10th Cir. 1971)). "[T]he former controls the use of property by the owner for the public good, authorizing its regulation and destruction without compensation, whereas the latter takes property for public

use, and compensation is given for property taken, damaged, or destroyed." *Id.* "The Takings Clause does not apply when property is retained or damaged as a result of the government's exercise of some power other than the power of eminent domain." *Johnson v. Manitowoc Cnty.*, 635 F.3d 331, 336 (7th Cir. 2011). This Court has looked at takings cases "with reference to the 'particular circumstances of each case.'" *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 33 (2012).

The distinction between the power of eminent domain and the police power to protect the public flows from the principle that owners are not entitled to unlimited uses of their property. *See Mugler*, 123 U.S. at 688–89. For instance, unlawful uses or nuisances are not protected. *See, e.g.*, *Mahon*, 260 U.S. at 413; *Lucas*, 505 U.S. at 1029–30. Similarly, law enforcement must have the authority to enter onto or seize property, and, in some instances, damage property, to carry out their duty to enforce the law. *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1154–55 (Fed. Cir. 2008).

The circuit courts' hesitancy to classify law-enforcement actions as compensable takings indicates that the Takings Clause does not provide a remedy when officers damage property while protecting the public. The Seventh Circuit, for instance, rejected a Fifth Amendment claim arising from police officers' destruction of a home while executing a search warrant during a murder investigation involving the plaintiff's tenant. *See Johnson*, 635 F.3d at 336. The court held that when property is damaged as a result of the government's authority to exercise some power other than the power of eminent domain, "the Takings Clause does not apply." *Id.*

Likewise, the Federal Circuit in *AmeriSource* held that the government acts "within the bounds of the police power" when it seizes or destroys property while enforcing criminal law. *AmeriSource*, 525 F.3d at 1153. In *AmeriSource*, the Court of Federal Claims rejected an

argument that "when law enforcement officials damage private property in the process of enforcing criminal law, they ... take private property for public use." *Id.* at 1153–54. Instead, the court reasoned that the officials damaged property while "us[ing] perhaps the most traditional function of the police power: entering property to effectuate an arrest or a seizure." *Id.* at 1157. Thus, the court concluded that the plaintiffs did not suffer "a taking of their property for public use," and their Fifth Amendment claim failed as a result. *Id.*

The Tenth Circuit adopted a similar approach in *Lech*. There, police destroyed a home to apprehend a wanted criminal fugitive who was hiding from law enforcement in another person's residence. *Lech*, 791 F. App'x at 713. To arrest the fugitive, law enforcement fired gas munitions into the home, broke open the doors with an armored vehicle, and used explosives to create sight lines and points of entry. *Id.* at 713. The Tenth Circuit dismissed the compensation claim brought under the Fifth Amendment and held that the officers' actions fell within the scope of the police power and that actions taken pursuant to the police power do not constitute takings. *Id.*

The court reasoned that the distinction between the police power and the eminent domain power is dispositive when a physical interference is at issue. *Id.* at 716–17. Thus, the Fifth Amendment did not afford a remedy for this instance of damage to property because the officers' purpose in damaging the property was for public safety, not acquisition for public use (such as creating a park, road, or dam). *Id.* at 717; *See also Bachmann*, 134 Fed. Cl. at 695. (rejecting a takings claim where U.S. Marshals damaged property to apprehend a fugitive because the actions were "deliberately for the public's safety").

The Fourth Circuit, meanwhile, has noted "[t]hat government actions taken pursuant to the police power are not per se exempt from the Takings Clause." *Yawn v. Dorchester Cnty.*, 1 F.4th 191, 195 (4th Cir. 2021). In that case, the Fourth Circuit applied an "intentionality and

foreseeability" analysis to the taking claim at issue, as set out in *Ark. Game & Fish Comm'n v. United States*, 568 U.S. at 33. In *Ark. Game & Fish*, this Court discouraged resorting to blanket rules. *See id.* at 36–37. However, this Court held instead that takings cases "should be assessed with reference to the 'particular circumstances of each case.'" *Id.* at 39.

