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

Team 17
Counsel for Petitioner

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QUESTIONS PRESENTED

I. Under the Due Process of the Fourteenth Amendment, is a state actor liable pursuant to the state-created danger doctrine for injuries inflicted by private parties, when the state affirmatively creates or increases the danger to an individual?

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

STATEMENT OF THE CASE

This case is about a survivor of domestic abuse and police misconduct.

On the evening of Friday, September 8, 2023, Jones's intoxicated former boyfriend, Mark Baker, threatened both Jones and their ten-year-old son, A.J. R. at 2. Jones, fearing for her and her son's safety, called 911 to report the domestic abuse. *Id.* Officers Trent and Williams from the Laurenton Police Department responded to the call. *Id.* Upon arrival, they observed Baker visibly angry and threatening Jones because she had called for help. *Id.*

Jones told the officers that Baker owned a handgun and other weapons and had military training in explosives. *Id.* Officer Trent assured her of her safety; that she need not leave with her son for the night because Baker would "be locked up until at least the morning," as Baker had an outstanding arrest warrant for domestic assault in the nearby Holbrook County. *Id.*

The Officers left the premises with Baker in custody, only then following City policy by checking with the county jail to ensure it was not over capacity, and they could, in fact, book Baker, as they had promised Jones. *Id.* Contrary to what they promised Jones, the county jail was over capacity, and they could not lock Baker up that night. *Id.* Rather than alert Jones, take Baker to another facility, or keep him under surveillance, the Officers merely seized one of his weapons and dropped him off—alone—at a house he was renting. *Id.*

Having left Baker alone at his home, the Officers were unaware that the next morning, he retrieved two homemade bombs from his basement, packaged them both, disguising one as an Amazon package, and took them to Jones' home. *Id.* He placed one bomb on her front porch and the other on her back porch. *Id.* When she awoke, believing herself safe, as the Officers had promised, she retrieved the Amazon package-disguised bomb from her front porch and brought it inside. *Id.* The moment Jones began opening the package, the bomb detonated. *Id.* at 2-3. The

explosion shattered her left femur, inflicted third-degree burns over her arms and face, and caused her permanent hearing loss. *Id.* at 3. As to her son, the explosion fractured his arm, caused lung contusions, and severe psychological trauma. *Id.* The explosion also caused damage to her front porch. *Id.*

A neighbor heard the explosion and called 911. *Id.* Police and paramedics transported Jones and her son to the hospital, then noticed the second package on the back porch and called in the Bomb Squad. *Id.* The Bomb Squad secured the area, then deployed a robot equipped with an x-ray and an energetic tool that may disrupt explosives or detonate explosives if disruption is unsuccessful. *Id.* Based on the x-ray scan, the Bomb Squad learned that the bomb had a remote detonation mechanism and was so sophisticated that disruption was virtually impossible. *Id.* Rather than search for Baker to detain him so he could not remotely detonate the device, the Officers instead detonated the bomb. *Id.* The explosion leveled the back half of Jones' single-story home, collapsed part of the roof, and rendered it so uninhabitable that Jones' only option would be to spend $385,000 demolishing and rebuilding her home. *Id.* She also suffered the costs of temporary housing and personal property lost to the explosion. *Id.*

Jones timely filed suit under 42 U.S.C. § 1983 against the City of Laurenton and the Laurenton Police Department (collectively, "Respondent"), alleging two claims. *Id.* at 4. First, she alleged a Due Process Clause violation for affirmatively creating the danger that led to her injuries by returning Baker to his home, rather than arresting him on the outstanding warrant, despite assuring Jones he would be in custody overnight. *Id.* Second, she alleged a Takings Clause violation for the foreseeable destruction of her home without just compensation. *Id.*

Both of Jones' claims were similarly brought under *Monell v. Dep't of Social Services*, 436 U.S. 658, 690 (1978) based on the City's policy not to effectuate Bakers' arrest warrant and

the Bomb Squads procedure that led to the detonation of the device and deficient training practices. *Id.* Respondent has not disputed either policy's existence or that the *Monell* standard for liability has been met. *Id.*

The Thirteenth Circuit granted Respondent summary judgment on both of Jones' claims. *Id.* at 4.

