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, No. 24-19087,
THE HONORABLE JUDGE CHANDLER, UNITED STATES CIRCUIT JUDGE

BRIEF OF RESPONDENT

Team 14
Counsel For Respondent

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QUESTIONS PRESENTED

1. Whether, under the Due Process Clause of the Fourteenth Amendment, the City of Laurenton may be held liable under the state-created danger doctrine for injuries Petitioner sustained from bombs built by Baker?

2. Whether, under the Takings Clause of the Fifth Amendment, the Petitioner is due compensation for property damaged due to the City of Laurenton's valid exercise of its police powers?

STATEMENT OF THE CASE

On September 8, 2023, Sarah Jones (Jones) called 911 to report her former boyfriend, Mark Baker (Baker), was intoxicated and threatening her and her then ten-year-old son, A.J. R. at 2. Officers Trent and Williams of the Laurenton Police Department ("LPD") responded to Jones's residence when she informed the officers that Baker owned a handgun, other weapons, and had a background in explosives based on his prior military service. R. at 2. She expressed fear for her and A.J.'s safety, and Officer Trent assured Jones that Baker would be detained "until at least the morning" due to an outstanding arrest warrant. R. at 2.

Once the officers detained and removed Baker from the scene, they realized they needed to release him under a standing city policy that prohibited executing certain warrants when the county jail was over capacity. R. at 2. The officers confirmed the jail was over capacity and without notifying Jones, the officers seized Baker's handgun and transported him to a rental house where he was residing, releasing him there alone. R. at 2.

Early the next morning, Baker retrieved two homemade explosive devices from his basement, packaged them in Amazon-marked material, and brought them to Jones's home. R. at 2. Baker placed a homemade explosive on the front porch and on the back porch of the property. R. at 2. Believing the front package to be an ordinary delivery, Jones brought it inside. R. at 2. When she attempted to open it, the device detonated, fracturing her femur, causing third-degree burns, and permanent hearing damage. R. at 3. Her son, A.J., who was nearby, sustained a fractured arm, lung injuries, and severe psychological trauma. R. at 3.

After Jones and A.J. were taken to the hospital, police at the scene discovered the second package on the back porch and called the LPD Bomb Squad. R. at 3. The LPD Bomb Squad x-rayed the package and deployed standard disruption procedures. R. at 3. The attempt to disrupt

the device instead triggered a detonation, destroying the rear portion of the residence and rendering the structure unsafe and uninhabitable. R. 3. Expert testimony later estimated the property and required demolition and the damage at $385,000. R. at 3.

Jones filed suit under 42 U.S.C. § 1983 against the City of Laurenton and the LPD Department (collectively, "the City"), alleging that (1) the officers' conduct affirmatively created the danger that led to her injuries in violation of the Due Process Clause, and (2) the destruction of her home constituted a taking without just compensation under the Takings Clause. R. at 4. The district court granted summary judgment to the City on both claims, holding that there is no such thing as a state-created danger theory under the Due Process Clause and that the Takings Clause does not apply to property destruction carried out under the police power. R. at 4.

Jones timely appealed to the United States Court of Appeals for the Thirteenth Circuit. R. at 4. On appeal, the Thirteenth Circuit affirmed the decision of the district court, agreeing with the lower court's reasoning. R. at 7-8. Jones filed a petition for a Writ of Certiorari with this Court, which was granted on September 5, 2025. R at 13.

SUMMARY OF THE ARGUMENT

In this case, Petitioner, Sarah Jones, states that the Thirteenth Circuit Court of Appeals incorrectly determined the grant of summary judgment in favor of the City of Laurenton, New Virginia, and the Laurenton Police Department. Jones filed claims under 42 U.S.C. § 1983 alleging violations of the Due Process Clause and the Takings Clause. The two main issues are (1) whether, under the Due Process Clause of the Fourteenth Amendment, the City of Laurenton may be held liable under the state-created danger doctrine for injuries Jones and A.J. sustained from bombs built by Baker, and (2) whether, under the Takings Clause of the Fifth Amendment Jones is due compensation for the property damaged due to the City of Laurenton's valid exercise of its police powers.

Respondent argues that the City is not liable under the Due Process Clause because there is no constitutional duty to protect against private actors. Baker's acts of placing the explosives are a third-party intervening event that occurred after the LPD officers released Baker at his personal rental home. When the officers last saw Baker, he was alone with no apparent risk to Jones once the officers left. There are an exceptions to liability under the Due Process Clause including the state-created doctrine. This doctrine is not uniformly recognized and the application of the elements are not the same across the circuits that do recognize. Using the most common elements, the state-created danger doctrine is not met by the facts of this case. The three elements most used across court of appeals circuits are whether the LPD officers affirmatively create or enhance a specific danger, whether the state had known or should have known of the danger, and whether the conduct "shocks the conscience."

