**No. 25-178**

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2025

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

*Petitioner,*

V.

THE CITY OF LAURENTON, ET AL.

*Respondents*.

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On Writ of Certiorari to the United States
Court of Appeals for the Thirteenth Circuit

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Brief for Respondents

Team 2
*Counsel for Respondent*

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## QUESTIONS PRESENTED

**I. Whether a state actor is liable for injuries inflicted by a private party under the Due Process Clause of the Fourteenth Amendment when the state merely releases the private party from custody pursuant to a standing city policy after assuring another that he would be in custody overnight.**

**II. Whether just compensation is required under the Fifth Amendment for property that is damaged during a valid and necessary exercise of police power to prevent imminent harm.**

## STATEMENT OF THE CASE

### I. Statement of Facts

Officers Trent and Williams from the Laurenton Police Department ("LPD") responded to a 911 call placed by Sarah Jones on Friday, September 8, 2023. R. at 2. On the call, Jones reported that her former boyfriend, Mark Baker, was threatening her and their 10-year-old son, A.J. *Id.* The officers arrived at Jones's home within minutes of her call. *Id.*

When the officers arrived on scene, Baker appeared frustrated that Jones had called law-enforcement. *Id.* The officers acted promptly and, despite Baker's visible anger, took him into custody without incident. *Id.* While still at Jones's residence, Jones mentioned that Baker had previously served in the military and possessed experience with explosives, as well as owning some weapons, including a handgun. *Id.* Officer Trent informed Jones that Baker would be in custody until at least morning because he had an outstanding arrest warrant in neighboring Holbrook County. *Id.*

After leaving with Baker in custody, Williams reminded Trent that the standing policy of the City of Laurenton expressly prohibits the execution of certain warrants when the county jail is over capacity. *Id.* Williams, adhering to protocol, called county jail officials to determine the current jail population status. *Id.* The jail officials confirmed the current jail population was over capacity. *Id.* Thus, the officers transported Baker to a home he was renting, seized his handgun which Jones had warned them he possessed, and left him there alone in compliance with the City policy. *Id.*

The next morning, Baker removed two homemade bombs from his basement and took them to Jones's home disguised as packages. *Id.* Baker placed one package on the front porch, and another on the back porch. *Id.* Later, Jones attempted to open the package on the front porch and

the device detonated. *Id.* at 2–3. The explosion caused severe injuries to Jones and her son, but only minor damage to the home's front porch. *Id.* at 3.

Laurenton's police and paramedics arrived on the scene shortly after a neighbor heard the explosion and called 911. *Id.* While law-enforcement was on the scene ensuring that Jones and A.J. were stabilized and transported to the hospital, the police discovered the second package on the back porch. *Id.* Recognizing the danger this package presented, the officers promptly called the LPD Bomb Squad. *Id.*

When the Bomb Squad arrived they secured the area and made certain everyone was at a presumably safe distance before assessing the package. *Id.* The squads next steps were all done according to protocol. *Id.* First, the squad leader deployed a robot equipped with an X-ray system to view the contents of the package. *Id.* This confirmed that the package contained an explosive device with a remote detonation mechanism. *Id.* At this time, the police did not have Mark Baker in custody or possession of the remote detonator. Therefore, the Bomb Squad had no way to control the device or know when or if it might explode. *Id.* The squad's only option was to attempt to disrupt the device before it was detonated remotely at an inopportune time. *Id.* Thus, the squad's next step was to have the robot attach an energetic tool designed to disrupt explosives onto the package. *Id.*

Unfortunately, Mark Baker had built a highly sophisticated device constructed to evade disruption. *Id.* The LPD Bomb Squad's attempt to disrupt and disarm the device instead caused its detonation. *Id.* While no people were injured in the explosion, it did significantly damage Jones's home. *Id.*

## II. Procedural History

Jones filed suit under 42 U.S.C. § 1983 against the City of Laurenton and the Laurenton Police Department (collectively, the "City") in the United States District Court for the Eastern District of New Virginia. R. at 4. Jones asserted the City was liable under two theories. First, under the Due Process Clause for affirmatively creating the danger that led to her injuries by returning Baker to his home after assuring her that he would remain in custody overnight. *Id.* Second, the Takings Clause for damaging her home without just compensation by deciding to detonate the second device despite the resulting damage being foreseeable. *Id.*

The district court granted summary judgment to the City on both claims. *Id.* The court concluded the City was not liable under the Due Process Clause because there is no state-created danger theory under the Due Process Clause. *Id.* The court also held that the Takings Clause does not apply to destruction of property undertaken in the exercise of the states police power. *Id.*

Jones timely appealed to the United States Court of Appeals for the Thirteenth Circuit. *Id.* The court affirmed the district court's ruling. *Id.* at 8. This Court granted Jones's petition for Writ of Certiorari. *Id.* at 13.

