REGENT UNIVERSITY SCHOOL OF LAW

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

No. 25-178

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2025

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

Petitioner,

v.

THE CITY OF LAURENTON, ET AL.

Respondents.

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

BRIEF FOR PETITIONER, SARAH JONES

TEAM 13
COUNSEL OF RECORD FOR SARAH JONES

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QUESTIONS PRESENTED

I. Under the Fourteenth Amendment's Due Process Clause, can the State be held liable for injuries, pursuant to the state-created danger doctrine, when those injuries were inflicted by a private party who took advantage of the foreseeably dangerous situation created or enhanced by the State's affirmative, authoritative acts?

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

STATEMENT OF THE CASE

I. Factual History

On September 8, 2023, Ms. Sarah Jones had enough of her former boyfriend's, Mark Baker, threats and abuse. R. at 2. In the face of an enraged, intoxicated Baker threatening her and her ten-year-old son, A.J., Ms. Jones made the difficult decision to protect herself and her son from any further abuse by picking up the phone and calling 911 for help. *Id.* However, the response from the Laurenton Police Department (LPD) has left Ms. Jones questioning that decision. *Id.*

When LPD Officers Trent and Williams arrived at Ms. Jones's home, Baker became visibly infuriated at Ms. Jones for calling the police, threatening her in front of the officers because of it. *Id.* Importantly, Ms. Jones then provided additional details to the officers regarding some specific dangers Baker posed to her and her son. *Id.* She indicated that Baker not only owned a handgun, but other additional weapons, and had a background in explosives from his military service. *Id.*

Afterwards, Ms. Jones sought Officer Trent's advice and counsel on how to ensure her family's safety for at least the night, asking the officer if she should leave with her son. *Id.* However, Officer Trent assured Ms. Jones that was not necessary because Baker "[would] be locked up until the morning" due to an outstanding arrest warrant for a previous domestic assault in a separate county. *Id.* Unfortunately, Ms. Jones trusted Officer Trent's assurance and stayed home with her son. *Id.*

Unbeknownst to Officer Trent, the City of Laurenton has a standing city policy that does not allow them to execute certain warrants if their jail is over capacity. *Id.* Officer Williams informed Officer Trent of this policy and called the jail to confirm it was overcapacity. *Id.*

Subsequently, the officers decided they could no longer detain Baker in accordance with the city's policy. *Id.* Notably, there is nothing in the record indicating any other compliance with the policy or that they informed the warrant's issuing county that Baker was in custody. *Id.*

Instead, Officers seized Baker's handgun, drove Baker to his home, and left him there alone—without ever informing Ms. Jones that the man that they recently saw threaten her was out in the wild. *Id.* Notably, nothing in the record indicates the officers attempted to investigate for other possible weapons or explosives that Ms. Jones specifically warned them about. *Id.*

Predictably, Baker then retrieved two of his homemade bombs from his home, packaged them, including one in an Amazon marked material, and took them to Ms. Jones's home. *Id.* Baker placed the "Amazon" package on Ms. Jones's front porch, and the other on her back porch. *Id.* When Ms. Jones awoke the next morning, she spotted the "Amazon" labeled package and unknowingly brought it inside. *Id.* As soon as she opened the package, the bomb that Mr. Baker placed inside detonated, causing life-altering injuries for both her and her son. *Id.* at 3.

As a result of the explosion, Ms. Jones suffered a shattered left femur, third-degree burns over her arms and face, and permanent hearing loss. *Id.* A.J. suffered a fractured arm, lung contusions, and severe psychological trauma. *Id.* Fortunately, after the explosion, a neighbor called paramedics, who were able to stabilize Ms. Jones and A.J. *Id.*

Officers also responded to the scene and noticed the second package on the back porch of Ms. Jones's home. *Id.* The LPD Bomb Squad was called and secured the area. *Id.* Following their protocol, a robot was deployed, equipped with an X-ray system and an energetic tool, meant to disrupt an explosive and detonates if its disruption is not successful, which was attached to the package by the robot. *Id.* The robot's X-ray system showed the bomb was built with a remote

detonation mechanism. *Id.* However, the LPD Bomb Squad could not discover how to control the device because Baker, the maker of the bombs, was not in custody. *Id.* Therefore, the LPD Bomb Squad was forced to attempt to disrupt the bomb, which was basically impossible due to the sophistication of the device. *Id.* The bomb was unable to be disarmed and was forcibly detonated by the LPD tool. *Id.*

In addition to the damage already done to the front porch by the first bomb, the second bomb's explosion leveled the rear half of Ms. Jones's single-story home, collapsed part of the roof, and rendered Ms. Jones's home unsafe and uninhabitable. *Id.* Ms. Jones's home was forcibly required to be demolished and rebuilt. *Id.* The resulting damage to her home was $385,000, however, Ms. Jones suffered additional damages for her lost personal property and her need to find temporary housing. *Id.*

II. Procedural History

Ms. Jones filed suit in the Eastern District of New Virginia under 42 U.S.C § 1983 against the City of Laurenton and the Laurenton Police Department (collectively, the "City"). *Id.* at 1, 4. Ms. Jones alleged that the City was liable under (1) the Due Process Clause for affirmatively creating the danger that led to her injuries, and (2) the Takings Clause for destroying her home without just compensation. *Id.* at 4. Both claims against the City were asserted under *Monell v. Department of Social Services*, based on the City's overcrowding jail policy and the Bomb Squad's standard operating procedure. 436 U.S. 658, 690 (1978); *Id.* at 4, n.2. The City has not disputed the existence of either policy or whether the *Monell* standard for liability has been met. *Id.*

In support of her due process claim, Ms. Jones asserts the City violated her substantive due process rights, under the state-created danger doctrine, because "the officers affirmatively

increased her vulnerability to private violence by: (1) telling her that Baker would be retained at jail overnight; (2) returning Baker to his home rather than arresting him on the outstanding domestic assault warrant, and (3) not informing her that Baker had been released." *Id.* at 4-5. Additionally, for the Takings Clause claim, Ms. Jones asserted the City's resulting decision to detonate the second device foreseeably destroyed her home. *Id* at 4.