As to the Due Process claim, the court reasoned that no special relationship existed, so Respondent had no affirmative duty to protect Jones from Baker. *Id.* at 5. As to the Takings Clause claim, the court reasoned that the Clause only applies to takings executed pursuant to eminent domain powers, but not pursuant to the exercise of police powers. *Id.* at 7.

Jones timely appealed and sought reversal of the grant of summary judgment because the state-created-danger doctrine and the Takings Clause ought to apply here to make Jones whole after surviving the domestic abuse and police misconduct that led to her and her son's disfigurement and the destruction of their home. *Id.* at 13.

SUMMARY OF THE ARGUMENT

I. THE STATE-CREATED DANGER DOCTRINE

The Thirteenth Circuit erred by refusing to adopt the state-created danger doctrine and holding that there was no such substantive doctrine under the Due Process Clause. In *Kneipp*, this Court established the general rule that state actors have no affirmative duty to prevent harm inflicted by one citizen on another. However, *Kneipp* opened the door to state liability when a state's affirmative actions create or increase the danger to the specific individual(s). Consequently, the majority of circuit courts adopted the state-created doctrine.

The commonalities of the state-created doctrine, as applied by the various circuits, adhere to this Court's previous holdings regarding substantive due process. Every circuit requires an affirmative act by a state actor, culpability beyond mere negligence, and a causation nexus between the state's actions and the resulting harm. These standards ensure that the doctrine is applied only in the limited circumstances when government actors arbitrarily abuse their authority; this Court should therefore decide the circuit split in favor of the majority. *See* Part I.A.

This Court should further hold that the state-created danger doctrine establishes liability for the City of Laurenton, New Virginia, and the Laurenton Police Department for the injuries inflicted on Jones and her son by Baker. The officers in the case emboldened Baker by telling him he would not be arrested for his misconduct, even though they had probable cause. This conduct is additionally onerous given that Jones informed the officers of the danger posed by Baker, they acknowledged that danger, and assured her that she would be safe in her home that night, by invoking knowledge derived from their position that she would not have otherwise

known. Consequently, this Court should remand the case back to the lower court for consideration of its merits under the state-created danger doctrine. *See* Part I.B.

II. THE TAKINGS CLAUSE

The Thirteenth Circuit erred in finding the Takings Clause does not apply to Respondent's destruction of her home. *See* Part II. Rather, the Takings Clause applies to destruction of property undertaken in the exercise of police power. *See* Part II.A. The Takings Clause applies in such contexts where, as here, the destruction of property is foreseeable and/or the intended result of government action. *See* Part II.A.1. It is not limited to solely the exercise of eminent domain but rather encompasses the destruction of property undertaken in the exercise of police powers because such powers are necessarily exercised for the public use. *See* Part II.A.2. Here, Respondent blowing up Petitioner's home was not a valid exercise of police powers, and thus Respondents must not be shielded from liability for compensating Jones for the damage it inflicted. *See* Part II.A.3. Lastly, the public-necessity doctrine does not support dismissing Jones' Takings Clause claim because the detonation of the bomb was not inevitable. *See* Part II.B.

ARGUMENT

I. THIS COURT SHOULD ADOPT THE STATE-CREATED DANGER DOCTRINE TO HOLD STATE ACTORS ACCOUNTABLE FOR AFFIRMATIVE ACTIONS THAT CREATE OR INCREASE DANGER FOR CITIZENS LIKE JONES.

The Circuit Court of Appeals erred by refusing to adopt the state-created danger doctrine and holding that there was no such substantive doctrine under the Due Process Clause. The Circuit Court was wrong: the Due Process Clause establishes liability for state actors when a state affirmatively creates or increases danger posed by private parties to specific individual(s).

This Court should resolve the circuit split in favor of the majority and hold that a state actor may be liable under 42 U.S.C. § 1983 when the state affirmatively puts a person in a position of danger that the person would not otherwise have been in; that is, when a "state–created danger" occurs. *See infra* Part I. Further, this Court should reverse the holding of the lower court and find that the City of Laurenton, New Virginia, and the Laurenton Police Department are liable for affirmatively increasing the danger that resulted in Jones's and her son's injuries. *See infra* Part II.