## SUMMARY OF THE ARGUMENT

Both questions presented to this court revolve around the obligations and limitations the Constitution imposes on state governments. Under both Jones's claims, a ruling in her favor would significantly undermine the bedrock principles of federalism that our nation's system of governance is built on. While the circumstances of this case are unfortunate, the City is not (1) liable for Jones's injuries under the Fourteenth Amendment, or (2) obligated to pay just compensation for the damage to Jones's property under the Fifth Amendment.

First, Jones's Due Process Clause claim fails as a matter of law because the state-created danger doctrine is not rooted in the Fourteenth Amendment and is an inappropriate remedy for the injury Jones has suffered. This Court has always been cautious to expand the concept of substantive due process. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). Furthermore, this Court expressly refused to obligate the states to protect its citizens from private violence in a case with analogous facts to Jones's claim. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989). Courts have mistakenly created an exception to *DeShaney*, by wrenching a sentence from *DeShaney* out of context to imply a broad, but unconstitutional, route to recovery under the Due Process Clause. Claims like Jones's are more appropriately brought in state court, following state negligence law rather than transforming negligence claims into constitutional violations.

In the alternative, even if this Court decides to stretch the boundaries of the Due Process Clause by recognizing the state-created danger doctrine, the City is not liable for Jones's injuries. Under the elements that courts have applied for state-created danger claims, the City's actions do not qualify for the claim Jones asserts.

Second, Jones's Takings Clause claim fails as a matter of law because the City's actions were an exercise of the City's police power and not its eminent domain power. The distinction between a state's police power and eminent domain power is commonly recognized. *Mugler v. Kansas*, 123 U.S. 623, 668–69 (1887). Many courts have applied the police power-eminent domain distinction to reject Takings Clause claims for property damage occurring in the course of law-enforcement activity, especially when neutralizing dangerous threats. *See, e.g.*, *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1160, 1153–54 (Fed. Cir. 2008). Because the LPD Bomb Squad was acting under the state's police power to protect public safety, the damage caused by Baker's explosive device is non-compensable under the Fifth Amendment.

Nor is there any liability to the city for Jones's property damage under the public necessity doctrine. Under the doctrine, when a government acts by necessity to prevent an imminent threat, any injury or damage caused by that action is non-compensable under the Takings Clause. *See United States v. Caltex*, 344 U.S. 149, 154 (1952). Here, the LPD Bomb Squad was responding to an explosive device that could have been remotely detonated any moment. R. at 3. The squad followed protocol and acted to try to disarm the bomb. *Id.* Requiring compensation for the damage to Jones's home would be a punishment on the City for protecting the public safety. The public-necessity doctrine maintains that Jones's loss is non-compensable.

## ARGUMENT

### I. The circuit court was correct in granting summary judgment for the City on Jones's Due Process claim.

The Due Process Clause of the Fourteenth Amendment serves as an important limitation on the State's power to act, but it does not provide a guarantee of certain minimal levels of safety and security. U.S. Const. amend. XIV, § 1; *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989). This Court has made clear that the Due Process Clause generally does not impose an affirmative duty on the States to protect individuals against private violence. *Id.* Yet Jones argues the City should be liable for her injuries caused by her ex-boyfriend under the state-created danger doctrine. R. at 4–5. Expanding the Due Process Clause to recognize the state-created danger doctrine would repurpose the Fourteenth Amendment's protections into a sword for individuals to wield against the State by imposing unconstitutional duties on the States. *See DeShaney*, 489 U.S. at 195. This Court should not adopt the state-created danger doctrine because it is not rooted in the Due Process Clause or precedent. Also, the state-created danger doctrine would risk transforming a large swath of state negligence cases into federal constitutional violations. In the alternative, if this Court were to adopt the state-created danger doctrine, the City

is still not liable for Jones's injuries because she cannot satisfy the requirements for such a claim. The lower courts were therefore correct to grant summary judgment to the City. This court should affirm and adhere to what the Fourteenth Amendment and case law require: the City is not liable for injuries caused by a private citizen.

### A. This Court has not recognized the state-created danger doctrine and should decline to do so because it is not rooted in the Fourteenth Amendment and is an inappropriate remedy.

This Court has been consistently reluctant to broaden the concept of substantive due process and has never recognized the state-created danger doctrine under the Fourteenth Amendment. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992); *Johnson v. City of Phila.*, 975 F.3d 394, 400 (3rd Cir. 2020). This Court was clear when it proclaimed "[n]othing in the language of the Due Process Clause requires the State to protect the life, liberty, and property of its citizens against the invasion by private actors." *DeShaney*, 489 U.S. at 195. Despite this Court's unmistakable reluctance to impose liability on state governments for failing to protect private individuals from each other, some circuit courts have adopted the state-created danger doctrine as an exception to the no-duty rule explained in *DeShaney*. This Court should reject this approach because it is not properly rooted in the Fourteenth Amendment and is an inappropriate remedy for cases like Jones's which should be resolved in state courts.