The Honorable Roy Ashland from the district court granted summary judgment to the City on both claims, concluding that there is no state-created danger theory under the Due Process Clause and that the Takings Clause does not apply to destruction of property undertaken in the exercise of the police power. *Id.* at 1, 4.

Ms. Jones filed a timely appeal to the Thirteenth Circuit Court of Appeals. *Id.* at 4. The appellate court reviewed the grant of summary judgment de novo and drew all reasonable inferences of fact in favor of the non-moving party, here Ms. Jones. *Id.* at 4, n.3. The honorable Judge Chandler wrote for the court who affirmed the district court's grant of summary judgment in a two to three vote. *Id.* at 1, 8-9. The Thirteenth Circuit chose not to recognize the state-created danger doctrine as a valid claim under 42 U.S.C. § 1983 and that the destruction of Ms. Jones's home was a "direct interference with physical property pursuant to the City's police power to protect public safety, [thus] the Takings Clause does not apply." *Id.* at 7-8.

On September 1, 2025, the Supreme Court of the United States granted Ms. Jones's writ of certiorari. *Id.* at 14.

SUMMARY OF THE ARGUMENT

Ms. Jones respectfully requests this Court to recognize the state-created danger doctrine because the doctrine adheres to the constitutional principle of the Due Process Clause—a protection for the people against the State. The state-created danger doctrine justly protects against the State abusing their authority to affirmatively create or enhance a danger that would not have otherwise existed. While the doctrine preexisted *Deshaney v. Winnebago County Department of Social Services.*, this Court implicitly manifested it through its substantive due process analysis and application to that case. Although being derived from dicta, the federal circuits have contextually applied this Court's reasoning to develop the state-created danger doctrine. In doing so, nearly every circuit has recognized the doctrine as a viable claim under 42 U.S.C. § 1983. Accordingly, the circuits have created universally agreed to elements for a viable claim that is consistent with this Court's substantive due process analysis, necessarily separating it from state-law tort claims. For these reasons, this Court should follow nearly every circuit court and recognize the state-created danger doctrine, reversing the Thirteenth Circuit's failure to do so, and overturn its grant of the City's motion for summary judgment.

Ms. Jones further requests this Court to find that the destruction of her home constituted a compensable taking under the Fifth Amendment Takings Clause. The Takings Clause exists to provide just compensation to individuals whose property is taken by the government for public use, a principle directly implicated in Ms. Jones's case. The Laurenton Police Department's deliberate and foreseeable decision to detonate an explosive device on Ms. Jones's back porch, foreseeably leveling the structure of her home, constituted a physical taking requiring compensation. This action was a direct exercise of eminent domain power. Even if this destructive act conducted for a public benefit is deemed an exercise of police power, this conduct

went too far and still constitutes a taking. Further, the wary public necessity exception does not apply because the LPD failed to pursue less destructive alternatives before detonating the device. Following the fairness principles underlying the purpose of the Takings Clause, Ms. Jones should not bear alone the burden of protecting the public; therefore, this Court should reverse the Thirteenth Circuit's decision and find that she is entitled to just compensation under the Takings Clause.

ARGUMENT

I. THE STATE-CREATED DANGER DOCTRINE ADHERES TO THIS COURT'S SUBSTANTIVE DUE PROCESS ANALYSIS, NECESSARILY SEPERATING ITSELF FROM STATE-LAW CLAIMS.

The Due Process Clause of the Fourteenth Amendment holds that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The constitutional protections afforded have two components: (1) a procedural component, and (2) "[a] substantive competent . . . that protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125 (1992) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)).

The severe, tragic personal injuries suffered by Ms. Jones and her son are a constitutional deprivation of liberty under the substantive component of the Due Process Clause. R. at 2-3; *Ingraham v. Wright*, 430 U.S. 651, 673 (1977) ("Among the historic liberties protected [by the Due Process Clause] was a right to be free from and to obtain judicial relief, for unjustified intrusions on personal security."); *Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997) ("[L]iberty includes more than the absence of physical restraint . . . [including the right] to bodily integrity."); *Washington v. Harper*, 494 U.S. 210, 237 (1990) (Stevens J., concurring) ("Every violation of a person's bodily integrity is an invasion of his or her liberty.").

Therefore, the issue presented here is whether a constitutional "deprivation" of an already recognized liberty interest occurred, and not whether a liberty interest exists. *Contrast Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 292, 295 (2022) (holding the Constitution does not confer a substantive liberty interest to obtain an abortion) *with Daniels*, 474 U.S. at 328, 333 (holding negligent state conduct causing injury was not a "deprivation" of the liberty interest to

being free from bodily injury—instead of holding the claimed interest did not exist) *and* *Deshaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195-96 (1989) (holding that "nothing in . . . Due Process Clause itself requires the State to protect life, liberty, and property of its citizens against invasion by private actors" even when "the government itself may not deprive the individual [of those interests]").

Generally, the State does not deprive the liberty of an individual when a private party directly causes the personal injuries suffered, even if the State failed to protect that individual from known dangers; however, this Court noted that in "limited circumstances the Constitution imposes upon the State affirmative duties of care and protection." *See Deshaney*, 489 U.S. at 195, 196, 198-201. Based on *Deshaney*'s analysis of these "limited circumstances," the federal circuits have recognized two exceptions to the general rule: (1) the "special relationship" doctrine, and (2) the state-created danger doctrine. *Johnson v. City of Phila.*, 975 F.3d 405, 399-400 (3d Cir. 2020).

These two exceptions that impose an affirmative duty to protect upon the State have been defined through this Court's decision in *Deshaney*. First, a "special relationship" exists "when the State takes a person into its custody and holds him there against his will, [then] the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety." *Deshaney*, 489 U.S. at 199-200. Second, the state-created danger doctrine imposes an affirmative duty to protect against harm caused by a private actor in a non-custodial setting when the State affirmatively creates the dangerous situation or increases the individual's vulnerability to the dangers. *See Id.* at 201; *See, e.g.*, *Irish v. Fowler*, 979 F.3d 65, 73-74 (1st Cir. 2020).