A. The State-Created Danger Doctrine Falls in Line with This Court's Substantive Due Process Guideposts.

Due process, as enshrined through the Fourteenth Amendment, guarantees that no person will "be deprived of life, liberty, or property" by a state. U.S. Const. amend. XIV, § 1. The Framers drafted the Due Process Clause to curtail "abusive government conduct." *Davidson v. Cannon*, 474 U.S. 344, 348 (1986); *see Wolff v. McDonnell,* 418 U.S. 539, 558 (1974) ("The touchstone of due process is protection of the individual against arbitrary action of government."); *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

In *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, this Court held that the Due Process Clause did not extend to "[an] affirmative right to governmental aid." 4 89 U.S. 189, 195

(1989). There, a young child experienced recurring abuse from his father. *Id.* at 193-94. Despite multiple reports to local authorities, professionals considered the situation and chose to return the boy to his father. *Id.* The boy subsequently suffered life-threatening injuries due to his father's abuse. *Id.* This Court declined to hold the state actors liable for not preventing the boy's father, a private actor, from harming the boy when neither party was in state custody. *Id.* at 202. This Court held that the State's duty "was to protect the people from the State, not to ensure that the State protected them from each other." *Id.* at 196. However, in *dictum*, this Court emphasized that, "[The State] played no part in [the dangers'] creation, nor did it do anything to render [the boy] any more vulnerable to [the dangers]." *Id.* at 201.

Based on the language and framing used by this Court in *DeShaney*, ten circuits now recognize a "state-created danger doctrine" as an exception to the general rule in *DeShaney* that a state is not liable for harm by private actors. *Compare Irish v. Fowler*, 979 F.3d 65, 75 (1st Cir. 2020); *Pena v. DePrisco*, 432 F.3d 98, 109 (2d Cir. 2005); *Kneipp v. Tedder*, 95 F.3d 1199, 1211 (3d Cir. 1996); *Callahan v. N. Carolina Dep't of Pub. Safety*, 18 F.4th 142, 146–47 (4th Cir. 2021); *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1066 (6th Cir. 1998); *Doe v. Vill. of Arlington Heights*, 782 F.3d 911, 917 (7th Cir. 2015); *Freeman v. Ferguson*, 911 F.2d 52, 54 (8th Cir. 1990); *Murguia v. Langdon*, 61 F.4th 1096, 1111 (9th Cir. 2023); *Uhlrig v. Harder*, 64 F.3d 567, 572 (10th Cir. 1995); *Butera v. D.C.*, 235 F.3d 637, 651 (D.C. Cir. 2001), *with Fisher v. Moore*, 73 F.4th 367, 372 (5th Cir. 2023); *Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1305 (11th Cir. 2003).

This Court should expand on *DeShaney* and adopt the state-created danger doctrine because it falls within this Court's already-established demarcations for substantive due process. *See infra*.

Acknowledging this Court's reluctance to "expand the concept of substantive due process," the state-created danger doctrine, as implemented by the circuit courts, falls within the already-established "guideposts" of this Court. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125, 112 S.Ct. 1061, 1068 (1992). The doctrine does not purport to "transform every tort committed by a state actor into a constitutional violation." *DeShaney*, 489 U.S. at 202. Instead, circuit courts only apply the state-created danger doctrine in "limited circumstances." *Id.* at 198. While circuits apply various standards for state-created danger claims, a few commonalities exist that demonstrate the doctrine's compatibility with this Court's jurisprudence. *Compare Uhlrig*, 64 F.3d at 571-576, *with Kallstrom*, 136 F.3d at 1066-67.

First, to prevail on a state-based danger claim, all circuits that adopt the exception require affirmative action from the defendant. *Irish*, 979 F.3d at 73–74; *see, e.g.*, *Reed v. Gardner*, 986 F.2d 1122, 1125 (7th Cir. 1993) ("*Inaction* by the state in the face of a known danger is not enough to trigger the obligation.") (emphasis added).

This requirement aligns with this Court's holding in *DeShaney*, where the state actors failed to act in the face of a known danger by allowing the boy to return to his father and taking no action to intervene in the abuse. 489 U.S. at 193-194. The father perpetuated the abuse without state intervention. *Id.* at 200-01. While undoubtedly tragic, the affirmative action requirement ensures that state actors are only liable for conduct resulting, at least in part, from their own actions. *See id.* at 203.