#### 1. The state-created danger doctrine is not properly rooted in the Fourteenth Amendment.

The Due Process Clause was designed to prevent the government from "abusing [its] power, or employing it as an instrument of oppression." *Davidson v. Cannon*, 474 U.S. 344, 348 (1986). It was intended to shield the people from abuse by the State, not to guarantee that the State would protect its citizens from one another. *See, e.g.*, *Davidson*, 474 U.S. at 348; *Daniels v. Williams*, 474 U.S. 327, 331 (1986); *Parratt v. Taylor*, 451 U.S. 527, 549 (1981) (Powell, J.,

concurring in result). But, before *DeShaney*, lower courts were conflicted on whether a state or local government violated an individual's due process rights by failing to provide adequate protective services. *DeShaney*, 489 U.S. at 194. With facts analogous to the facts in Jones's case, this Court held in *DeShaney* that the State did not violate the Due Process Clause, because the Clause does not require the government to protect the life, liberty, and property of its citizens against private actors. *Id.* at 195.

In *DeShaney*, this Court considered whether the state's failure to provide a young child with adequate protection against his father's repeated physical abuse deprived the child of his liberty in violation of the Due Process Clause. *Id.* at 191. Though the State was made aware several times of the abuse the young boy was suffering and did nothing, this Court concluded that the state did not violate the boys due process rights because "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *Id.* at 197. Thus, in a similar case to the one at hand, this Court refused to impose a duty on the State to protect its citizens from private violence.

In addition to explaining this no-duty rule, the Court outlined a limited exception that arises when there is a special deprivation-of-liberty relationship between the government and a particular individual (the special-relationship exception). When the State affirmatively acts to restrict a person's liberty, such as taking a person into custody, an affirmative duty to protect that person arises because the State has imposed a limitation on that person's freedom to act on his own. *Id.* at 200. So an affirmative duty will only arise when a special relationship exists between an individual and the State, such as when an individual is incarcerated or otherwise restrained. *Id.*

In this case, a special relationship did not exist between Jones and the City. Jones was not in the custody of the City at any point. R. at 2–4. The City's promises to Jones did not deprive

Jones of her liberty to act on her own behalf or force her to become dependent on the City. *Id.*; *see Rivera v. Rhode Island*, 402 F.3d 27, 38 (1st Cir. 2005) (explaining the states promises to the plaintiff did not deprive her of her liberty to act on her own, regardless of whether the promises were false or unkept). Like *DeShaney* and *Rivera*, there was no special relationship between Jones and the City which would justify imposing a duty on the City to protect Jones from her ex-boyfriend.

Despite the clear no-duty rule and one exception provided by this Court in *DeShaney*, some circuits have recognized an additional exception: the state-created danger doctrine. Here, Jones asserts her substantive due process rights were violated under the state-created danger doctrine. R. at 4–5. While this Court has never recognized the doctrine, courts that apply it impose liability when a state affirmatively acts to create or exacerbate the risk of private violence. *See, e.g.*, *Irish v. Fowler*, 979 F.3d 65, 73–74 (1st Cir. 2020). Both the district court and Thirteenth Circuit Court below refused to implement the state-created danger doctrine, and this Court should affirm the holdings of those courts by rejecting the doctrine.

Circuits recognizing the state-created danger doctrine admit the doctrine stands on weak footing. *Johnson*, 975 F.3d at 400 (explaining that the doctrine does not "stem from the Constitution or any other positive law, and consequently vests open-ended lawmaking power in the judiciary"). Courts have derived the doctrine from a single sentence in *DeShaney*, in which the Court observed that the State "played no part in [the] creation, nor did it do anything to render [the plaintiff] any more vulnerable to" the danger he faced from his father while it discussed the special-relationship exception. *DeShaney*, 489 U.S. at 201; *see, e.g.*, *Est. of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 491 (6th Cir. 2019) (explaining how courts have implied the state-created danger doctrine from a single line in *DeShaney*). This sentence, which courts have taken

out of its proper context, is inadequate to support a doctrine which significantly expands the breadth of substantive due process.

The sentence courts rely on to imply the state-created danger doctrine from *DeShaney* is found within the Courts' discussion of how the special-relationship exception does not apply to the facts of that case because the child's injuries occurred while he was in the custody of his father, not the State. *DeShaney*, 489 U.S. 189 at 201. After the sentence at issue, and to conclude the paragraph, the Court explains that the State did not become a permanent guarantor of the child's safety or assume a constitutional duty because the State took temporary custody of the child once. *Id.* Therefore, properly understood in its context, the Court's statement is purely an explanation of how the State did not create or increase the risk of harm by limiting the child's freedom to act on his own, and no special-relationship exception existed. The mere supplemental discussion by the Court of the special-relationship exception was not the Court carving out a new exception. *Murguia v. Langdon*, 73 F.4th 1103, 1115 (9th Cir. 2023) (Bumatay, J., dissenting).

Ultimately, the state-created danger doctrine is not founded in the Fourteenth Amendment or this Court's interpretation of the Due Process Clause. Substantive due process is intended to protect individual's life, liberty, and property against certain government action. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). It does not purport to impose an affirmative duty on the State to protect its citizens from private violence. *Davidson*, 474 U.S. at 348. This Court has always been reluctant to expand the concept of substantive due process, and it should not change course today by recognizing the state-created danger doctrine.