Petitioner may rely on the Fourth Circuit's standalone decision to suggest that the Takings Clause applies to exercises of the police power. *See Yawn*, 1 F.4th at 195. But neither *Yawn* nor *Ark. Game & Fish* offer support here. First, both cases are factually distinct to the facts in this case. In *Ark. Game & Fish*, the Court assessed a takings claim where the government induced temporary flooding to build a dam. *Ark. Game & Fish*, 568 U.S. at 33. This Court was careful to limit its holding only to the facts of that case: "We rule today, simply and only, that government-induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection." *Id.* at 34.

Second, *Yawn* was a case about mosquitoes, not police actions. *Yawn*, 1 F.4th at 194. And even if the fact that the officers' actions pursuant to their lawful exercise police power could not decide this case, *Yawn* still provides limited help for Petitioner. In *Yawn*, the county intentionally sprayed pesticide to control mosquitoes and prevent the spread of a virus, which resulted in the unintended death of the plaintiff's bees. *Id.* The analysis looked at (1) whether the government's interference with property was intended, and (2) whether it was the foreseeable result of authorized government action. *Id.* at 195. The Fourth Circuit found neither. *Id.* at 196.

The Fourth Circuit held that the bee deaths were an "incidental consequence" of a legitimate government action to exercise its police power to protect public health and were neither the intended nor the foreseeable result of the county's actions. *Id.* Therefore, the facts did not constitute a compensable taking. *Id.* Thus, even under the Fourth Circuit's analysis,

Petitioner's claim fails because the destruction was neither intentional nor foreseeable. Here, the Laurenton Bomb Squad detonated the device on the back porch to neutralize a highly sophisticated and uncontrollable explosive. R. at 3. In the midst of a ticking bomb, they followed protocol, deployed mechanisms that failed, and exhausted all courses of action before the bomb went off. *Id.* The robot deployed was equipped to detonate bombs designed to evade disruption. *Id.* Had the Bomb Squad Leader not deployed the robot, the bomb would have exploded by design, endangering the safety and welfare of the community, neighborhood, and officers surrounding it. *Id.*

Given that Laurenton officers acted to protect the safety of the community, the facts of this case do not justify classifying the actions as a compensable taking under the Fifth Amendment. The destruction of Petitioner's home, caused by police in a lawful effort to dismantle a live explosive falls squarely within the City's police power to preserve the health, safety, and welfare of the public. In detonating the bomb to protect those around it, the officers exercised the most traditional function of the police power: safeguarding life and safety. The Constitution does not require law enforcement to pause and price out the danger before doing so.

Because law enforcement does not exercise eminent-domain power when it destroys property to protect life, safety, and welfare of the public, just compensation is not required. Thus, Petitioner did not suffer a compensable taking, and this claim brought under the Fifth Amendment fails as a result. This Court should affirm.

B. Alternatively, the Public Necessity Doctrine, Consistent with History, Tradition, and Historical Precedent, Provides an Independent Basis for Dismissal.

This Court looks to history, tradition, and historical precedents when determining the meaning of the Takings Clause. Since its inception, the takings clause has never provided compensation for police who exercise their powers to avert danger. To the contrary, the public

necessity doctrine has applied to shield those from constitutional liability who damage property to allow the government to protect public interests from greater harm.

This Court has never squarely decided whether the government, acting under its police power, must compensate property owners for damage that occurs as an inevitable result of acting to protect the public from immediate danger. R. at 7. In answering that question, the Fifth Circuit grounded it's answer is history, tradition, and precedent, deciding that under the public necessity doctrine, just compensation is not required when officers destroy property while responding to an active, life-threatening emergency. *See Baker v. City of McKinney, Texas*, 84 F.4th 378, (5th Cir. 2023), *cert. denied*, 145 S. Ct. 11, 220 L. Ed. 2d 240 (2024).

Thus, under the public necessity doctrine, consistent with history, tradition, and precedent traced back to the Founding, just compensation is not required if the destruction was (1) inevitable, and (2) objectively necessary to prevent imminent harm, just compensation is not required. *Id.* at 388. Because Laurenton law enforcement damaged property that was both necessary and inevitable, just compensation is not required. Accordingly, this Court should affirm.

1. The Original Meaning of the Takings Clause Does Not Extend The Takings Clause to Property Damaged When Protecting Life Over Property.