For example, in *Reed v. Gardner*, the Seventh Circuit highlighted the distinction between passive failure to intervene and affirmative action that creates or increases danger. 986 F.2d at 1127. There, officers arrested a woman for driving while intoxicated. *Id.* at 1124. They left the vehicle and its keys with a passenger, who, tragically, then chose to drive drunk. *Id.* A fatal

collision ensued. *Id.* at 1123. The circuit court rejected the plaintiff's claim that the officers, as state actors, were liable for the crash because they left the passenger with the vehicle. *Id.* at 1127. The officers did not increase the danger by arresting the driver—"without state intervention, the same danger would exist." *Id.* at 1125.

Second, under the state-created danger doctrine, all circuits hold that defendants are culpable only beyond mere negligence. *Irish*, 979 F.3d at 74. The state-created danger doctrine establishes liability only for the precise danger undergirding the due process clause—*arbitrary* and *abusive* state action; that which shocks the conscience. *See, e.g.*, *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 240 (3d Cir. 2008); *Montgomery v. City of Ames*, 749 F.3d 689, 695 (8th Cir. 2014) ("To shock the conscience… an official's action must either be motivated by an intent to harm or, where deliberation is practical, demonstrate deliberate indifference.")

A state's mere negligence is not enough to constitute a substantive violation of due process under the state-created danger doctrine. *Davidson*, 474 U.S at 347-48. This Court is clear - "[L]ack of care simply does not approach the sort of abusive government conduct that the Due Process Clause was designed to prevent." *Id.* This Court emphasized in *Cnty. of Sacramento v. Lewis* that, for a state actor to be held liable for actions taken under the color of law, the conduct must be arbitrary. 523 U.S. at 843. "[T]he cognizable level of executive abuse of power [is] that which shocks the conscience." *Id.* at 846.

In *Rochin v. California*, this Court provided an early illustration of conduct that is conscious shocking. 342 U.S. 165, 169 (1952). There, officers impermissibly entered the plaintiff's home, barged into his room, and, when the plaintiff ingested pills, attempted to pry the pills from his mouth. *Id.* at 172. This Court determined then that officers' abusive actions were "bound to offend even hardened sensibilities." *Id.*

Finally, the circuits require that a plaintiff show a causal connection between the state's conduct and the harm. *Irish*, 979 F.3d at 74; *see, e.g.*, *Buchanan-Moore v. Cnty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009). It is not enough that a state actor took *any* affirmative action - *DeShaney* clearly established that the affirmative action must have the effect of creating or increasing danger for the victim. 489 U.S. at 201.

In *Sanford v. Stiles*, the Third Circuit declined to hold that the plaintiff satisfied their burden under the state-created danger doctrine because the enumerated affirmative actions of a state actor were "too attenuated" from the resulting harm. 456 F.3d 298, 312 (3d Cir. 2006). There, a school counselor was made aware of a conflict between students in which one student expressed suicidal ideations. *Id.* at 301-02. The counselor intervened in accordance with school policy, including meeting with the student and conducting a mental health assessment. *Id.* at 302-03. However, based on the counselors' findings, she chose not to escalate the situation by reporting the concerns to the student's parents or other professionals. *Id.* Tragically, the student, a young boy, later committed suicide. *Id.* at 302. The boy's parents maintained that the counselor was liable for the boy's death. *Id.* at 303. The Third Circuit, however, held that none of the counselor's aforementioned actions could be interpreted to have incited or contributed to the boy's death and therefore declined to establish liability. *Id.* at 311-312.

* * *

In these ways, the state-created danger doctrine creates a substantive due process cause of action in accordance with this Court's standards for such claims. This Court should adopt the doctrine—the exception to the rule this Court established in *DeShaney*—as a mechanism to hold state actors accountable in extreme, limited circumstances.

B. The Officers Affirmatively Increased the Danger to Jones and Her Son.

The Thirteenth Circuit additionally erred when the court determined that the state actors were not liable for the tragic injuries that befell Jones and her son.