**2. The state-created danger doctrine is an inappropriate remedy for Jones's claim.**

Courts that have previously recognized the state-created danger doctrine have begun to question its validity, and for good reason. *See, e.g.*, *Johnson*, 975 F.3d at 405 (Porter, J., concurring)

("But I write separately to explain my view that our full Court should revisit the state-created danger doctrine."); *Murguia*, 73 F.4th at 1115 (Bumatay, J., dissenting) ("By now, one point should be clear: the state-created danger doctrine needs a serious course correction . . . . To fix things, we should return to the text of the Due Process Clause and *DeShaney*."); *Kedra v. Schroeter*, 876 F.3d 424, 462 (3d Cir. 2017) (Fisher, J., concurring) ("[I]t is troubling how far we have expanded substantive due process. . . . [I]t may be time for this full Court to reexamine the [state-created danger] doctrine."). The state-created danger doctrine is an improper remedy for courts to apply because it risks federalizing state negligence law. In addition, proper remedies already exist, rendering the state-created danger doctrine an unnecessary encroachment on state's rights.

**i. The state-created danger doctrine risks federalizing state negligence law.**

A fundamental principle of the United States Constitution is that the federal governments powers are few and defined, whereas the State governments retain indefinite powers. The Federalist No. 45 (James Madison). Consistent with that axiom, this Court has repeatedly rejected the idea that the Due Process Clause is sufficiently expansive to transform all torts committed by a state or private actor into a constitutional violation. *See, e.g.*, *DeShaney*, 489 U.S. at 202; *Parratt*, 451 U.S. at 544; *Daniels*, 474 U.S. at 335–336; *Martinez v. California*, 444 U.S. 277, 285 (1980). By recognizing the state-created danger doctrine, this Court risks eroding the foundation of federalism our system of government is built on by expanding the Due Process Clause to transform torts committed by state actors into constitutional violations. *See* R. at 6.

In *Collins*, the Court considered whether 42 U.S.C. § 1983 provides a remedy for a city employee who was fatally injured because the city failed to properly train its employees or warn them about known workplace hazards. *Collins*, 503 U.S. at 117. Relying on precedent, the Court refused to interpret the Due Process Clause to impose federal duties on government workers that are "analogous to those traditionally imposed by state tort law." *Id.* at 128. A remedy for violating

duties arising out of tort law must be sought in state court under traditional tort-law principles. *Baker v. McCollan*, 443 U.S. 137, 146 (1979). This Court also emphasized that local policy choices must be made by locally elected representatives, rather than by federal judges interpreting the Constitution for the entire country. *Collins*, 503 U.S. at 128–29.

In this case, Jones's claim is analogous to a typical state-law tort claim: The City breached its duty of care to Jones by failing to inform her that Baker had been released. Although the City's decision to release Baker from custody and not inform Jones was government action, Baker's action the next day cannot be categorized as government action. *See Martinez*, 444 U.S. at 284–85. Recognizing the state-created danger doctrine is extremely problematic because it risks converting "flawed law-enforcement decision[s]," which Jones alleges here, "into a constitutional tort." R. at 6. The doctrine will result in constitutional claims being raised which would have been ordinary state tort claims otherwise. *See generally Collins*, 503 U.S. at 128. It would also risk creating a font of Fourteenth Amendment tort law superimposed upon the systems already being administered by the States. *Paul v. Davis*, 424 U.S. 693, 701 (1976).

By pursuing a § 1983 claim rather than a state-law tort claim, Jones is attempting to fit a round peg into a square hole. A negligence claim does not become a violation of the Fourteenth Amendment simply because the defendant is a state official or local government entity. *See Baker*, 443 U.S. at 146. The risk of recognizing the state-created danger doctrine is federalizing claims like the one Jones asserts, rather than looking to state tort law for a proper remedy.

**ii. The state-created danger doctrine is an unnecessary remedy.**

The City is sympathetic to Jones and the injuries she suffered at the hands of her ex-boyfriend. Fortunately, Jones has other available proper remedies outside of her due process claim. Therefore, in addition to the reasons stated above, the state-created danger doctrine is an

unnecessary remedy for individuals such as Jones because other remedies such as state negligence claims and local democratic processes are available.

First, at the time of Jones's injuries, she could have brought a state negligence claim against the City and the police officers who assured her Baker would not be released. There are numerous cases with circumstances similar to Jones which were brought under state negligence law. *See, e.g.*, *Valdez v. City of New York*, 18 N.Y.3d 69 (2011) (examining whether the City could be held liable under a theory of negligence for a wife's murder when the police failed to act on a promise to arrest the wife's estranged husband); *Coleson v. City of New York*, 24 N.Y.3d 476 (2014) (holding there is a triable negligence claim against the city when the police promised a woman her abusive husband would be in prison and she would be protected but failed to arrest him leading to the woman's injuries); *See generally Tarasoff v. Regents of Univ. of Cal.*, 551 P.2d 334 (Cal. 1974) (finding campus police and psychiatrist had a duty to warn a victim of a murder's threats and emphasized that there is a more general duty of law enforcement to warn potential victims of foreseeable harm). These cases show that victims in similar circumstances to Jones sought recovery under traditional state negligence, and many of them received favorable outcomes. Jones's due process claim in this case is similar to many state negligence claims and should be pursued accordingly.