"The Constitution is a written instrument. As such[,] its meaning does not alter. That which it meant when adopted[,] it means now." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012). Proper judicial restraint comes from confining judging closely to the written text of the Constitution and the known views of the Founders. *Id.*

Rooted in English common law, the public necessity doctrine rests on the maxim *salus populi suprema lex esto*—"the welfare of the people is the supreme law." William J. Novak, *Common Regulation: Legal Origins of State Power in America*, 45 Hastings L.J. 1061,

1091 (1994). The principle that, when the two conflict, the law prioritizes life over property. "When faced with an emergency, the magnitude of the imminent danger can justify what otherwise might be unreasonable"… And "where the survival is concerned, there ought to be no holding back on action." Oren Gross, *Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?* 112 Yale L.J. 1011, 1134 (2003).

The public-necessity doctrine can be traced at least as far back as 1606. Often recognized as the first recorded judicial acknowledgment of limits on the sovereign's power comes from *The Case of the King's Prerogative in Saltpetre* (1606) 77 Eng. Rep. 1294; 12 Co. Rep. 12, 12. In *Saltpetre*, Sir Edward Coke held that while the sovereign's agents could enter private land to extract saltpeter, a vital component of gunpowder for national defense, the safety of the realm justified only a temporary interference with property rights. *See id.* Lord Coke grounded this limited authority in public necessity, explaining that "a house shall be plucked down if the next be on fire" to save the city. *See id.* at 13. This provided the backdrop for understanding the Constitution's original meaning, the Drafters' intent to preserve life over property, and how the takings clause operates within both rights.

Much of the Takings Clause's ratification in the Bill of Rights remains largely a mystery. There is no surviving history of debate of the Congress or the state legislatures about what the clause meant. William Michael Treanor, *Review: Supreme Neglect of Text and History*, 107 Mich. L. Rev. 1059, 1065 (2009). Two years before he drafted the Fifth Amendment, Madison in Federalist Ten wrote that the protection of "the faculties of men"—that is, the right of "acquiring property"—should be the main goal of the government. The Federalist No. 10 (James Madison). However, in drafting the clause, Madison sought to address two situations: (1) the prevention of military confiscations and (2) compensation if the government abolished slavery. William

Michael Treanor, *The Original Understanding of the Takings Clause and the Political Process*, 95 Colum. L. Rev. 782 (1995). At the time it was ratified, the Clause solved both purposes. *Id.*

While petitioner may argue as if the Founders believed that property rights were the central feature of the Constitution, history relays the opposite. *Id.* So far as we know, neither the Framers of the Constitution nor state legislatures were concerned about the federal government's authority to seize property. *Id.* The clause was ratified in 1789, but no delegate to the Constitutional Convention in 1787 mentioned the need for protecting against the government's taking power. *Id.* The state ratifying conventions proposed over eighty amendments to be incorporated into the Bill of Rights, but not one request was made for the Takings Clause or any equivalent measure. *Id.*

In light of these facts, the Takings Clause "seems entirely to have been the product of James Madison," not because there was a national demand for it. *Id.* Benjamin Franklin, however, offered the strongest statement of the relation between private property claims and the public good. He wrote:

> We know, that…the accumulation…of Property in such a Society, and its Security to Individuals in every Society, must be an Effect of the Protection afforded to it by the joint Strength of the Society, in the Execution of its Laws. *Private Property … is a Creature of Society*, and *is subject to the Calls of that Society, whenever its Necessities shall require it*, even to its last Farthing; its Contributions therefore to the public Exigencies are not to be considered as conferring a Benefit on the Publick, entitling the Contributors to the Distinctions of Honour and Power, but as the Return of an Obligation previously received, or the Payment of a just Debt.

Benjamin Franklin, *Queries and Remarks Respecting Alterations in the Constitution of Pennsylvania* (1789), reprinted in *The Founders' Constitution*, ch. 12, doc. 25 (Univ. of Chi. Press 1987). Put another way, property only exists because society exists to create it, through the laws it makes to protect it. Because property's existence depends entirely on society to protect it,

society can demand its use when the common good necessitates it. Simply, returning a debt owed to the society that created the right in the first place.