First, officers increased the danger to Jones and her son by emboldening Baker. Circuit courts have declined to impose liability on state actors for merely failing to effect an arrest. *See, e.g.*, *Walter v. Pike Cnty.*, Pa., 544 F.3d 182, 194 (3d Cir. 2008). However, here, officers took additional affirmative action by showing Baker that he could not be arrested.

In *Martinez v. City of Clovis*, the Ninth Circuit held that officers' emboldenment of a private citizen triggered the state-created danger doctrine. 943 F.3d 1260, 1265–66 (9th Cir. 2019). There, Martinez was a victim of domestic abuse. *Id.* Her abuser was a former police officer. *Id.* Martinez sought support from law enforcement multiple times, but officers refused to arrest her abuser despite having probable cause. *Id.* at 1266-69. Officers despairingly discussed Martinez with her abuser and even spoke of his family's positive reputation in the city. *Id.* The circuit court held that the officers who only allowed Martinez to remain in the already dangerous situation were not liable. *Id.* at 1273-73. However, the officers who interacted with the abuser and implied that there would be no recourse for his conduct increased the danger to Martinez by emboldening the abuser to escalate the abuse. *Id.* at 1273. ("A reasonable jury could find that [the abuser] felt emboldened to continue his abuse with impunity.)

Similarly, here, officers emboldened Baker when they left the Jones residence with him in custody but then realized they could not arrest him under department policy and released him. R. 2-4. Like the abuser in Martinez, officers implied to Baker that he would not be charged for his actions. Baker then knew that, at least as long as the jail was over capacity, he could not be detained by law enforcement. The act of taking Baker away from the house, only to release him, constituted an affirmative act and emboldened his abuse, akin to the officers' bolstering of

Martinez's abuser. This newfound license not only freed Baker to harm Jones but also incentivized him to act before his window for escaping accountability expired. A reasonable juror could find that the officers knew, or should have known, that Baker was likely to escalate his behavior in response to his unexpected release.

Additionally, officers lulled Jones into a false sense of security by assuring her that Baker would be in custody that night. R. 2-4. While this alone could not constitute an affirmative act, *see e.g. Bright v. Westmoreland Cnty.*, 443 F.3d 276, 282 (3d Cir. 2006), their conduct speaks to the officers' culpability. *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1063 (9th Cir. 2006) ("Misrepresentation as to the risk… was an additional and aggravating factor, making them more vulnerable to the danger he had already created.").

In *Kneipp v. Tedder*, the Third Circuit held that officers were liable when they failed to intervene in the dangerous situation that they created. 95 F.3d at 1211. There, Kneipp and her husband were returning home after a night of drinking when officers stopped them and ordered her husband to go home. *Id.* at 1201-02. Her husband, acting under the officers' order, left Kneipp alone to walk home. *Id.* at 1125. Kneipp was highly intoxicated and suffered serious injuries in her attempt to walk home without her husband's help. *Id.* The circuit court held that the officers knew, or should have known, that Kneipp - who was visibly drunk - would face danger walking home, alone, in the cold. *Id.* at 1208-09. Once their actions created the danger, the Third Circuit held that they should have used "additional measures." *Id.* at 1210. The court emphasized the officers' knowledge that Kneipp was intoxicated when they abandoned her to the harm they created. *Id.* at 1210-1211.

This Court can apply a similar rationale here. Just as Kneipp was visibly intoxicated, officers here knew that Jones was in a vulnerable position because she told them of Baker's

munitions training and her fear of harm. R. at 2. Indeed, one officer affirmed the danger she faced, offering reassurances that Baker could not harm her that night. *Id.* The officer exercised his unique authority when he informed Jones that a pending warrant, of which Jones would otherwise not know, would hold Baker. *Id.* Despite this initial acknowledgement of threat, the officers took affirmative action that rendered her more vulnerable—emboldening Baker—yet abandoned her to that danger. True, the officer's assurances did not deprive Jones of her ability to take precautionary measures. *Bright*, 443 F.3d at 284. Nonetheless, the officers knew, or should have known, that releasing an emboldened and intoxicated Baker would pose a threat to Jones and her son. That the officers would abandon Jones to peril after using the power of their office to convince her to remain home shocks the conscience and surpasses negligence.

* * *

For the aforementioned reasons, this Court should hold that the City of Laurenton, New Virginia, and the Laurenton Police Department are liable under the state-created danger doctrine because they affirmatively acted to make Jones more vulnerable when they deliberately disregarded the impending danger and emboldened Baker by showing him that he could not be arrested for his conduct that night.