Second, nothing in the Fourteenth Amendment prevents state or local government from imposing affirmative duties of care and protection on its agents through its courts and legislatures. *DeShaney*, 489 U.S. at 202. There are several matters which the court has historically allowed to be governed through the democratic political process; the regulation of law enforcement is one such matter. Although civil courts occasionally reprimand law enforcement for behavior in a civil suit, most policies and laws which control the behavior of law enforcement are decided and

enforced by elected officials. For example, in Georgia, law enforcement agencies must promptly notify victims of an accused's arrest, provide updates on the case, and notify victims of proceedings related to the accused's release. Ga. Code. Ann. § 17-17-7 (2014). Similarly, North Carolina requires custodial agencies to timely notify victims of an offender's release, escape, or transfer. N.C. Gen. Stat. § 15A-836 (2019). Likewise, Virginia mandates that a victim or witness be informed upon the release, escape, change of name, or transfer of a prisoner. Va. Code Ann. § 19.2-11.01 (2023).

Each of these examples demonstrates how states can impose their own duties of care on law-enforcement. These laws were enacted through the political process, which citizens such as Jones can participate in by voting in local elections. If the current laws of Jones's home state do not provide a remedy that she deems suitable, she can bring about the changes she seeks by participating in the political process. The lack of a judicial remedy for Jones under the Due Process Clause does not infringe on her right "to assert [her] views in the political forum or at the polls." *United States v. Richardson*, 418 U.S. 166, 179 (1974).

### B. In the alternative, even under the state-created danger doctrine, the City is not liable for Jones's injuries.

Even if this court were to adopt the state-created danger doctrine, the facts of this case would not satisfy the analysis courts generally use for such claims. To make a state-created danger claim, courts generally require the plaintiff to establish: (1) that a state actor affirmatively acted to create or enhance a danger specific to the plaintiff; (2) that the act caused the plaintiff's harm; and (3) that the state actor's conduct, when viewed in total, shocks the conscience. *Irish v. Fowler*, 979 F.3d 65, 75 (1st Cir. 2020). In this case, Jones cannot satisfy these requirements.

### 1. The City's actions did not create or enhance the risk of danger to Jones; therefore, the City did not cause Jones's harm.

The City did not affirmatively create or enhance the danger to Jones since its actions equate to mere negligence. While it is easier to establish a substantive due process claim if the violence is directly attributable to the state's own actions, "it is much more difficult when the person who inflicts the injury is a private person*." Rivera v. Rhode Island*, 402 F.3d 27, 34 (1st Cir. 2005) (noting an example of when an injury by a private person could still be considered government conduct is if "the police had handed the murderer [a] gun with instructions to shoot").

Here, by letting Baker out of custody and not informing Jones, the police only made Jones more vulnerable to danger but did not actually create or enhance any danger Jones faced. R. at 2–3. The *Rivera* court emphasized that due process claims must show an action which caused a deprivation of life, liberty, or property. *Rivera*, 402 F.3d at 37–38. It is insufficient that the State's actions "merely render[ed] a person more vulnerable to risk" as this "does not create a constitutional duty to protect." *Id.* at 38. Whether or not the City's conduct made Jones more vulnerable to risk is irrelevant.

Abandoning the benefit of hindsight, it is evident the City's actions did not create the danger posed to Jones. Courts typically require that the State's enhancement or creation of the danger must "impose an immediate threat of harm, which by its nature has a limited range and duration." *See, e.g.*, *Ruiz v. McDonnel*, 299 F.3d 1173, 1183 (10th Cir. 2002). Here, Baker was dropped off at his rental home on the evening of September 8, 2023. R. at 2. Baker did not retrieve the homemade bombs or place them at Jones's home until the next morning. *Id.* The gap between the City's conduct, and Bakers actions, dispel any notion of immediacy. Thus, the City did not affirmatively act to create or enhance a risk of danger that ultimately hurt Jones because its actions were removed from Bakers conduct and Jones's subsequent injuries.

Furthermore, the City cannot have caused the injury to Jones if the City did not affirmatively act to create or enhance a risk of danger specific to Jones. So, Jones cannot satisfy the first or second requirements for a state-created danger claim.

**2. The City's actions do not shock the conscience.**

The police acted in accordance with City policy when it released Baker. R. at 2. This conduct fails to meet the "onerous requirement" that the state actor's actions be "conscious shocking or outrageous." *Rivera*, 402 F.3d at 35. Courts have held that this standard require that the act be "characterized as arbitrary or conscious shocking" and that only "the most egregious official conduct can be said to be arbitrary in the constitutional sense." *Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1305 (11th Cir. 2003). While there is not an objective standard to measure what is "conscious shocking," mere negligent conduct is insufficient. *Id.* (citing Cnty. of Sacramento v. *Lewis*, 523 U.S. 833 (1998)). For example, in *Skinner*, the Eleventh Circuit held the conduct of a group of firefighters who assaulted the plaintiff did not shock the conscience and denied relief for the plaintiff's constitutional violation claim. *Skinner v. City of Miami*, 62 F.3d 344, 346–48 (11th Cir. 1995).