First, the LPD officers did not affirmatively create or enhance the danger that later harmed Jones. In fact, the officers removed the immediate risk, kept Baker and Jones separate, and seized the weapon that was apparent to the officers. The officers left Jones in a safer position than when they found her. Second, the officers were unaware of the danger Baker posed. Courts require actual knowledge of a substantial risk of harm, not just foreseeability. Here, although LPD officers heard from Jones that Baker had a background in explosives, there was no real threat from these explosives at the time Baker was taken into custody or even when they left him at home. There had also been no prior recorded encounters between Jones and Baker for the police to rely on to consider Baker dangerous to Jones. Third, the conduct of the LPD officers did not "shock the conscience." The expectation of courts when an action "shocks the conscience" is when it "violates the decencies of civilized conduct." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998). Here, the officers' actions were simply following an

administrative city policy not to take Baker to jail because of overcrowding. There was no malicious intent or purpose to cause harm. By affirming the Circuit Court's dismissal of this case on the Due Process issue, this Court can confirm that police discretion and decision-making regarding choices when they are not the active tortfeasor should be protected from constitutional liability.

Respondent also argues that the City is not liable to compensate Jones under the Takings Clause of the Fifth Amendment, because there is an established necessity exception for damages caused due to the government's exercise of valid police powers in response to an immediate public safety concern. There is a recognized difference between the government's taking of property for public use under its powers of eminent domain, which requires just compensation, and takings that result from the exercise of police powers to limit what an owner may do with his property for the public good. These restrictions do not rise to a regulatory taking, which would require compensation, unless the regulations go too far.

However, there are exceptional cases where a necessity exception, derived from common law, allows property to be destroyed for public safety concerns. The classic example is tearing down a home to prevent the spread of fire to additional structures. Common law principle held that these trespasses to private property did not require compensation, and this principle has carried over to apply to the Takings Clause as well. While Circuit Courts agree on the existence and validity of the necessity exception, they are split between a categorical bar against compensation based on the use of police powers, and a bar against compensation only when the exercise of police powers is objectively necessary for public safety.

Here, the damage to Jones's property was the result of a police action to end the ongoing public safety threat of an unexploded bomb. Under the basic principles of the necessity

exception, this type of action is certainly within the scope of an exceptional case where preserving public safety would bar a Fifth Amendment takings claim. However, even when applying the objectively necessary test to the exception, courts have found that less dangerous situations, such as severely damaging a home to apprehend a barricaded lone gunman, have satisfied the test and allowed a Takings Clause claim.

Therefore, the Respondent requests that the United States Supreme Court affirm the Thirteenth Circuit Court's dismissal of the case because, under the Due Process Clause of the Fourteenth Amendment, the City is not liable under the state-created danger doctrine for injuries inflicted by Baker and that the Fifth Amendment does not require just compensation for a taking due to the destruction of property in a valid police power exercise.

ARGUMENT

The United States Supreme Court should affirm the Thirteenth Circuit grant of summary judgment in favor of the City on Jones' claims under 42 U.S.C. § 1983 for violations of the Due Process Clause and the Takings Clause.

I. The Thirteenth Circuit correctly concluded that under the due process clause of the Fourteenth Amendment, the City is not liable pursuant to the state-created danger doctrine for injuries caused by Baker.

The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Jones erroneously argues that the LPD officers violated this Clause through the state-created danger doctrine because the officers affirmatively created the danger that led to her and her son's injuries.

A. The Due Process Clause does not impose a duty to protect against private violence, therefore the City cannot be liable for Baker's independent criminal act.

Under the Fourteenth Amendment, specifically the Due Process Clause, the City owed no constitutional duty to protect Jones or her son, A.J., from the violent acts of Baker, an independent party. Supreme Court precedent establishes that the Due Process Clause functions as a restriction on the State's authority to act, rather than a promise of safety and security. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 192 (1989). Because the officers' conduct involved a private actor's intervening criminal act, no constitutional violation occurred, and no duty on behalf of the City to protect Jones was owed.

The Due Process Clause provides 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 case *DeShaney v. Winnebago County* required the Supreme Court to analyze the Due Process Clause when a young boy was repeatedly abused by his father. *DeShaney*, 489 U.S. at 192. Despite multiple reports and clear indications of danger, the county's social services agency failed to intervene, resulting in the child suffering permanent brain damage. *Id*. The Court found that the social service agency did not deprive petitioner's liberty in violation of the Due Process Clause because "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *Id.* at 195. The Clause is framed to restrict the State's authority rather than to assure specific standards of safety and security. *Id.* Its "purpose was to protect the people from the State, not to ensure that the State protected them from each other." *Id.* at 199–200. *Deshaney* states an exception to officers' responsibilities to protect under the Due Process Clause when a special relationship exists. The special relationship doctrine applies when "the State takes a person into its custody and holds

him there against his will," creating an affirmative obligation for the State to ensure that person's safety. *Id.* The Due Process Clause "does not transform every tort committed by a state actor into a constitutional violation." *Id.* at 202.