II. THE THIRTEENTH CIRCUIT ERRED IN FINDING THE TAKINGS CLAUSE DOES NOT APPLY.

The Thirteenth Circuit erred in limiting the scope of Fifth Amendment protections, when it decided no compensation was due to Petitioner after Respondent blew up her home. The Fifth Amendment's Takings Clause, through which the states are bound by the Fourteenth Amendment, states that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. "The 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. US*, 364 U.S. 40, 49, 80 S. Ct. 1563, 4 L. Ed. 2d. 1554 (1960).

There is no "'set formula' for determining when "justice and fairness" require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons." *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104,124, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978) (quoting *Goldblatt v. Hempstead*, 369 U.S. 590, 594, 82 S. Ct. 987, 990, 8 L.Ed.2d 130 (1962)). Courts consider factors like whether there was a physical invasion of property and the character of governmental action in determining what is just and fair. *Penn Cent. Transp. Co.*, 438 U.S. at 124, 128. It matters not whether property is "taken over by the Government or destroyed," because "destruction is tantamount to taking." *United States v. General Motors Corp.*, 323 U.S. 373, 384, 65 S.Ct. 357, 89 L.Ed. 311. Where, as here, the government destroys private property for no public purpose it must compensate the owner.

The majority erred in determining the Takings Clause does not apply to destruction of property undertaken in the exercise of police power, *see* part II.A. Not only does it apply to takings from the exercise of police power, *see* part II.A.1, but Respondent's destruction of Petitioner's home was not a valid exercise of police power, *see* part II.A.2. The concurring reasoning similarly does not support shielding the government from liability, because the public-necessity doctrine is inapplicable in this case, *see* part II.B. Therefore, the court erred in affirming the dismissal of Petitioner's Takings Clause claim.

A. The Takings Clause Applies to Destruction of Property Undertaken in the Exercise of Police Power.

The court's implementation of a categorical exemption from Fifth Amendment responsibility flies in the face of this Court's precedent. By limiting the reach of the Fifth Amendment's protection, the court impermissibly established a *per se* rule, where this Court has held none may exist, and unreasonably expanded the scope of the exception to protect officers who act with reckless disregard for the limits of their police powers.

1. The Takings Clause applies when destruction of property is foreseeable and/or the intended result of government action.

This Court has squarely refused to create categorical exemptions to the Takings Clause. "Time and again in Takings Clause cases, [this] Court has heard the prophecy that recognizing a just compensation claim would unduly impede the government's ability to act in the public interest. We have rejected this argument when deployed to urge blanket exemptions from the Fifth Amendment's instruction." *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 36, 133 S. Ct. 511, 184 L. Ed. 2d 417 (2012). Rather, "when the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the [] owner." *Ark. Game & Fish Comm'n*, 569 U.S. at 31 (internal quotation omitted). When destruction of property is the foreseeable and/or intended result of government action, compensation is due. *See, Ark. Game & Fish Comm'n*, 569 U.S. 23; *Slaybaugh v. Rutherford Cnty., Tennessee*, 114 F.4th 593 (6th Cir. 2024), *cert. denied,* 145 S. Ct. 1959, 221 L. Ed. 2d 738 (2025); *Yawn v. Dorchester Cnty.*, 1 F.4th 191 (4th Cir. 2012)

For example, in *Yawn*, the county released an aerial pesticide spray that resulted in the death of the plaintiff-beekeeper's bees. 1 F.4th at 192. There, the court reasoned that a plaintiff "must show that the government intended to invade a protected property interest or that the

asserted invasion is the direct, natural, or probable result of the authorized activity and not the incidental or consequential injury inflicted by the activity." *Id.* at 195 (citing *Moden v. United States*, 404 F.3d 1335, 1342 (Fed. Cir. 2005). Though that court found the killing of the plaintiff's bees did not amount to a taking, it did so because "the question is not simply whether applying the pesticide to bees would foreseeably result in their death, but rather, whether the bees would die despite the [c]ounty's specific efforts to avoid exposing the bees to the pesticide." *Id.* at 196.