Here, there is nothing shocking about the City's actions. The police simply followed standing city policy. R. at 2. The record is devoid of any facts reflecting the officers knew or should have known that Baker would harm Jones the next day after being released. R. at 2. The City's knowledge of "the individual's predicament" does not itself create an affirmative duty on the City to protect Jones. *DeShaney*, 489 U.S. at 200. Thus, even had the officers known or suspected that Baker may have intended to cause harm to Jones, the officers' decision to follow the city policy was not an action which shocks the conscious. Like *DeShaney*, the most that can be said of the police is that they "stood by and did nothing when suspicious circumstances dictated a more active role for them." *Id.* at 203. The City's conduct was not sufficiently conscious shocking, so Jones

suffered no constitutional violation by the City releasing Baker. *See also Waddell*, 329 F.3d at 1306–07 (explaining that individuals have no due process right to be protected from the release of confined persons, even when the release violates state law).

While it is unfortunate that Jones and her son suffered such injuries by Baker's conduct, the police officer's release of Baker "though calamitous in hindsight — simply does not constitute a violation of the Due Process Clause." *DeShaney*, 489 U.S. at 202. Thus, should this court adopt the state-created danger doctrine, it should still reject Jones's claim because the facts of her claim do not satisfy the requirements of such a claim.

In conclusion, the Thirteenth Circuit and trial court were correct when they dismissed Jones's due process claim because the state-created danger doctrine is unfounded in the Fourteenth Amendment or this Court's precedent. The doctrine is a dangerous expansion of substantive due process which transforms typical state tort law claims into federal constitutional actions. If this Court decides to recognize the state-created danger doctrine, the City still faces no liability for Jones's harm because Jones cannot satisfy the requirements for a state-created danger doctrine claim.

## II. The circuit court was correct in granting summary judgment for the City on Jones's Takings Clause claim.

Eminent domain is the government's power to take private property for public use without the consent of the owner. *PennEast Pipeline Co. v. New Jersey*, 594 U.S. 482, 487 (2021). The Fifth Amendment provides some protection to private landowners. The Takings Clause requires that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V. Simply put, when the government has committed a taking under the Fifth Amendment, it must pay just compensation. Determining what constitutes a taking can be far more complicated. That said, two clear rules have been broadly recognized in cases with facts like those at hand. First,

no Fifth Amendment taking occurs when State actors damage or destroy property while acting pursuant to a power other than eminent domain. *Johnson v. Manitowoc Cnty.*, 635 F.3d 331, 336 (7th Cir. 2011). Second, under the public-necessity doctrine, actions that damage or destroy private property to avert an imminent public disaster are not considered compensable takings. *Huelen v. City of Corsicana*, 65 F.2d 969, 970 (5th Cir. 1933). Under either of these Fifth Amendment principles, the City has not committed a taking of Jones's private property. Therefore, we ask that this Court affirm the lower court's ruling and hold that the damage caused by the City of Laurenton's actions is not a compensable taking under the Fifth Amendment.

### A. The City of Laurenton does not owe Jones compensation because her home was damaged due to a physical interference pursuant to the City's police power to protect public safety.

A state's police power is separate and distinct from its power of eminent domain. The police power enables the state to regulate "private property for the protection of public health, safety, and welfare." *Lech v. Jackson*, 791 F. App'x. 711, 714 (10th Cir. 2019). Although the Court has not directly addressed the issue that Jones raises, it has consistently recognized a distinction between the government's exercise of eminent domain power and police power. *See, e.g.*, *Mugler v. Kansas*, 123 U.S. 623, 668–69 (1887); *Baker v. City of McKinney*, 145 S. Ct. 11, 13 (2024) (mem.) (Sotomayor, J., statement concurring in the denial of certiorari). Here, the City is not required to compensate Jones for the damage caused by Baker's explosive because the destruction was pursuant to the City's police power to protect public safety; therefore, the Takings Clause does not apply.

Circuit courts have held that "the Takings Clause does not apply when property is retained or damaged as the result of the government's exercise of its authority pursuant to some other power other than the power of eminent domain." *Johnson v. Manitowoc Cnty.*, 635 F.3d 331, 336 (7th Cir. 2011). For example, in *Lech*, the police used aggressive tactics in their attempt to arrest a suspect

who had invaded the Lech's home. *Lech*, 791 F. App'x at 713. The police set up barricades, fired rounds of tear gas into the house, breached its doors with an armored vehicle, and used explosives before ultimately apprehending the suspect after a nineteen-hour standoff. *Id.* The police's actions rendered the Lech's home uninhabitable. *Id.* But the Tenth Circuit held that these actions did not constitute a Fifth Amendment taking because "they fell within the scope of police power" and "actions taken pursuant to the police power do not constitute takings." *Id.* at 719. The court reasoned that in cases of physical interference with private property by the government, a Takings Clause claim fails when the government acts pursuant to its police power and not its power of eminent domain. *Id.* at 715–17.