The case *Town of Castle Rock v. Gonzales* required the Court to examine the scope of the Due Process Clause in the context of police enforcement of a restraining order. *Town of Castle Rock v. Gonzales***,** 545 U.S. 748, 752–53 (2005). Also here, the petitioner repeatedly contacted the police to report that her estranged husband had taken their three young daughters in violation of a court-issued restraining order. *Id.* at 753–55. Unfortunately, the police failed to act, and the children were later found murdered by their father. *Id*. The town was found not liable under the Fourteenth Amendment, as the Court held and reaffirmed after *DeShaney,* that even when state law or official policy seems to require enforcement or protection, the Due Process Clause does not establish an individual right to such enforcement. *Id.* at 768–69. The Court also held that "[t]he benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under the Due Process Clause." *Id.* at 768.

In *Daniels v. Williams*, a prisoner slipped on a pillow negligently left on a prison step and sued, claiming that the government's negligence had deprived him of his liberty and personal safety without due process. *Daniels v. Williams*, 474 U.S. 327, 335-36 (1986). Here, the court concluded that the Due Process Clause does not guarantee against incorrect or poorly made decisions. *Id.* at 330.

In *Davidson v. Cannon*, a prisoner informed a warden that another inmate had threatened him, but the warden ignored the warning. *Davidson v. Cannon*, 474 U.S. 344, 347 (1986). The prisoner was subsequently attacked. *Id.* The Court held that the warden's inaction, amounting to negligence, was insufficient to establish a due process violation, reaffirming that liability

requires an affirmative act and more than a failure to act. *Id.* Also, the Court ruled that negligence does not violate the Due Process Clause. *Id.*

Applying these cases to the case at hand, the officers did not have a constitutional responsibility to protect Jones based on the Fourteenth Amendment, and the special relationship exception does not apply. Jones was not in custody, nor did the State restrain her liberty. She remained free to act on her own behalf after officers departed. Under the analysis from *DeShaney*, the State has no constitutional duty to protect in such circumstances because there was never a right to protection from an independent actor in the Constitution.

The officers under the Due Process Clause did not owe protection to Jones and her son because Baker's violence was a private act between two individuals, not the state government. The harm to Jones and A.J. arose from Baker's independent actions of placing and detonating explosive devices at her home hours after the officers left. Baker's decision to act violently and place two explosive devices divided the sequence of events, separating the officers' earlier actions between Jones and Baker from the resulting injuries caused by Baker's actions. The Court has explicitly rejected attempts to hold government officials liable for injuries inflicted by private parties where the government "played no part in [the] creation" of the danger. *DeShaney*, 489 U.S. at 201. Here, when the officers knew about the dangers Baker could pose, they removed Baker to a different location than Jones, without predicting the harm he would later cause at a different location. These steps taken by LPD officers cannot be interpreted as creating a danger for Jones.

Also, while the officer's actions may have been negligent, there was no constitutional misconduct. While Officer Trent assured Jones that Baker would be in jail "until at least the morning," the officers later returned Baker to his rental home due to the City's overcrowding

policy. R. at 2. While officers heard concerns from Jones herself, they removed the risk that was present at the time of the altercation between both parties. Here, like *Davidson*, officers were found negligent based on being warned of a potential risk from a private actor's criminal actions, but this harm was not a constitutional violation by officials. While the officials acted negligently or failed to prevent harm, such conduct doesn't meet the standard for a substantive due process claim. In both cases, the official failed to act further after being warned. No steps were taken to make the parties worse off or increase the risk of harm after concerns were raised. No affirmative duty arose merely because officers interacted with Jones. Also, like *Daniels*, while poor decision-making led to not notifying Jones of Baker's release, the Due Process Clause does not guarantee liability based on incorrect or poorly made decisions.

Their conduct was driven by the policy designed to address jail capacity limits, not to risk Jones's safety. Like *Gonzales,* where the officers did not follow the restraining order, the court recognized that law enforcement officers have their own discretion in responding to policy, which is what happened with the LPD officers' decisions for the night. Ultimately, it is crucial to allow police officers discretion. Otherwise, it sets a precedent that almost any flawed law enforcement decision could become a constitutional tort, which the Supreme Court has already indicated is best avoided under the Due Process Clause.