Aside from the Fifth Circuit, every federal circuit has recognized, in some form, the state-created danger doctrine, largely in part to *Deshaney*'s analysis. *See Murguia v. Langdon*, 73 F.4th

1103, 1113 (9th Cir. 2023) (Bumtatay, J., dissenting) (listing the elements required for a state-created danger claim in each circuit and noting the Eleventh and D.C. Circuits have materially similar claims). Although the Fifth Circuit has not clearly established the state-created danger doctrine, the circuit has "not categorically *ruled out* the doctrine either." *Fischer v. Moorer*, 73 F.4th 367, 372 (5th Cir. 2023).

In *Deshaney*, the Court made three conclusions that the state-created danger doctrine coheres to: (1) the Due Process Clause does not impose an affirmative duty to provide adequate protective services, (2) the special relationship exception does not form when the State has knowledge of specific dangers but only when the individual is in custody, and (3) the Due Process Clause does not transform every tort committed by a state actor into a constitutional violation. *Deshaney*, 489 U.S. at 195, 201-02.

Comparatively, the state-created danger doctrine, (A) arises from both *Deshaney*'s text and context, (B) protects against only state affirmative actions, (C) requires elements consistent with other constitutional claims, and (D) the required elements can be consistently applied to complex fact patterns, even if reasonable minds differ on its application.

For these four reasons, Ms. Jones asks this Court to follow the holdings of nearly every federal circuit and recognize the state created danger doctrine as a viable claim under 42 U.S.C. § 1983, overturning the lower court's decision.

A. The state-created danger doctrine arises from *Deshaney*'s text and context.

In *Deshaney*, this Court held that the State's failure to provide adequate protection to the child victim, against his father's known violence, did not violate the child's substantive liberty interest because the Constitution is a protection of negative liberties. *Deshaney*, 489 U.S. at 195,

201-02. However, the Court never decided the viability of the state-created danger doctrine because the petitioner only alleged the State's failure to act caused the deprivation of liberty; the petitioners conceded that the State did not create the dangers that the child faced. *Id.* at 191, 197. Instead, the petitioner argued a duty to protect arose out of a "special relationship," which developed when the State had knowledge of potential dangers and had acted to protect the child. *Id.* at 197. The Court rejected this argument by defining that special relationship exception as requiring an "affirmative act of restraining the individual's freedom to act on his own behalf" and explaining the exception did not apply because the child was in the "free world," not in state custody, when the dangers occurred. *Id.* at 198-201.

Nevertheless, even after concluding the special relationship exception did not apply, the Court found it necessary to continue, thus implicitly recognizing the state-created danger doctrine:

> While the State may have been aware of the dangers that [the child] faced in the free world, it played no part in their creation, nor did it do anything to render [the child] any more vulnerable to them. That the State once took temporary custody of [the child] does not alter our analysis, for when it returned him to his father's custody, [the State] placed [the child] in no worse position than that in which he would have been had [the State] not acted at all.

Id. at 201.

The fact that the State did not create the dangers was important as the Court "emphasized, no less than three times [throughout its opinion], that the [State] played no part in the creation of the danger the boy faced." *Rakes v.* Roederer, 117 F.4th 968, 973 (7th Cir. 2024) (Ripple J., per curium); *Deshaney*, 489 U.S. at 197, 201-02. Thus, although the issue was never reached, the "majority's dicta recognized the state-created danger caveat by negative implication." Laura

Oren, *Safari into the Snake Pit: The State-Created Danger Doctrine*, 13 Wm. & Mary Bill Rts. J. 1165, 1171 (2005) (discussing the constitutionality of the state-created danger doctrine).

The doctrine's recognition though does not contradict the Court's reasoning in *Deshaney*, but instead, the state-created danger doctrine serves the exact purpose of the Due Process Clause described—a constitutional protection from the affirmative actions of the State that create or increase danger. As the Court explained, "The Clause is phrased as a limitation on the State's power to act. . . . Its purpose was to protect people from the State, not to ensure the State protected them from each other." *Deshaney*, 489 U.S. at 195-96; *see Mark v. Borough of Hatboro*, 51 F.3d 1137, 1151 (3rd Cir. 1995) ("[*Deshaney*'s holding does not] necessarily preclude liability where the harm—through the hands of a private actor—is the product of state action that legitimately can be characterized as affirmative conduct.").

Nevertheless, even arising from dicta, the federal circuits have "respected" this Court's expression and have "taken [the expression] in connection with the case." *See Cohens v. State of Virginia*, 19 U.S. 264, 399-400 (1821). For example, in its acceptance of the state-created danger doctrine, the Eighth Circuit explained that although *Deshaney* left a vast "grey area,"

> It is clear . . . that at some point such [state] actions [creating a danger or vulnerability] do create such a duty [to protect]. To date the Supreme Court has found such a situation in only a custodial setting. It is instructive, however, that in *Deshaney* the Court considered it necessary to review the state's actions with regard to [the child]'s claim to determine whether the state had placed him in greater danger or made him more vulnerable, even though he was in a non-custodial setting. This analysis establishes the possibility that a constitutional duty to protect an individual against private violence may exist in a non-custodial setting if the state has taken affirmative action which increases the individual's danger of, or vulnerability to, such violence beyond the level it would have been absent state action.

Freeman v. Ferguson, 911 F.2d 52, 55 (8th Cir. 1990) (citations omitted).

Only 10 years later, the Eighth Circuit found the state-created danger doctrine "as a general matter" to be "indisputable." *S.S. v. McMullen*, 225 F.3d 960, 962 (8th Cir. 2000). However, their earlier recognized "grey area" became a fact-intensive, "elusive and thin" line between a state's affirmative action and its failure to protect that had been "important in the law for centuries." *Id.* at 963.

Although it is a difficult line to draw, the distinction between action and inaction does not convert a constitutional claim into a state-law tort claim—but instead, the distinction is what separates them. *Deshaney*, 489 U.S. at 201-02; *Deshaney,* 489 U.S. at 204 (Brennan J., dissenting) ("[Deciding state action versus inaction] is a point about perspective, having substantive ramifications. In a constitutional setting that distinguishes sharply between action and inaction, one's characterization of the misconduct under [Section] 1983 may effectively decide the case."); s*ee Monroe v. Pape*, 365 U.S. 167, 187 (1961) ("Section [1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions."), *overruled by Monell v. Dept. of Soc. Services*, 436 U.S. 658 (1978); *Bowers v. DeVito*, 686 F.2d 616, 619 (7th Cir. 1982).