Other circuit courts have ruled similarly to *Lech* and applied the same police power-eminent domain distinction to deny Takings Clause claims when law-enforcement actions damage or destroy private property while enforcing the law or neutralizing dangerous threats. *See, e.g.*, *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1160, 1153–54 (Fed. Cir. 2008) (holding no taking occurred when the government physically seized the plaintiff's property in connection with a criminal investigation because seizing property to enforce criminal laws falls within the bounds of police power); *Zitter v. Petruccelli*, 744 F. App'x 90, 93, 96 (3rd Cir. 2018) (unpublished) (relying on distinction between power of eminent domain and police power to hold no taking occurred); *Johnson v. Manitowoc Cnty.*, 635 F.3d 331, 333–34, 336 (7th Cir. 2011) (relying on distinction between power of eminent domain and police power to hold no taking occurred where law-enforcement physically damaged plaintiff's home); *Bachmann v. United States*, 134 Fed. Cl. 694, 696 (Fed. Cl. 2017) (holding that private property damaged incident to the exercise of the police power is not a taking because the property has not been altered or surrendered for public benefit).

Even this Court has recognized the police power-eminent domain distinction. In *Bennis*, this Court dismissed a Takings Clause claim where a state court ordered a vehicle "forfeited as a public nuisance" without requiring the state to compensate the plaintiff. *Bennis v. Michigan*, 516 U.S. 442, 443 (1996). The Court reasoned that the government need not compensate an owner for property when the state acquires property "under the exercise of governmental authority *other than the power of eminent domain*," regardless of the property owner's innocence. *Id.* at 452 (emphasis added). Thus, *Bennis* suggests a compensable Fifth Amendment claim fails when the government's exercise of authority is pursuant to a power distinct from eminent domain.

Here, as in *Bennis* and *Lech*, the Bomb Squad acted under the state's police power in an attempt to protect public safety by disarming the explosive. R. at 3. While it is regrettable that their actions resulted in serious property damage, it cannot be said that this damage constitutes a compensable taking of private property. Instead, as in *Lech* and *Bennis*, the damage is non-compensable since the Bomb Squad's actions were within the scope of the state's police power. Furthermore, because the interference with Jones's property was physical, rather than regulatory in nature, the distinction between the police power and eminent domain power is dispositive. *Id.* at 8; *Lech*, 791 F. App'x at 716–17.

On the one hand, this Court's Takings Clause precedent reflects a reluctance to exempt entire categories of government action from the Takings Clause analysis. *See Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 36–37 (2012). On the other hand, affirming the lower court's decision does not require this Court to recognize such a broad exemption. Rather, it will merely reaffirm that the government owes no compensation for damage to private property unless it's taken for public use. U.S. Const. Amend. V. Governments do not take private property for public use under the Takings Clause when such property is damaged or destroyed due to the state's

police power. *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1153 (Fed. Cir. 2008). If the intended beneficiary of government activity is a private party instead of a public one, the public need not bear the losses that may result from that activity. *Nat'l Bd. of Young Men's Christian Ass'ns v. United States*, 395 U.S. 85, 92 (1969). The courts are clear that this applies "even though the activity may also be intended incidentally to benefit the public." *Id*. Here, the property damage to Jones's home was not a taking for public use because her home was not altered or turned over for public benefit. *Bachmann v. United States*, 134 Fed. Cl. 694, 696 (Fed. Cl. 2017). Jones was the primary intended beneficiary of the City's efforts to disarm the homemade bomb. Therefore, following the reasoning of *Young Men's Christian Association*, the fact that the public may have also benefited from the City's conduct does not mean the property damage was for 'public use.'

Thus, although both Jones and the City would have preferred disarming the device without causing property damage, "the damage to the house was incident to securing the safety and welfare of both [Jones's] property and the community at large." *Bachmann*, 134 Fed. Cl. at 697. The damage to Jones's property was not a taking for public use because the City was not exercising its eminent domain power. Rather, the City's actions were a courageous exercise of the City's police power to protect the community.

### B. The City does not owe Jones compensation under the public-necessity doctrine since the actions taken were necessary to prevent an imminent and inevitable threat.

The public-necessity doctrine, recognized by this Court in *Caltex*, provides an independent basis for the dismissal of Jones's Takings Clause claims. This long-standing common-law principle holds that in times of "imminent peril . . . the sovereign [can], with immunity, destroy the property of a few" so that the property and lives of others can be saved. *United States v. Caltex*, 344 U.S. 149, 154 (1952). Accordingly, the City owes Jones no compensation since the Bomb Squad's valid exercise of police power were in good faith to prevent imminent public disaster. *See* R. at 3.