Because the Due Process Clause imposes no duty to prevent private violence, and no special relationship existed between Jones and the City, the Constitution does not require the City to protect her or A.J. from Baker's independent criminal acts. The officers' failure to detain Baker does not amount to a constitutional deprivation under *DeShaney* and controlling precedent. Accordingly, Jones's claim for a violation of protection under the Due Process Clause fails.

B. The state-created danger doctrine is not uniformly recognized, and even if it were, the officers' conduct fails to meet its standard.

After *DeShaney*, federal circuit courts adopted that language from the ruling and developed another exception. The general rule is that the Due Process Clause does not require the government to protect individuals from private violence, thus creating the state-created danger doctrine. The state-created danger doctrine is not uniformly recognized by all circuits and has not been acknowledged by the Court. Even if this Court were to recognize the state-created danger exception to *DeShaney*, the Laurenton officers' decision to release Baker pursuant to municipal policy does not satisfy the doctrine's criteria. The City's conduct did not affirmatively create or enhance a specific danger, the officers did not know, nor should they have known, of the danger posed by Baker, and the officers' conduct does not "shock the conscience."

There is currently no uniform standard for the state-created danger doctrine. Almost all circuits have different requirements and explanations of this doctrine. Ninth Circuit Judge Bumatay dissented in *Murguia* that "[p]ractically every circuit that's endorsed the state-created danger exception has come up with a different test for when it should apply." *Murguia v. Langdon*, 73 F.4th 1103, 1112 (9th Cir. 2023) (Bumatay, J., dissenting). Some examples of the variety of the elements of this test are: The First Circuit: (1) Affirmative act; (2) danger specific to plaintiff; (3) causation; (4) conscience-shocking conduct. *Irish v. Fowler*, 979 F.3d 65, 75 (1st Cir. 2020); The Third Circuit: Relationship, affirmative use of authority, foreseeable injury, conscience-shocking behavior. *Sauers v. Borough of Nesquehoning*, 905 F.3d 711, 717 (3d Cir. 2018); The Eighth Circuit: Plaintiff is in a definable group; known or obvious risk; reckless disregard; conscience-shocking conduct. *Villanueva v. City of Scottsbluff*, 779 F.3d 507, 512 (8th Cir. 2015); The Ninth Circuit: Affirmative act exposing plaintiff to danger, foreseeable injury, deliberate indifference. *Sinclair v. City of Seattle*, 61 F.4th 667, 680 (9th Cir. 2023); And the

Eleventh Circuit does not recognize the doctrine but states that the government is liable under the substantive due process clause only if an official's act or omission is "arbitrary or conscience shocking,". *White v. Lemacks*, 183 F.3d 1253, 1257 (11th Cir. 1999). In our case, the Thirteenth Circuit declined to adopt the state-created danger doctrine. R. at 5. *Murguia* cautioned that the doctrine has "roam[ed] menacingly among our circuit courts and is often difficult to comprehend." *Murguia,* 73 F.4th at 1115 (Bumatay, J., dissenting).

The most effective way to analyze this doctrine is to look at the most common factors observed across the circuit courts that apply it. These are the questions of whether the LPD officers affirmatively create or enhance a specific danger, whether the state had known or should have known of the danger, and whether the conduct "shocks the conscience."

1. The LPD Officers did not affirmatively create or enhance a specific danger**.**

Liability may arise when a state actor affirmatively exposes a person to danger they would not otherwise face. *Wood v. Ostrander*, 879 F.2d 583, 590 (9th Cir. 1989). In *Wood*, a police officer arrested a drunk driver, impounded the car, and left the plaintiff, a passenger in the car, stranded on the side of the road at 2:30 a.m. in a high-crime area, where she was later raped. *Id.* at 586-587 (9th Cir. 1989). The Ninth Circuit held that there were triable issues of fact as to whether the officer's conduct violated the plaintiff's substantive due process rights under the Fourteenth Amendment. *Id.* at 590–91. The court explained that while negligence alone does not create liability, an officer may be held liable when his affirmative acts place an individual in danger, showing deliberate indifference to her safety. *Id.* at 588–89. Because the officer knowingly left the plaintiff vulnerable in a dangerous area, the court found that a reasonable jury could conclude he created the danger that led to her harm, thereby triggering the state-created danger doctrine. *Wood*, 879 F.2d at 590. In *Kennedy v. City of Ridgefield*, after the plaintiff

reported and presented evidence that a teenage neighbor had molested her daughter and warned police of his violent tendencies, the responding officer promised to notify her before contacting the neighbor, but instead informed the neighbor first. *Kennedy v. City of Ridgefield*, 439 F.3d 1055 (9th Cir. 2006). Within eight hours, the neighbor broke into the plaintiffs' home, killing one and seriously injuring the other. *Id.* The court ruled that the officer affirmatively created the danger, and that the threat to the plaintiffs was known, leading to the attack. *Id.*