The Founding Fathers believed it was the responsibility of democratic decision-makers to balance individual property interests against other community interests. See Treanor, *Original Understanding of the Takings Clause*, supra. The Constitution starts with "We the People," and the original meaning of the Takings Clause can only be understood in that larger context. After all, "[a] Bill of Rights that means what the majority wants it to mean is worthless."[1]

History, of course, is not destiny, and just because the Founders intended the Takings Clause to have a narrow scope does not necessarily mean that it should be given an identical reading today. Thus, we look to precedent to confirm our understanding.

2. Historical Precedent Reaching Back To The Founding Supports That Compensation is Not Required under the Public Necessity Doctrine.

Cases addressing the pre-constitutional scope of a right are often relevant to the breadth of constitutional guarantees. *See, e.g., N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, 2134 (2022). ("Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them.*"). This Court has long looked to history and tradition to determine the scope of the Takings Clause. *See, e.g., Caltex*, 344 U.S. at 149. In times of imminent peril, the sovereign can destroy the property of a few to "save the property of many and the lives of many more." *Id.* at 154. The language of the Fifth Amendment "is no comprehensive promise that all who suffer from every burden will be made whole." *Id.* at 155.

When contemplating takings in the context of defending public safety, at least one Founding-era state supreme court held that the colonial government's seizure of property in the

[1] Steven F. Hayward, *Two Kinds of Originalism*, Nat'l Affs., Winter 2017, available at https://www.nationalaffairs.com/publications/detail/two-kinds-of-originalism.

defense of public safety did not constitute a taking. *See Respublica v. Sparhawk*, 1 U.S. 357, 358 (1788). *Sparhawk* is a pre-Takings Clause case that addressed the common law right to just compensation at the time of the Founding. During the Revolutionary War, government agents moved 227 barrels of flour from the plaintiff's storehouse to prevent their capture by British forces. *Id.* The Pennsylvania Supreme Court denied compensation, reasoning that the "rights of necessity form a part of our law" and thus compensation could not be awarded. *Id.* at 362. The court referred to 1666 during a fire in London when the Lord Mayor would not allow the government to remove furniture or pull-down wooden houses for fear he would have to answer for a trespass. *Id.* at 361. As a result, half the city was burned. *Id.* at 363. This Court has repeatedly cited *Sparhawk* for the principle that the government's *destruction* of private property in wartime does not warrant just compensation. *See, e.g., Caltex*, 344 U.S. at 154; *United States v. Pac. R.R.*, 120 U.S. 227, 234 (1887).

Similarly, *Field* held that no compensation was required when an officer necessarily tore down his wooden house during a fire through the city to save the lives of others. *Field v. City of Des Moines*, 39 Iowa 575, 577–78 (1874). There, the Supreme Court of Iowa reasoned, "the rights of private property, sacred as the law regards them, are yet subordinate to the higher demands of the public welfare." *Id*. When officials demolished buildings during a fire, the true cause of the loss was the fire itself, not the government's action. *Id.* The official merely hastened what was already certain to happen to prevent greater disaster. *Id.* In other words, when public necessity compels action in an emergency, property damage is an incidental result of protecting the greater public good. But certainly, this is not without limits. If property is destroyed with no apparent and reasonable necessity, the doers of the act will be held responsible. *Id.* at 581.

This issue reached this Court in 1879. *See Bowditch v. Boston*, 101 U. S. 16. (1879). In *Bowditch*, this Court similarly denied compensation under the takings clause to a building owner after firefighters destroyed his building to stop a fire from spreading. *Id*. at 18. The Court explained that "at the common law, everyone had the right to destroy real and personal property, in cases of actual necessity, to prevent the spreading of a fire, and there was no responsibility on the part of such destroyer, and no remedy for the owner." *Id.* This Court warned that to hold otherwise "would deter individuals from doing what the common interest and common safety imperatively demand." *Id.* at 18–19. *Bowditch* interpreted Massachusetts state law, but later cases have relied on *Bowditch* for denying compensation claims under the Takings Clause. *See Baker*, 145 S. Ct. 11, 14 (2024) (Sotomayor, J., statement concurring in the denial of certiorari).

Holding true to founding era guidance, this Court again applied the necessity doctrine to deny a takings remedy where property was damaged to protect safety. *See Caltex*, 344 U.S. 149. In *Caltex*, this Court decided that the government had no obligation to compensate an owner whose oil facilities were destroyed by the army during a military invasion. *Id.* at 156. In so holding, the Court explained that in times of imminent peril, "the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved." *Id.* at 154. *Caltex* reminds that the when the government only hastens the damage already certain to happen, it is not truly the government that causes the loss. Rather, the loss is attributed to the event that caused the destruction, not the sovereign. *Id.* at 155–56. For that reason, the Takings Clause supplies no remedy.