B. The state-created danger doctrine establishes a duty to protect, consistent with *Deshaney*, against only affirmative state actions: the "snake pit claims."

The Seventh Circuit, seven years before its decision was affirmed in *Deshaney*, followed a similar constitutional analysis to the Court's when it recognized the idea behind the state-created danger doctrine. *Bowers*, 686 F.2d at 618. The court found that there is no constitutional right "to be protected by the state against being murdered by criminals or madmen" because the Constitution "is a charter of negative liberties . . . [that] tells the state to let people alone." *Id.*

However, the court noted the difficulty in separating a constitutionally prohibited action and a state-law prohibited inaction:

> We do not want to pretend that the line between action and inaction, between inflicting and failing to prevent the infliction of harm, is clearer than it is. If the state puts a man in a position of danger from private citizens and then fails to protect him, it will not be heard to say that its role was merely passive; it is as much an active tortfeasor as if it had thrown him into a snake pit. . . . But the defendants in this case did not place [the petitioner] in a place of or position of danger; they simply failed to adequately protect her, as a member of the public, from a dangerous man.

Id.

Therefore, in *Bowers*, the Seventh Circuit conceptualized "snake pit" claims by clarifying the distinction between a state's inaction, a failure to protect, and a state's affirmative action of placing him in a place or position of danger by "throwing him into a snake pit." *Id.; see* Oren, 13 Wm. & Mary Bill Rts. J. at 1198. In doing so, the circuit laid the constitutional background upon which the state-created danger doctrine was built and that *Deshaney* manifested.

In fact, after *Deshaney*, the Seventh Circuit did not abandon their decision in *Bowers* but instead doubled down on it, recognizing *Deshaney*'s state-created danger doctrine: "*Deshaney* . . . leaves the door open for liability in [non-custodial] situations where the state creates a dangerous situation or renders citizens more vulnerable to danger." *Reed v. Gardner* 986 F.2d 1122, 1125 (7th Cir. 1993) (citing *Deshaney*, 489 U.S. at 201). Nor did the Circuit abandon its "snake pit" analogy, albeit with different context: "[The state] was a doer of harm rather than merely an inept rescuer, just as the Roman state was a doer of harm when it threw Christians to lions. . . . The state, having saved a man from a lynch mob, cannot then lynch him, on the ground that he will be no worse off than if he had not been saved." *K.H. v. Morgan*, 914 F.2d 846, 852, 849 (7th Cir. 1990); *see also Losinksi v. County of Trempealeau*, 946 F.2d 544, 550 (7th Cir.

1991) ("[T]he state did not subject [the petitioner] involuntarily to an existing danger. Although the state walked with [her] as she approached the 'lion's den,' it did not force her to proceed, it did not encourage her to continue. And . . . it did not force her to stay.").

C. The state-created danger doctrine requires that elements, consistent with constitutional claims, are satisfied.

Today, the Seventh Circuit continues to recognize the state-created danger doctrine by requiring three elements, which are uniformly required by the circuits, to be satisfied: (1) the state must affirmatively act to create or increase a danger faced by a specific individual, (2) the state's failure to protect the individual from such a danger must be a proximate cause of the injury to the individual, and (3) the state's failure to protect the individual must "shock the conscience by evincing a deliberate indifference to the rights of the individual. *King v. E. St. Louis Sch. Dist. 189*, 489 F.3d 812, 818 (7th Cir. 2007); *Rakes*, 117 F.4th at 982-83 (Brennan J., per curium); *Irish*, 979 F.3d at 73-74 (finding that ten circuits have implemented elemental tests for the state-created danger doctrine).

These elements were developed through a constitutional lens to ensure that state-created danger claims are solidly grounded in constitutional law, ensuring that not "every flawed law-enforcement decision [converts] into a constitutional tort." *C.f.* R. at 6; *See Collins*, 503 U.S. at 128 ("[W]e have previously rejected claims that Due Process Clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law."). The first element stems from ensuring the State crosses the inaction line, as defined by *Deshaney*, to perform an affirmative act that falls under the scope of the Constitution's protections. *Deshaney*, 489 U.S. at 196 ("The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security.").

The second element ensures the causal connection between the State's action and the harm is not "too attenuated to establish a 'deprivation' of constitutional rights." *Id.* at 197 n.4 (quoting *Martinez v. California*, 444 U.S. 277, 284-85 (1980)). It requires that the individual harmed is a "foreseeable victim of the [State's] acts." *Rakas*, 117 F.4th at 986 (Brennan J., per curium). Thus, requiring that the State's affirmative exercise of its inherent authority creates a "foreseeable type of risk to a foreseeable class of persons." *Id.* This element stems from *Deshaney*'s emphasis on the State's affirmative use of its authority in relation to a specific individual that creates the affirmative duty to protect in the Court's *Estelle-Youngberg* analysis. *See Deshaney*, 489 U.S. at 201. Consequently, the Court rejected that knowledge of a foreseeable danger and promising protection is enough to create the affirmative duty. *Id.* Ultimately, the danger must be a foreseeable result of the State's affirmative use of its authority that harms a foreseeable and specific individual, as opposed to the generalized public.

The third element stems from this Court's decisions requiring substantive due process claims have a heightened state of mind; although the inquiry is fact specific, the conduct must "shock the conscience" given its context. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998); *see Daniels*, 474 U.S. at 333 (requiring a degree of culpability higher than negligence under the substantive due process claims); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (holding that a claim under Section 1983 for inadequate police training requires that the failure to train amounts to a "deliberate indifference" to the rights of the individual); *Collins*, 503 U.S. at 128 (finding the petitioner's claim was more analogous to a state-law tort claim because that state's action was not "arbitrary, or conscious shocking").

D. Ms. Jones's case fits the state-created danger doctrine "to a T": a case comparison to the Seventh Circuit's analysis in *Rakas v. Roederer*.