Bowers v. Devito further explains how the state-created danger exception holds the State liable when government officials affirmatively place an individual in harm's way. *Bowers v. DeVito,* 686 F.2d 616, 618 (7th Cir. 1982). The Seventh Circuit described affirmatively creating a danger as the equivalent of the State "throwing [the plaintiff] into a snake pit." *Id.* This vivid language highlights the idea that liability attaches when the State itself acts as a tortfeasor.

The LPD officers responded promptly to the heated situation between Jones and Baker and took Baker into custody based on an outstanding warrant. Upon learning that the county jail was over capacity, the officers complied with a standing administrative city policy "requiring officers not to execute certain warrants when the county jail was over capacity." R. at 2. The officers then transported Baker to his rental home, leaving him alone there. Although Officer Trent assured Jones that Baker "[would] be locked up until at least the morning," this was incorrect, as Baker would soon be released. This release did not increase the danger she faced beyond what existed before officers got involved. The officers disarmed Baker, did not assist him in or witness the construction of the explosives, or otherwise encourage his violent acts.

Also, comparing the actions of the officers to the language in *Bowers*, the conduct did not throw Jones into a "snake-pit" of danger or otherwise restrain her liberty. The officers removed Baker from her home, seized his weapon, and followed the citywide jail-capacity directive. Their

actions, though insufficient to prevent Baker's later crime, did not transform the State into a "snake pit" creator. Baker's later planting of explosives was an independent, intervening act that harmed Jones. The direct harm was not caused by the police placing Baker at his rental home, and the Officers themselves did not act as active tortfeasors. This is clearly different from the facts in *Wood* and *Kennedy*. Unlike *Wood* and *Kennedy*, where the officers' inaction caused harm, the LPD removed the threat, Baker, from Jones's house by seizing the gun from his person and taking him to his rental home. Meaning, when the officers left the situation better than they found it, they had separated the parties from foreseeable future harm. In conclusion, because the officers did not affirmatively create or enhance a specific danger to Baker and her son, this element of the state-created danger doctrine is not satisfied.

2. The LPD Officers did not know nor should have known of the danger posed by Baker.

Circuits that recognize the state-created danger doctrine require an actual knowledge of a substantial risk of harm, not just foreseeability. *Est. of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 491–92 (6th Cir. 2019). Under many interpretations of the doctrine, the danger must be specific to the plaintiff at the time of the event and not just foreseeable during the time, not merely general or potential. *Irish*, 979 F.3d at 75. In most circuits, this element is not met if there is an indifference to the action**,** meaning the officer must fully understand that their conduct places the plaintiff at risk and disregard that risk. *Villanueva*, 779 F.3d at 512. The doctrine will not apply when the plaintiff can act for the best interest of their own safety, because the State has not prevented self-protection. *DeShaney*, 489 U.S. at 200.

In *Kennedy,* the circuit court found that the officers should have known the danger the neighbor presented because the plaintiff had shown that she had told the officers about the neighbor's violent tendencies, including several incidents of alarming and aggravated violence.

Kennedy, 439 F.3d at 1064. Additionally, the plaintiff also testified that before the incident, she left many messages with the police department where she expressed continued fear for her family's safety. *Id*.

Here, while Jones had warned of the possibility of Baker's harm and experience with explosives, there was no physical or direct evidence that this was a current concern officers needed to address. If, when the officers arrived, there had been a bomb or materials to build an explosive present, this would have gone beyond mere possibility and indicated a substantial risk to the family and the home. The way Jones presented this danger only left officers with a general potential for this event to happen at some point, not an immediate threat. In this case, the officers did not disregard the risk because they could not have known that there was a genuine material concern of a risk posed to the family.

Unlike *Kennedy*, this was also the first time that LPD had been involved in a domestic incident with Baker and Jones. Because in *Kennedy* there were several recorded concerns of the plaintiff's fear, the police should have known there was a real and present risk. Since LPD did not have as much prior experience with Jones and Baker, the police would not have been aware of an immediate and urgent concern for safety. Additionally, Jones could have protected herself from this risk by leaving the house, where Baker knew she was. In conclusion, because the officers did not know nor should have known the danger Jones posed to Baker and her son, this element of the state-created danger doctrine is not satisfied.