Applying the principles of foreseeability and causation here supports that Respondent's actions amounted to a taking under the Fifth Amendment. Unlike in *Yawn*, where the government neither intended to damage the plaintiff's bees, and likely could not have protected the bees had they taken specific efforts to do so, Respondents here both intended to blow up Petitioner's home and could have taken specific efforts to avoid doing so. Upon X-raying the bomb, Respondent knew with near certainty that use of the energetic tool would result in detonation. "Because the device was highly sophisticated and set up to evade disruption, the likelihood of disruption was virtually non-existent. As expected, the tool did not disrupt the explosive and thus detonated it." R. at 4. Thus, the explosion of the bomb was clearly foreseen by Respondent when they deployed the energetic tool.

Furthermore, Respondent could and should have taken specific efforts to avoid detonating the bomb. The x-ray of the device informed Respondent that it had a remote detonation mechanism, but nothing in the record supports that Respondent had knowledge Baker planned to imminently remotely detonate the bomb. Rather than attempt to find and secure Baker, or to simply keep the area secure while fellow officers sought him out, Respondent threw up their hands and blew up Petitioner's home.

Thus, Respondent failed to make specific, reasonable efforts to protect Petitioner's home. The detonation of the bomb was therefore foreseeable, intentional, and directly caused by Respondent's actions and compensation to Petitioner is due.

2. The Takings Clause applies to both the exercise of eminent domain and the exercise of police powers.

"That government actions taken pursuant to the police powers are not *per se* exempt from the Takings Clause is axiomatic in the Supreme Court's jurisprudence." *Yawn*,1 F.4th at 195. "The Supreme Court's entire "regulatory takings law" is premised on the notion that a city's exercise of its police powers can go too far, and if it does, there has been a taking." *John Corp. v. City of Hous.*, 214 F.3d 575, 578 (5th Cir. 2000) (citing *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922). Further, police powers are meant to protect public morals, health, and safety. *Chicago, B. & Q. Ry. Co. v. People of State of Illinois*, 200 U.S. 561, 592, 26 S. Ct. 341, 50 L. Ed. 596 (1906). Takings in the name of police powers, are therefore axiomatic of takings "for public use." U.S. Const. amend. V. When takings occur under the exercise of police power, "the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished this way under the Constitution of the United States." *Pennsylvania Coal Co.*, 260 U.S. at 415.

For example, in *Baker v, City of McKinney*, 93 F.4th 251 (5th Cir. 2024), police destroyed Baker's property while attempting to effectuate an arrest of a suspect inside Baker's home. Effectuating an arrest is done "for the public purpose of protecting the community [] from a violent fugitive." *Id.* at 252. "By placing the onus on Baker to ground her right to compensation in a historical analogue–rather than requiring the City to establish some

historically based exception to the compensation requirement –the panel flipped the burden that typically governs in cases involving individual rights." *Id.* at 253.

Applying the dissent's reasoning in *Baker* here, Respondent was called upon for the public purpose of protecting its citizens from a bomb. By reasoning that such a police power is *not* for public use or purpose, the Thirteenth Circuit has erased the purpose of *public* servants, like police, who are employed to protect public health, safety, and morals. *Chicago, B. & Q. Ry. Co.*, 200 U.S. at 592.

3. Respondent blowing up Petitioner's home was not a valid exercise of police powers.

Even if this Court decides to overrule its past precedent to create a categorical exemption to the Fifth Amendment, eliminating the compensation requirement for takings effectuated under police powers, that rule does not apply here. *See Penn Cent. Transp. Co.* 438 U.S. 104; *Armstrong*, 364 U.S. 40; *Ark. Game & Fish Comm'n*, 569 U.S. 23; *Rucklehaus v. Monsanto Co.*, 467 U.S. 986, 103, S.Ct. 2862, 81 L.Ed.2d 815 (1984); *U.S. v. General Motors Corp.*, 323 U.S. 373 (1945); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393; *Mugler v. Kansas*, 123 U.S. 623 (1887); *U.S. v. Caltex*, 344 U.S. 149 (1952); *Bowditch v. City of Bos.*, 101 U.S. 16 (1879). Though the circuits are split on whether the Takings Clause applies to the exercise of police powers, even those that come out against its application only do so in instances of *valid* exercises of police powers.