Recently the Seventh Circuit discussed the state-created danger doctrine and its application to a situation like Ms. Jones's case. *Rakes*, 117 F.4th at 969 (per curium). In *Rakas*, Amylyn and her husband were fighting in the middle of the road when two police officers responded. *Id.* Amylyn told the officers that her husband "was drunk, had hit her, had guns on him and at their house, and was threatening to kill her and himself." *Id.* The officers told Amylyn that they would keep her husband at the hospital on a 24-hour mental health hold. *Id.* However, the officers did not place her husband on a hold but instead told him to seek help voluntarily. *Id.* Amylyn's husband left the hospital shortly after, went back to the house, and shot Amylyn, killing her. *Id.*

Judges Scudder and Ripple found that the state-created danger doctrine could reasonably be applied to the officer who misinformed Amylyn. *Id.* However, Judge Brennan disagreed, he argued the affirmative act did not "create or increase danger, proximately cause death, or act in a manner that shocks the conscience." *Id.* at 988 (Brennan J., per curium). Nevertheless, even assuming Judge Brennan's findings are correct over Judges Scudder's and Ripple's, they were based on facts distinguishable from the current case. Moreover, by contrasting Amylyn's case from Ms. Jones's, it shows the elements of the state-create danger doctrine can be consistently applied to difficult, fact-intensive inquiries.

First, Judge Brennan found the officer's statements of misinforming Amylyn did not create or increase the danger. *Id.* at 985. He noted, "The affirmative act requirement means that 'state actors may not disclaim liability when they themselves throw others to lions' . . . [but does not] 'entitle persons who rely on promises of aid to some greater degree of protection from lions

at large." *Id.* at 985-86 (quoting *Pinder v. Johnson*, 54 F.3d 1169, 1177 (4th Cir. 1995)). Thus, the officers misinforming Amylyn, deciding not to incarcerate the husband, and failing to protect her did not create or increase the danger that had pre-existed the officers' acts. *Id.* at 986.

Comparatively, in Ms. Jones's case, the lion was caged, enraged, and released by the officers; thus, the officers "turned a potential danger into an actual one." *Id.* at 983. Although Baker's threats pre-existed the officers' arrival, Baker was lawfully in the officers' custody, unlike the husband in *Rakas*, thus creating a "position of safety" upon which the officer's release of Baker moved Ms. Jones from that "position of safety to a position of danger." *Id.* (quoting *Sandage v. Bd. Of Comm'rs of Vanderburgh Cnty*., 548 F.3d 595, 599 (7th Cir. 2008)); R. at 2. Initially saving Ms. Jones does not permit the State to then put her into a position of danger. *K.H.*, 914 F.2d at 852.

Second, Judge Brennan found that there was no proximate causation because the husband's abuse had no temporal bounds and he threatened other besides Amylyn. *Rakas* 117 F.4th at 986-87 (Brennan J., per curium). Comparatively, Ms. Jones and her son were the lone victims of Baker's abuse and threats, and Baker was in police custody, not on a mental health hold. R. at 2. Therefore, Baker, with an active warrant for domestic abuse, being released from custody without informing Ms. Jones led to a foreseeable type of risk to a foreseeable victim of the officers' act, unlike the husband's generalized risk to the public in *Rakas*. 117 F.4th at 986.

Lastly, Judge Brennan did not "the officers as deliberately indifferent towards Amylyn's personal safety and security." *Id.* at 988. For this conclusion, Judge Brennan examined the counsel and advice provided by the officers to Amylyn, the confiscation of the husband's gun but the allowance of Amylyn to keep hers, and the officers thorough investigation. *Id.* at 987-988. The current record does not indicate any of these examples. R. at 2. Officers Trent and Williams

did decide to arrest Baker, likely because of his warrant, and confiscate his gun; however, there is nothing else in the record to indicate the officers investigated the other weapons and explosives that Ms. Jones warned the officers about. *Id.* Moreover, the officers voluntarily released Baker, with a known domestic violence active warrant, without warning Ms. Jones first or contacting the warrant's issuing county. *Id.* Additionally, the record does not reflect that the officers provided Ms. Jones with any advice or counsel, except for misinforming her she'd be safe because Baker would be in custody overnight and that she should stay in her home because of it. *Id.* Therefore, the officers' actions rise above mere negligence and reach the level of deliberate indifference toward Ms. Jones's and A.J.'s safety that shocks the conscience.

Amylyn's and Ms. Jones's cases fit state-created danger claims "to a T" and demonstrate the necessity for such litigation. *Id.* at 993 (Scudder, J., per curium); Erwin Chemerinsky, *The State-Created Danger Doctrine*, 23 Touro L. Rev. 1,1 (2007) ("There is no series of cases that are more consistently depressing than the state-created danger decisions."). Ms. Jones and Amylyn needed and asked for help from the people our government has put in place to protect our communities. Our system of government functions because the people have entrusted the State the authority and power to protect them. Although the Constitution justly does not require the City to offer its protection, it does require them not to abuse its protective power. The state-created danger doctrine is a constitutional protection against government actions that affirmatively abuse its power by creating or increasing the risk of a danger.

The circuit courts have properly recognized the state-created danger doctrine and have developed elements that follow this Court's constitutional analysis under the substantive due process clause. Ms. Jones respectfully requests this Court to follow most federal circuits and recognize the state-created danger doctrine as a viable claim under 42 U.S.C. § 1983.

II. THE COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT ERRERED BECAUSE THE DESTRUCTION OF JONES'S HOME CONTITUTED A TAKING AND IS COMPENSABLE UNDER THE FIFTH AMENDMENT TAKINGS CLAUSE.

Ms. Jones, a single mother, endured a devastating experience after a bomb detonated at her home that resulted in catastrophic injuries to both Ms. Jones and her ten-year-old son, A.J. R. at 2. The explosion not only resulted in shattered bones, permanent hearing loss, and severe psychological trauma, but also rendered the Jones's home unsafe and uninhabitable. R. at 3. As a result of this incident provoked by the Laurenton Police Department's Bomb Squad ("LPD"), Ms. Jones and her son suffer extreme physical, emotional, and financial problems. *Id*.

The Takings Clause of the Fifth Amendment of the United States Constitution mandates that "private property shall not be taken for public use, without just compensation." U.S. Const. amend. V. The Takings Clause empowers the government to acquire private property for public use through eminent domain, but only upon providing just compensation for property that is taken, damaged, or destroyed. *Lech v. Jackson* 791 Fed. Appx. 711, 717 (10th Cir. 2019). Compensation is not required only when the state exercises its police power, which "controls the use of property by the owner for the public good, authorizing its regulation and destruction." *Id*.