3. The LPD Officers' conduct does not "shock the conscience."

The "shocks the conscience" standard requires behavior so egregious that it "violates the decencies of civilized conduct." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998). In *Lewis*, a deputy pursued two teenagers on a motorcycle after they fled a police stop, chasing

them for about 75 seconds at nearly 100 mph. *Id*. The chase ended when the motorcycle crashed, and the deputy's car accidentally killed the passenger. Since the officer was responding in a quick, split-second decision to catch a fleeing suspect and had no intent to harm, the Court determined that the conduct did not "shock the conscience." *Id*.

Here, the officers' actions are far from "violat[ing] the decencies of civilized conduct." *Id.* at 846. Their conduct followed an administrative order from the City intended to manage limited jail capacity. Like in *Lewis*, the officers acted in a way that had no purpose to harm for reasons unrelated to the arrest. In both cases, decision-making was also up to the officer's discretion and was made in a split second. Their actions, though consequential, reflect at most misjudgment or negligence, not "conscience-shocking" abuse of power.

In conclusion, because the officers' action in releasing Jones followed an administrative directive and does not "shock the conscience," this element of the state-created danger doctrine is not satisfied. Even if this Court were to adopt the state-created danger doctrine, the Laurenton officers' conduct would fail under the standard applied in many circuits. The City's conduct did not affirmatively create or enhance a specific danger, the officers did not know, nor should they have known, of the danger posed by Baker, and the officers' conduct does not "shock the conscience." Since the Court does not recognize the doctrine, and because the facts here fall short of its elements even when recognized, the City cannot be held liable under the state-created danger doctrine exception to the Due Process Clause. Therefore, the Court should affirm the Thirteenth Circuit's dismissal.

II. The Court Should Affirm the Dismissal Because the Fifth Amendment's Takings Clause Does Not Require Compensation for Damage or Destruction Resulting From The Government's Exercise of Valid Police Powers.

The Takings Clause of the Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. Jones erroneously argues that the Laurenton Police Department Bomb Squad effected a constitutionally protected taking of her property when her home was damaged by their good-faith efforts to render the second planted explosive device inert.

A. The Takings Clause does not require compensation for property impacted by the government's exercise of police powers rather than taken by its power of eminent domain.

The Takings Clause represented a shift from the colonial-era common law that allowed for uncompensated property taking that was legislatively authorized. *Fulton v. Fulton Cnty. Bd. of Comm'rs*, 148 F.4th 1224, 1243 (11th Cir. 2025). Following the Revolutionary War, in which both sides seized property for the war effort, often without compensation or direct legislative authorization, James Madison proposed the Fifth Amendment's Taking Clause as a remedy against this unregulated behavior. *Id.* at 1244-45. The Takings Clause provided a direct federal right-of-action for property owners to receive just compensation for uncompensated governmental taking. *Id.* The ratification of the Fourteenth Amendment subsequently "ensured a federal guarantee of the 'just compensation' remedy against state and local governments." *Id* at 1255.

The plain language of the Takings Clause establishes that when the government takes property for public use through eminent domain, it must pay compensation. U.S. Const. amend. V. Further interpreting the Takings Clause, the Tenth Circuit clarifies that "[police power] controls the use of property by the owner for the public good, authorizing its regulation and

destruction without compensation, whereas [eminent domain] takes property for public use and compensation is given for property taken, damaged or destroyed." *Lamm v. Volpe*, 449 F.2d 1202, 1203 (10th Cir. 1971).

In 1922, the Court expanded the Takings Clause to provide that the government had the right to use its police powers to regulate property use but noted that "if regulation goes too far it will be recognized as a taking." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). At the same time, the Court further recognized that beyond these regulatory takings, there were "exceptional cases, like the blowing up of a house to stop a conflagration . . . ." *Id.* at 415-16 (citation omitted). The Court did note that "[i]t may be doubted how far exceptional cases . . . go-and if they go beyond the general rule . . ." yet also noted "[i]n general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders." *Id*. Regulatory taking cases eventually established a set of factors that helped identify when such regulations became a taking that required compensation. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

For the exceptional cases that have yet to benefit from an established set of factors, the police powers contain a necessity exception based on common law. *Respublica v. Sparhawk*, 1 U.S. 357, 362–63 (1788). *Sparhawk* notes "[t]he rights of necessity, form a part of our law." *Id.* Several common law necessity examples based on public safety were illustrated, such as the destruction of a house to prevent the spread of fire, the privilege to trespass on private property to navigate past a damaged road, and that "as the safety of the people is a law above all others, it is lawful to part affrayers in the house of another man. *Id.* The same maxim was applied to the destruction of railroad bridges during the Civil War, where the Court stated "[t]he safety of the state in such cases overrides all considerations of private loss." United States v. Pac. R.R., 120

U.S. 227, 234 (1887). After World War II, the Court reaffirmed the necessity exception where the destruction of a petroleum depot in the Philippines at the outset of the war to prevent it from falling into enemy hands was determined not to be a taking. *United States v. Caltex*, 344 U.S. 149 (1952). Affirming that the necessity exception applied in times of emergency, the Court stated that "[t]he terse language of the Fifth Amendment is no comprehensive promise that the United States will make whole all who suffer from every ravage and burden of war." *Id.* at 155.