Respondent's destruction of Petitioner's home was not a valid exercise of police powers because it neither protected public health, safety, or morals, nor did it intend to do so. To find that destruction of property does not amount to a compensable taking when such destruction occurred beyond the scope of valid police powers would create the reverse slippery slope this Court has intentionally declined to recognize; that recognizing such compensable claims would

"unduly impede the government's ability to act in the public interest." *Ark. Game & Fish Comm'n*, 569 U.S. at 36. Rather than unduly impede the government's ability to serve the public, it would unreasonably shield the government from liability when it causes the very harms it is responsible for preventing.

For example, in *Slaybaugh*, 114 F.4th at 604, the court found that when officers unreasonably damage property in the course of an arrest or search, the property owner is entitled to compensation. There, officers surrounded Slaybaugh's home to effectuate an arrest of her son. *Id.* at 595. Despite her offering to go inside and persuade him to come out, the officers waited several hours, then fired 35 tear gas canisters into the home, entered, and made the arrest. *Id.* The deployment of the canisters caused extensive damage to the drywall, flooring, and furniture. The court declined to apply the categorical police power exception for two reasons. *Id.* at 597. First, the exception does not comport "with the text and history of the Takings Clause or with the precedent explaining it." *Id.* Second, "a categorical exception would run afoul of Supreme Court precedent recognizing that the government's exercise of its police powers can, in some circumstances, amount to taking." *Id.* It determined that "property damage resulting from an unlawful search or seizure counts as a Fourth Amendment "injury" that may be compensated. *Id.* at 604.

Applying the reasoning in *Slaybough* here, the Respondent's exercise of police powers went too far. Though, like in *Slaybough*, Respondent had a valid reason to be on Petitioner's property (i.e. to diffuse the bomb), Respondent was unreasonable in detonating said bomb instead of deactivating it or securing the area until Baker was in custody, and they knew he could not detonate it remotely. R. at 4. Respondent caused the very harm it was called upon to

prevent. Thus, like when an officer violates the Fourth Amendment by unreasonably executing a search or seizure, Respondent here acted beyond the bounds of its police powers.

Because Respondent did not act pursuant to its valid police powers in destroying Petitioner's home, it cannot be exempt from liability for compensating Petitioner for the damage it inflicted.

B. The Public-Necessity Doctrine Does Not Support Dismissal of the Takings Clause Claim.

Judge Hart's concurring opinion is a similarly invalid basis for dismissing Petitioner's Taking Clause claim because the public-necessity doctrine is inapplicable in this case. The public-necessity doctrine privileges governmental action that is necessary to avoid a public disaster. *Baker*, 93 F.4th at 254 (internal citation omitted). "All the Supreme Court's cases countenancing the public necessity exception share this characteristic of inevitable loss." *Id.* at 257.

For example, in *United States v. Caltex*, the government demolished an oil companies' terminal facilities during World War II, to prevent Japan from gaining access to them. 344 U.S. at 155. There, this Court found "the necessities of the war called for and justified this. The safety of the state in such cases overrides all considerations of private loss." *Id.*

In *Bowditch v. City of Bos.*, 101 U.S. at 16, the city destroyed petitioner's home to prevent the spread of wildfire. There, this Court found it was "necessary,"" because the destruction of property actually did help prevent the spread of wildfire. *Id.* at 17.

Unlike in *Caltex* and *Bowditch*, where the government was faced with the extreme conditions of war and natural disaster, no such threat existed here. To be exempt from compensation under public-necessity doctrine, Respondent must show that it acted to prevent an inevitable loss. The threat of war and wildfire could not be so controlled. The threat here could

have been. Though the bomb had a remote detonation function, it was not inevitable that Baker would have used it. Respondent acted recklessly in detonating the bomb themselves, when they could and should have instead sought to detain Baker.

Thus, the lack of an inevitable loss or larger-scale risk, like natural disaster or war, precludes the application of the public-necessity doctrine to Petitioner's claim. Respondent must be held liable and compensate Petitioner for taking her home by detonating the bomb.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand the lower court's decision, adopting the state-created danger doctrine and applying the Taking Clause.

Respectfully submitted,

/s/ Team 17

Counsel for the Petitioner

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