Two types of takings are governed by the Fifth Amendment: physical takings and regulatory takings. This Court has established some bright line rules regarding what constitutes a taking. Notably, physical takings are considered takings when "a permanent physical occupation of property authorized by government" exists. *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012). Conversely, a regulatory taking occurs when there is a "regulation that permanently requires a property owner to sacrifice all economically beneficial uses of his or her land." *Id*. at 32. Any permanent physical occupation of property more readily constitutes a taking and thus requires compensation under the Takings Clause, while compensation for regulatory

takings turns on an ad hoc inquiry into the regulation's economic impact and the character of the government action. *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

The LPD Bomb Squad's choice to detonate the second bomb on Ms. Jones's back porch was foreseeable to have caused physical destruction of her property and was conducted under the state's eminent domain power, thus constituting a taking. R. at 3. Since this foreseeable destruction constituted a taking, it is compensable based on the fairness principles underlying the Takings Clause and no exceptions apply.

The purpose of the Fifth Amendment Takings Clause was "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). As this Court noted in one of its leading cases, it would only be fair and just to reverse the lower courts' holdings and provide compensation where a taking of Ms. Jones's property is due.

A. The deliberate and foreseeable destruction of Ms. Jones's home under the government's eminent domain power constituted a physical taking under the Fifth Amendment Takings Clause.

The lower courts incorrectly granted the respondents' motion for summary judgment by holding that the Takings Clause does not apply to destruction of property undertaken in the exercise of police power. The Fifth Amendment Takings Clause applies to the destruction of private property undertaken in the exercise of eminent domain power. The Laurenton Police Department deliberately and foreseeably destroyed Jones's home under its power of eminent domain. The lower courts incorrectly found that the Takings Clause did not apply to the destruction of Jones's property and thus this Court should reverse the lower courts' holdings.

1. Physical destruction by the government constitutes a physical taking.

The Fifth Amendment Takings Clause governs physical takings and regulatory takings. A physical taking is a permanent physical occupation of property authorized by the government. *Ark. Game & Fish*, 568 U.S. at 31. "When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner." *Id*. Though "not every destruction or injury to property by government action has been held to be a taking," the destruction of Ms. Jones's property was a compensable taking rather than a merely consequential harm. *Armstrong*, 364 U.S. at 48.

In *Armstrong v. United States*, the government entered a contract with Rice Shipbuilding Corporation, a Maine corporation, for the construction of eleven navy personnel boats. *Id*. at 41. In the event of a default by Rice, the government was allowed to take possession of all finished and unfinished goods. *Id*. Though Rice defaulted, the materialmen had liens on the goods for the value of their unpaid materials and labor. *Id*. at 43. The government seized all goods under its contract with Rice but failed to compensate the materialmen for their labor and materials, giving them standing to sue the government under the Fifth Amendment Takings Clause for just compensation of the government's total destruction of property liens. *Id*. at 42. The lienholders were entitled to just compensation because the total destruction of all value of the liens by the government was a direct, physical taking rather than a mere "consequential incidence of a valid regulatory measure." *Id*. at 48. This Court held that a fair interpretation of the Fifth Amendment's constitutional protection entitled the lienholders to just compensation. *Id*. at 49.

Even if this Court finds that the government's action was not a permanent physical taking, temporary takings are nonetheless treated the same under the Fifth Amendment. *Ark. Game & Fish*, 568 U.S. at 33. This Court has previously held that temporary takings can be compensable, which exist when government action gives rise to "a direct and immediate

interference with the enjoyment and use of the land." *Id*. Courts must carefully weigh the relevant factors and circumstances in each case to determine what constitutes a physical versus a temporary taking. *Id*. at 36.

In the present case, the LPD Bomb Squad's intentional detonation of the explosive on Ms. Jones's back porch resulted in severe damage to her property and thus constituted a physical taking. R. at 3. The LPD Bomb Squad, following protocol, took possession of Ms. Jones's property by deploying a robot that did not disrupt the explosive, but detonated it instead. *Id*. Similar to the lienholders in *Armstrong*, Ms. Jones's property was destroyed as a direct result of the LPD Bomb Squad's actions. *Id*. The resulting damage leveled the rear half of the single-story residence, collapsed part of the roof, and rendered the structure unsafe and uninhabitable–none of which was a mere "consequential incidence" of the government's actions. R. at 3. The government's conduct amounts to a physical taking, as it directly and intentionally destroyed Ms. Jones's legally protected property interest for a public use and without just compensation.

If this Court deems LPD's possession of Ms. Jones's property is a temporary rather than purely physical taking, there is no doubt that the taking is still compensable. Ms. Jones's home was rendered unsafe and uninhabitable, estimating the damage to the property at $385,000. *Id*. It can be argued that the government's taking was temporary in that the LPD Bomb Squad only occupied Ms. Jones's property for a limited time. However, because a deposed expert found that her home is required to be demolished and rebuilt, a physical taking transpired. *Id*.

2. The deliberate and foreseeable nature of the destruction satisfies the intent and causation requirements of the Takings Clause.

The Fifth Amendment Takings Clause requires courts to consider factors such as foreseeability, causation, substantiality, the amount in damages, and passage of time in determining whether there has been a taking. *Ark. Game & Fish*, 568 U.S. at 40. The balancing

test set out in *Ark. Game & Fish* establishes that each taking should be evaluated carefully based on the relevant factors and circumstances in each case. *Id*. at 36. Central to the takings inquiry is the "degree to which the invasion is intended or is the foreseeable result of authorized government action." *Id*. at 39.

In *Ark. Game & Fish Comm'n v. United States*, the U.S. Army Corps of Engineers authorized flooding that extended into the peak growing season for timber on forest land owned and managed by the Arkansas Game and Fish Commission. *Id*. at 26. This repeated flooding disrupted the ordinary use and enjoyment of the Commission's property. *Id*. This Court held that the damage resulting from the flooding was a compensable temporary taking because it was foreseeable that the flooding would disrupt the ordinary use and enjoyment of the property, the flooding was the direct cause of the damage, interference with the property and the damage were severe, and the repeated flooding over time had a major destructive impact. *Id*. at 40-41. Thus, this Court also found that "when a regulation or temporary physical invasion by government interferes with private property," the duration of interference is a factor to determine the existence of a compensable taking. *Id*. at 38.