In the present case, Jones suffered her loss during the course of a public safety emergency that clearly highlights the core reason for the necessity exception to the Takings Clause. The LPD Bomb Squad followed their protocol and attempted to end the ongoing threat to public safety from the second, undetonated, bomb at Jones's home. The attempt to disarm the bomb in place at Jones's home presented the least amount of risk to the public at large. There are several recent circuit court cases analogous to Jones's situation.

In *Lech v. Jackson*, an armed criminal subject barricaded himself in the plaintiff's home while city police surrounded the property. *Lech v. Jackson*, 791 F. App'x 711, 713 (10th Cir. 2019). A shot was fired at police by the barricaded subject, leading to a nineteen-hour standoff. *Id.* Police deployed increasingly aggressive means of ending the standoff, including firing gas rounds into the home, using an armored vehicle to breach the doors, using explosives to create additional entry points, and attempting to apprehend the suspect with a tactical team which drew additional gunfire. *Id.* In a final push, police once again used the armored vehicle to open multiple holes into the plaintiff's home, at which point, the subject was apprehended by the tactical team, but the home was left uninhabitable, requiring the plaintiff to demolish and rebuild the structure. *Id.* In analyzing the case, the Tenth Circuit relied heavily on the principle that damage from an exercise of police power is explicitly not a Fifth Amendment taking because the

property was not turned over for public use. *Id. at* 715-16. The court further notes that they have "implicitly treated the distinction between the police power and the power of eminent domain as dispositive of the taking question, even when the interference at issue is physical, rather than regulatory, in nature." *Id.* at 716. In the same manner, Jones's home was damaged as a result of the LPD's exercise of police powers, but it was never converted to public use.

B. The Court should affirm because the circuit courts uniformly recognize a necessity exception to the Takings Clause for property destroyed under the government's police powers, despite differences in when the exception should apply.

In contrast to the Tenth Circuit's strong assertion that the government's exercise of police power, separate from the exercise of eminent domain, results in a necessity exception being categorically a non-taking, the Fifth Circuit takes a less concrete stance. In *Baker v. City of McKinney, Texas*, with a fact pattern similar to the Jones case at hand, and nearly identical to the circumstances in *Lech*, the police apprehension of a suspect led to approximately $50,000 in damage to the plaintiff's home. *Baker v. City of McKinney, Tex.*, 84 F.4th 378, 380-81 (5th Cir. 2023), *cert. denied*, 145 S. Ct. 11 (2024).

The *Baker* case began when a suspected kidnapper, holding a fifteen-year-old girl, arrived at the Plaintiff's home after previously fleeing from police. *Id.* at 380. City police were alerted, secured a perimeter, and then utilized gas grenades, explosives, two armored vehicles, and a drone while trying to apprehend the suspect. *Id.* While the 15-year-old victim was quickly released, she informed the police that the suspect was high and had rifles and pistols. *Id.* The suspect stated that he "had terminal cancer, wasn't going back to prison, knew he was going to die, [and] was going to shoot it out with the police." *Id.* Although the standoff ended with the suspect taking his own life, the plaintiff's dog was rendered blind and deaf by the explosives used. *Id.* at 380-81. Further, the gas grenade residue required HAZMAT remediation, many

fixtures, appliances, windows, and doors were left irreparable, and all personal property was destroyed, totaling around $50,000 in damages. *Id.*

The *Baker* defendant-appellant encouraged the Fifth Circuit to adopt as a broad rule the holding that destruction of property under the exercise of police powers is categorically not a compensable taking. *Id.* at 383. The court declined to adopt the rule, feeling that it was too broad of a precedent to be set by a lower court, and further, that the rule went against their own precedent. *Id.* The prior Fifth Circuit case, *John Corp. v. Houston*, involved a plaintiff's loss when the city demolished a condemned building he failed to fully renovate. *John Corp. v. City of Houston*, 214 F.3d 573, 575 (5th Cir. 2000). The circuit court draws a line from *John Corp.* directly to the regulatory taking law stemming from *Pennsylvania Coal*, which famously noted that regulations that go too far can be recognized as a taking. *Id.* at 578. Further, the court compares the *John Corp.* case to *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), where the Supreme Court held that a property stripped of all economically beneficial uses amounts to a taking. *John Corp.,* 214 F.3d at 578. However, *Baker*, using the reasoning found in *John Corp.*, appears to be one of the few case in which the tenets of regulatory taking law are applied directly to the necessity exception. *Baker*, 84 F.4th at 383. In fact, in *Baker*, the court goes on to quote the context surrounding the aforementioned *Pennsylvania Coal* proposition as evidence of the necessity exception itself:

> The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go—and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle. *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

Baker, 84 F.4th at 387. Thus, the court affirms their conclusion that the necessity exception is a longstanding privilege regardless of their thoughts on the principles underlying it. *Id.*

However, the Fifth Circuit expresses its feelings about the underlying principle through *Armstrong v. United States*. *Baker*, 84 F.4th at 388. *Armstrong* noted, in a traditional eminent domain taking case surrounding a lien on steel used in building boat hulls, that "[t]he Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation 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). However, despite the Fifth Circuit's misgivings, the recognition of a necessity exception stemming from government action under its police powers led the court to conclude "it was objectively necessary for officers to damage or destroy [the plaintiff's] property in an active emergency to prevent imminent harm to persons." Baker, 84 F.4th at 388. Thus, the *Baker* plaintiff was excluded "from the protection of the Fifth Amendment's Takings Clause." *Id.*

Following the Fifth Circuit's decision in *Baker*, the plaintiff petitioned this Court, which denied the Writ of Certiorari. *Baker v. City of McKinney, Tex.*, 145 S. Ct. 11 (2024) (Sotomayor, J., statement concurring in the denial of certiorari). In its accompanying opinion on the denial, the Court makes clear that it "expresses no view on the merits of the decision below." *Id.* at 12. Instead, the Court acknowledges that the question of the existence and boundaries of the necessity exception is complex, important, and remains open, with a call for the lower courts to further explore the issue before the Court intervenes. *Id.* at 13.

To that end, the Ninth Circuit published an opinion in early November of 2025 agreeing with the Fifth Circuit's *Baker* decision that the necessity exception exists, and "that law enforcement's reasonable and necessary destruction of property to protect public safety falls outside the scope of the Takings Clause." *Pena v. City of Los Angeles*, No. 24-2422, 2025 WL

3074588, at *4 (9th Cir. Nov. 4, 2025). In *Pena*, the court suggests that the alternative remedy for damage incurred subject to the necessity exemption is through state and local legislation or administrative processes. *Pena*, 2025 WL 3074588, at *13.

Similar to *Lech* and *Baker*, *Pena* involves an armed fugitive barricading himself in the plaintiff's print shop. *Pena*, 2025 WL 3074588, at *2. After a thirteen-hour standoff, LAPD SWAT officers fired dozens of gas grenades through the windows, walls, and roofs, thus contaminating the shop, inventory, and equipment resulting in over $60,000 in damage. *Id.* As in *Baker*, the court determined that the efforts by the police were objectively necessary to ensure public safety. *Pena*, 2025 WL 3074588, at *13.

When comparing the facts of *Pena* and *Baker* to the case at hand, the danger of the unexploded bomb at Jones's home is certainly equal to, if not easily exceeding, the danger posed to the general public by a lone, barricaded subject. The courts found that it was reasonable, after a period of waiting, to flush the subjects out of their refuge. There was not an expectation that police were required to let standoff continue indefinitely, and could resort to force, even if the outcome of the actions would cause damage to a third-party's property. In the same way, the unexploded bomb was not rashly dealt with by bomb squad in Jones's case. Following protocol, the bomb was x-rayed in place, and it was determined that, with the bomb maker at large, the device could detonate at any time. Moving the bomb would potentially expose more of the public to risk. Even though the bomb was not successfully disabled and subsequently detonated, the most reasonable choice for the bomb squad to make in the situation was to attempt to disable the device remotely, in situ, using the energetic tool.

Therefore, the destruction of Jones's property, though unfortunate, does not constitute a compensable taking for public use under the Fifth Amendment. It falls directly within the

necessity exception to the Takings Clause, which is ultimately recognized by both the Tenth Circuit and Fifth and Ninth Circuits. Although the Fifth and Ninth Circuits argue for a stronger objectively necessary standard to invoke the exception, in Jones's case, the threat to public safety was significantly greater than in the *Baker* or *Pena* cases. Yet, the courts found that those police actions in the less dangerous situations were still objectively necessary, invoking the necessity exception.

CONCLUSION

For the reasons stated herein, the Respondent respectfully requests that the Court affirm the Appellate Court's decision.

This the 10th day of November, 2025.

Respectfully Submitted,
By: /s/*Team 14*
Team 14
Counsel for Respondent
November 10, 2025