3. Recent Takings Precedents Apply the Public Necessity Doctrine to Bar Compensation for Damaged Property when Necessary to Prevent Imminent Harm.

Modern courts continue to apply this time-tested principle. Recently, the Fifth Circuit declined to extend a takings remedy to a homeowner whose house was destroyed when police

sought to rescue a hostage and apprehend an armed fugitive barricaded inside. *Baker*, 84 F.4th at 380. In *Baker*, police responded to a homeowner's call about an armed fugitive who forced entry into the plaintiff's home and held a teenage girl hostage. *Id.* City police arrived on scene and secured the perimeter of the house. *Id.* After efforts failed, officers deployed tear gas and entered the house with an armored vehicle, causing damage to the windows, fence, front door, and garage. *Id.* at 381. The explosions left the homeowner's dog blind and deaf. *Id.*

The homeowner sued under the Takings Clause, arguing that the damage to her house during a valid police operation constituted a taking under the Fifth Amendment. *Id.* at 380–81. The district court agreed, but the Fifth Circuit reversed. *Id.* at 379. The court held that "as a matter of history and precedent, the Takings Clause does not require compensation for damaged or destroyed property when it was objectively necessary for officers to damage or destroy that property in an active emergency to prevent imminent harm to persons." *Id.* at 388. The court reasoned that police acted in a "life-threatening emergency" to protect the hostage, the officers, and the community. *Id.* In doing so, the Fifth Circuit reaffirmed the public necessity privilege that no compensation is owed when destruction is (1) inevitable and (2) objectively necessary to prevent imminent harm. *Id.* And when this Court denied certiorari, it left that formulation intact. *See Baker*, 145 S. Ct. at 13 (Sotomayor, J., statement respecting denial of certiorari).

Here, the City's actions were precisely that: necessary in light of an active emergency to prevent imminent harm to the community, to the officers who responded on scene, and to others in the residential area. These actions were objectively necessary because (1) detonation was certain once disruption failed, and (2) acting immediately was the only way to prevent imminent harm.

Nonetheless, Petitioner claims that the decision to detonate the bomb on the back porch of her house foreseeably destroyed her home. R. at 4. This means, Petitioner reasons, that the City is required under the Takings Clause to compensate her for the damage to her home. *Id.* History and precedent say otherwise. The City did not have the power to prevent the inevitable damage to her home. It did, however, have the duty and lawful authority to act under its police power to protect the community, responding officers, and surrounding neighborhood from an active explosive.

Here, Petitioner's former boyfriend retrieved two homemade bombs and disguised both in packages. R. at 2. He placed one on the front porch and another on the back porch of Petitioner's house. *Id.* When Petitioner retrieved the package, the bomb exploded, shattering Petitioner's femur, causing burns, and leaving her with hearing loss. R. at 3. Petitioner's son, standing nearby, also suffered a fractured arm, lung contusions, and psychological trauma. *Id.*

Hearing the first bomb explode, a neighbor called 911. *Id.* In responding to that call, police and paramedics arrived on scene and called the Laurenton Bomb Squad to neutralize the second bomb. *Id.* On scene, the Squad secured the area, and the Squad Leader deployed an energetic tool designed to disrupt a highly sophisticated device equipped with a remote detonation mechanism. *Id.* When that disruption failed, detonation became inevitable. The maker of the bomb was not in custody, and was capable of triggering the bomb remotely. *Id.*

In that moment, Laurenton officers had two choices: safely detonate the bomb following standard safety procedure under controlled conditions, or wait until the maker of the bomb detonated it remotely, endangering lives and surrounding homes. In a situation requiring the former, the officers chose to do their jobs, and took necessary action to prevent imminent harm to the community, officers, and neighborhood alike. R. at 3. As a result, the officers merely

hastened the damage that Petitioner's house was certain to sustain. *Id.* By doing so, Laurenton officers did not "take" Petitioner's home. They did their jobs.