Ark. Game & Fish outlines multiple factors to balance in determining whether a taking has occurred. The Court held that recurrent floodings constituted compensable temporary takings although the damage itself was not permanent. *Id*. at 37. Specifically, "a taking might be found where there is a sufficiently prolonged series of nominally temporary but substantively identical deviations." *Id*.

Applying the balancing test set forth in *Ark. Game & Fish*, it was foremost foreseeable that deploying the robot to disrupt the second device would result in damage to Ms. Jones's home. Moreover, given that the "likelihood of disruption was virtually non-existent," such an

attempt at disruption essentially equated to the intentional detonation of the explosive. R. at 3. Further, LPD could have fully anticipated that the detonation of an explosive in such close proximity to the home would render those damages substantial. *Id*. Specifically, the detonation leveled the rear half of her single-story residence, collapsed part of the roof, and rendered the structure unsafe and the house uninhabitable. *Id*. The amount in damages, estimated by a deposed expert, testified that the house was so structurally unsound that it had to be demolished and rebuilt, estimating the damage to the property at $385,000. *Id*. Although the Bomb Squad followed protocol, LPD knew that that protocol would result in the detonation of the explosive and damage to the home.

Concerning the first explosive, it was also foreseeable that Ms. Jones and her son would suffer injuries: LPD knew that Baker was angry at and threatening Ms. Jones, had an arrest warrant for prior domestic assault, and had a background in explosives from military experience. R. at 2. Adding to this, LPD also knew that Baker was not in custody and therefore capable of harming the Jones's, both because of Holbrook County's jail crowding policies and LPD's own unwillingness to investigate Baker's behavior. *Id*. Further, there is no doubt that the injuries suffered from the first explosive were also extremely substantial. *Id*. The first device that detonated shattered Ms. Jones's left femur, caused third-degree burns over her arms and face, and left her with permanent hearing loss. R. at 3. Likewise, Ms. Jones's son suffered a fractured arm, lung contusions, and severe psychological trauma. *Id*.

Although it could be argued that destruction of property is only temporary, Ms. Jones, a single mother, suffered additional costs of temporary housing and personal property loss after the detonation of the device, effectively prolonging the duration of this taking. *Id*. It is impossible to

say how much time it may take a ten-year-old boy to recover from severe psychological trauma, let alone the physical traumas both him and his mother endured as a result. R. at 2-3.

Because the City of Laurenton and the LPD knowingly created and accepted the risk of destruction and injury from both explosions and their actions were intentional, foreseeable, and directly caused substantial harm to Ms. Jones and her son. Consequently, in satisfying the factors outlined in *Ark. Game & Fish*, the LPD's actions constituted a physical taking under the Fifth Amendment Takings Clause.

3. Police power is not outside the Takings Clause, and LPD's actions exceeded the scope of its police power, thus constituting a taking.

A state's eminent domain power "permits the taking of private property for public use," whereas a state's police power allows the state to "regulate private property for the protection of public health, safety, and welfare." *Lech v. Jackson*, 791 Fed. App'x 711, 714 (10th Cir. 2019). When a state exercises eminent domain, property may not be taken for public use without just compensation. *Mugler v. Kansas*, 123 U.S. 623, 668 (1887). In exercising police power, however, jurisdictions differ as to whether a taking is compensable.

The Seventh and Tenth Circuits developed an overly broad rule establishing that the Takings Clause of the Fifth Amendment "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). Conversely, the Fifth Circuit declined to adopt this exceptionally broad rule, and have instead implemented a narrower, more sensible rule. *Baker v. City of McKinney*, 84 F.4th 378, 383 (5th Cir. 2023). Specifically, the Fifth Circuit held that: takings cases should be assessed on a case-by-case basis; "history and tradition, including historical precedents, are of central importance" in a takings analysis; and the exceptionally broad rule proposed by the Seventh and Tenth

Circuits goes against Fifth Circuit and twentieth-century Supreme Court precedents. *Id*. *See also John Corp. v. City of Houston*, 214 F.3d 573, 578 (5th Cir. 2000) (holding that "a city's exercise of its police powers can go too far, and if it does, there has been a taking").

The Fourth Circuit, adopting a similar rule to the Fifth Circuit, held that "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). *Yawn* emphasizes the need to inquire into intent and foreseeability when conducting a takings analysis, holding that intentional and foreseeable destruction because of the government exercising police power may still constitute a taking under the Fifth Amendment. *Id*. at 195-196.

In *Lech v. Jackson*, the Greenwood Village City police department responded to a burglar alarm at Lechs' home where an armed criminal suspect was inside. *Lech*, 791 Fed. App'x at 713. The suspect engaged in a shootout with the police who responded by positioning their vehicles in the driveway of the Lechs' home to prevent the suspect from escaping a high-risk, barricade situation. *Id*. After nearly five hours, when police negotiation efforts proved to be unsuccessful, the officers employed increasingly aggressive tactics that rendered the Lechs' home uninhabitable. *Id*. The Tenth Circuit held that the City's law enforcement actions fell within the scope of the police power and therefore did not constitute a taking. *Id*. at 719.

In the case at hand, the State exercised eminent domain over Ms. Jones's home by using the property for a public safety operation. R. at 8. The LPD had reason to believe the situation posed an immediate threat to life, thus appropriating the property temporarily for use and permanently by destroying it. *Id*. Unlike in *Lech*, there is no indication in the record that the LPD attempted less aggressive tactics to disrupt the bomb. Even though the LPD followed protocol, it knew that deploying the robot equipped with an energetic tool would detonate the bomb if

disruption were not successful. R. at 3. Since the State intentionally destroyed the Jones's home to protect the public, it effectively appropriated private property for public use. R. at 8. The LPD exercised eminent domain over Ms. Jones's home because the State intentionally destroyed their home to protect the public from immediate threat to life and did not attempt less aggressive alternatives, thus effectively appropriating private property for public use. *Id*.

Even if this Court deems the destruction of Ms. Jones's home to be a result of LPD's police power, a taking still occurred as LPD's actions exceeded the scope of these powers. Although the LPD had a duty to protect public safety, its decision to detonate the second explosive in place was not a reasonable nor necessary exercise of police power. At the time the explosive was detonated, officers had already secured the area and moved bystanders to a safe distance from the harm, thereby neutralizing any threat to the public. R. at 3. In this sense, the LPD knowingly destroyed Ms. Jones's property on grounds of erroneous judgment rather than immediate necessity, as required in the exercise of police power. Therefore, the LPD's conduct exceeded the bounds of their police power and entered the realm of eminent domain, requiring just compensation under the Takings Clause.

Despite the government's intent to protect the public, the nature and outcome of the LPD's actions placed it within the exercise of eminent domain power, thus constituting a taking under the Fifth Amendment Takings Clause. If this Court deems otherwise, the LPD's actions conducted with the use of police power went too far and still constituted a taking.

B. The physical taking of Ms. Jones's property is compensable under the Fifth Amendment Takings Clause.

The physical taking of Ms. Jones's home lands directly within the protections of the Fifth Amendment Takings Clause. Though the State may argue that the destruction of Ms. Jones's property was justified by the public necessity exception to the Takings Clause, that defense is not

unanimously accepted nor does it apply in this case. Even if the State proves that its actions served a public purpose, the fundamental fairness principles underlying the Takings Clause require that the public endures such burdens, not sole individuals like Ms. Jones.

1. The "public necessity" exception does not apply.

Even if there is a public necessity exception to the Fifth Amendment Takings Clause, it would not apply in Ms. Jones's case. The common law defense of public necessity justifies "the destruction of real and personal property, in cases of actual necessity, to prevent the spreading of a fire or to forestall other grave threats to the lives and property of others." Susan S. Kuo, *Disaster Tradeoffs: The Doubtful Case for Public Necessity*, 54 B.C.L. 127, 127 (2013) (discussing the common law defense of public necessity). The public necessity exception "allows the government to damage or destroy property without compensation." The rationale underlying this exception is that exposing the state to liability for emergency actions could deter immediate intervention, and such hesitation could itself lead to catastrophe. *Baker*, 84 F.4th 378 at 386.

In *Baker v. City of McKinney*, an armed fugitive held a 15-year-old girl hostage inside a home in which the local police department employed "armored vehicles, explosives, and toxic-gas grenades to resolve the situation." *Id*. at 379. In doing so, the home and personal property within it suffered severe damage. *Id*. The Fifth Circuit held that the Takings Clause does not require compensation for the damage to the home because both parties deemed it "objectively necessary for officers to damage or destroy [the] property in an active emergency to prevent imminent harm to persons." *Id*. at 388. *See also United States v. Caltex (Philippines), Inc.*, 344 U.S. 149, 151 (1952) (holding that property seized and destroyed by the United States Army did not constitute a compensable taking because it was necessary during a time of war to deprive the enemy of a valuable logistic weapon).

This Court should adopt the rationale outlined in Circuit Judges Elrod's and Oldham's dissent. The dissent explains that "exempting some kinds of takings from the just compensation requirement on the basis of the public necessity privilege is fundamentally at odds with the purpose of the Takings Clause." *Baker v. City of McKinney*, 93 F.4th 251, 256 (5th Cir. 2024). Should this Court decline to adopt this rationale and thereby accept the exception, it nevertheless remains the government's burden to demonstrate that it is historically grounded. *Id*. at 253.

The State acted under established procedures, but failed to apprehend the necessary threat: Mark Baker. Baker, Ms. Jones's former boyfriend, had an outstanding warrant for domestic assault in a neighboring county. R. at 2. The LPD informed Ms. Jones that Baker would be locked up until at least the morning but failed to inform her that they instead left him alone at a residence he was renting. *Id*. Baker, having a background in explosives from his military service, retrieved two homemade bombs and placed one on the front and back porch of Ms. Jones's home. *Id*. The LPD not only failed to take Baker into custody at the time it arrived at Ms. Jones's home but also failed to inform Ms. Jones of this failure. R. at 3. The LPD discovered that the package was an explosive with a remote detonation mechanism, knowing Baker was the holder of the remote to control the device. *Id*. Instead of finding Baker, the LPD deployed a robot to detonate the device that would knowingly and foreseeably destroy Ms. Jones's home. *Id*.

The State further failed to show how the facts fit comfortably within necessity jurisprudence. R. at 9. The State argues that the LPD Bomb Squad's detonation of the device was undertaken to neutralize what officers reasonably believed to be an immediate threat to life. R. at 8. Though it can be argued this situation posed a threat to life, it was neither immediate nor necessary to implement such drastic procedures. It was not necessary to destroy Ms. Jones's home in the process of disrupting the device. The LPD Bomb Squad had time to establish

alternative solutions, meaning the destruction was deliberate, not spontaneous or necessary. Therefore, this Court should find that the public necessity exception does not apply.

2. Compensation is justified based on the fairness principles underlying the Takings Clause.

The Takings Clause prevents private property from being taken for public use without *just compensation*. U.S. Const. amend. V. This Fifth Amendment guarantee was designed to bar the government "from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong*, 364 U.S. at 49. *Armstrong* reinforces the fairness and justice principle that govern the purpose of the Takings Clause.

Ms. Jones's home was deliberately destroyed to protect the nearby public. By detonating the device, the public ensured a benefit that was executed at Ms. Jones's private expense. Compensation under the Fifth Amendment and reinforced by the principles outlined in Armstrong ensures a public benefit at the expense of an individual is shared by society, not that individual alone. Ms. Jones did not receive compensation from the State even though it was only fair and just to provide her and her son with the necessary financial support. The State's decision to detonate the device on Ms. Jones's back porch constituted a physical taking and is compensable under the Takings Clause both because the public necessity exception does not apply, and because of the underlying fairness and justice principles of the clause.

CONCLUSION

For the foregoing reasons, Ms. Jones respectfully requests this Court to overturn the lower court's decision to grant summary judgment in favor of the State.

Respectfully submitted.

/s/ Electronically signed by the Counsel of Team 13

Team 13

Counsel for the Petitioner,

Ms. Sarah Jones and her minor son A.J.

Dated: November 10, 2025