Moreover, like *Sparhawk* and *Bowditch*, the Laurenton Bomb Squad did not create the danger. Rather, Petitioner's ex-boyfriend created the danger when he placed two bombs outside her home, endangering the surrounding areas, the officers on scene, and the Petitioner herself. R. at 2. Whether by the City's intervention or by the bomber's remote trigger, Petitioner's property would have inevitably been destroyed.

Like the Fifth Circuit's decision in *Baker*, here, it was objectively necessary for officers to damage Petitioner's property during an active emergency to prevent imminent harm to persons. The Fifth Circuit's reasoning is sound. Grounded in history, tradition, and historical precedent, the necessity privilege does not afford a remedy for property damaged in circumstances such as these.

As such, no compensation is required under the Takings Clause, and this Court should affirm.

C. Affirming the Thirteenth Circuit's Decision Does Not Leave Property Owners Without Remedies Because the Constitution Already Provides Limits and Necessity is its Own Limit.

Finally, contrary to Petitioner's suggestion, affirming that the City's actions here do not afford a remedy under the Takings Clause does not authorize the government to impose a burden on individuals "under the cloak of the police power." R. at 11. That argument overlooks the well-established limits on the police power and the fact that the public necessity doctrine is its own limit.

"[A]s expansive as the police power may be, it is not without limit. The limits, however, are largely imposed by the Due Process Clause." *AmeriSource*, 525 F.3d at 1154. Courts can

review claims of bad faith through traditional tort and due process mechanisms without invoking the Takings Clause. This design reasonably limits the government's authority to act while also preventing the Takings Clause from becoming an insurance policy. Thus, defining the City's actions here as a lawful exercise of police power to protect the public does not "close the courthouse doors." as suggested. R. at 9. It simply places this case in its proper category. Officers who act to save lives over property do not take. They protect. And the Constitution does not require compensation for it.

Moreover, necessity is narrow by nature; its limits are its own safeguard. The *Baker* test provides a workable rule: courts assess whether the destruction was (1) to prevent imminent harm and (2) reasonably necessary under the circumstances. Narrower than the broader police power exception, the Fifth Circuit's holding is consistent with the police power to protect the safety and welfare of the public, and no other circuit has rejected the Fifth Circuit's holding.

In this case, two things can be true: On the facts, this Court can sympathize with Petitioner for having suffered a loss. As do we. But this Court must also agree that the law does not afford a remedy for this loss through the Takings Clause of the Fifth Amendment. Despite "the considerable appeal of this position as a matter of policy," this Court must attend to historical precedent and uphold the dismissal of this argument as a matter of *law. See AmeriSource*, 525 F.3d at 1157. (emphasis in original). In this instance, it may seem unfair that one property owner should have to pay when the justice system benefits us all. *See id.* But as the Federal Circuit put it, "the war memorials only a short distance from the courthouse remind us that individuals have from time to time paid a dearer price for liberties we all enjoy." *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1157 (Fed. Cir. 2008).

While Petitioner's core theory is at best a sensible policy argument, it is just that, a policy argument that has been considered and discarded in the relevant precedents. Someday Congress may well pass a law providing compensation for property owners like Petitioner. Until then, this case should stand as a "reminder that the Federal Constitution does not prohibit everything that is intensely undesirable." *Id.* Accordingly, this Court should affirm.

CONCLUSION

For the foregoing reasons, this Court should affirm the Thirteenth Circuit's ruling. First, the state-created danger doctrine is not deeply rooted in this nation's history and tradition, but rather in misinterpreted lines of dicta. Creating such a doctrine would chill law enforcement's willingness to intervene, create uncertainty, and open the floodgates to liability.

Second, the Fifth Amendment's Taking Clause does not provide just compensation when law enforcement necessarily damage property to protect the safety and welfare of the public pursuant to a lawful exercise of police power. Alternatively, the public necessity doctrine, consistent with history, tradition, and historical precedent reaching back to the Founding, provides its own basis that the Takings Clause does not extend the just compensation requirement to law enforcement actions to protect life over property. For these reasons, this Court should affirm the Thirteenth Circuit's decision, and the Petitioner's claims should be dismissed.

Respectfully submitted this 10th of November, 2025.

Respectfully submitted,

/s/ Team 12

_____

Team 12
Counsel for Respondent