When determining the meaning of the takings clause, this Court has emphasized the importance of history and tradition. *See Tyler v. Hennepin Cnty.*, 589 U.S. 631, 637–44 (2023). Hence, it is significant that legal scholarship has converged on a common thesis: the public necessity doctrine is long recognized and deeply rooted in history and precedent. *See, e.g.*, William J. Novak, *Common Regulation: Legal Origins of State Power in America*, 45 Hastings L.J. 1061, 1092 (1994) ("American courts consistently referred to a line of English cases making it well settled at common law that private houses could be pulled down without compensation when the safety and security of the many depended upon it.") (citation modified); Susan S. Kuo, *Disaster Tradeoffs: The Doubtful Case for Public Necessity*, 54 B.C. L. Rev. 127, 127 (2013) ("Courts, however, have long recognized an exception to takings law for the destruction of private property when necessary to prevent a public disaster."); Note, *Necessity Takings in the Era of Climate Change*, 136 Harv. L. Rev. 952, 953 (2023) ("Since the earliest days of the Republic, U.S. courts have sanctioned violations of private property rights without compensation under conditions of public necessity. The principle has expanded to include activities as diverse as law enforcement.") (citation modified).

In summary, history, tradition, and precedent reaching back to the common law support the existence of a public-necessity exception to the Takings Clause. Therefore, in this case, if the City's conduct falls under the public-necessity exception, it need not pay Jones just compensation for the damage to her home.

A public-necessity analysis is a fact-specific analysis, with no uniform guidelines or boundaries for determining its applicability. *Caltex*, 344 U.S. at 156 ("No rigid rules can be laid down to distinguish compensable losses from noncompensable losses. Each case must be judged on its own facts.") Nevertheless, it is evident the City's actions in this case are privileged and

exempt from Jones's Takings Clause claim when compared with other recent public-necessity cases.

The public-necessity theory was first formally recognized by this Court in *Caltex*. In that case, the Army had destroyed oil facilities in Manila, Philippines, to deprive the invading Japanese military of the petroleum products. *Id.* at 151. After World War II ended, the oil companies that owned the destroyed facilities in Manila brought a Takings Clause claim to recover compensation for the destruction of their facilities. *Id.* The Court held the claimants did not have a right to compensation because, under the public-necessity doctrine, safety concerns of the nation override "all consideration of private loss." *Id.* at 154. Significantly for this case, the Court emphasized that the property was not "appropriated for subsequent use," rather it was destroyed because it was necessary in that situation. *Id.* at 155.

In *Baker*, the Fifth Circuit considered whether damage to Baker's home constituted a compensable taking when the damage occurred in the course of a stand-off with an armed fugitive. *Baker v. City of McKinney*, 84 F.4th 378, 380 (5th Cir. 2023), *cert. denied*, 145 S. Ct. 11 (2024). The court held the damage was not a compensable taking because the officers needed to destroy the property during an active emergency to prevent imminent harm to others. *Id.* at 388.

Similarly, in *Bowditch*, the Court held that a building owner was not entitled to compensation after firefighters destroyed his building to stop a fire from spreading. *Bowditch v. Boston*, 101 U.S. 16, 25 (1879). The necessity exception applied even though the owner's building was not yet burning and merely near the fire. *Id.* The Court emphasized that anyone, including the firefighters, is privileged to take action in cases of actual necessity, with no remedy afforded for the owner. *Id.* at 18.

From these cases, when considering a public-necessity situation, courts will focus on the good faith or reasonable action taken by the government actor and the imminency of the public threat. Based on these guideposts and by comparison to public-necessity precedent, the facts of this case "fit comfortably within necessity jurisprudence." R. at 9.

First, the LPD Bomb Squad acted in good faith and with a reasonable effort in response to the threat. Several facts support this conclusion. The second package contained an explosive device. R. at 3. Mark Baker designed this homemade bomb so that he could remotely detonate it. *Id.* Neither Mark Baker nor the remote detonator was in police custody. *Id.* If the Bomb Squad was going to neutralize the device and prevent further injury and property damage, their only option was to disrupt the device. *Id.* The goal of the law enforcement was to prevent harm before Baker could detonate the bomb remotely. *Id.* They attempted to do so in good faith and in a reasonably prudent manner, following established protocol. *Id.* The fact that disruption was unlikely due to the design of the device does not make the Bomb Squad's conduct unreasonable.

Second, the explosive device on Jones's back porch presented an imminent threat. The police were at Jones's home responding to an explosion when they found a second package on her back porch. R. at 3. The LPD Bomb Squad determined the second package contained an explosive device with a remote detonation mechanism. *Id.* The first device had already exploded, injuring Jones and her son, and without the maker of the bomb in custody, he could have detonated it at any moment. *Id.* In addition, the explosive in this package could have been more lethal or capable of a bigger blast radius than the first package. Just like an armed suspect in a home or a nearby fire, this explosive device had the potential to hurt more people at any instant. So the explosive device posed an imminent threat to the City police.

Law-enforcement officers must be permitted to respond to emergencies that endanger public safety and require an immediate response. The public-necessity theory protects law enforcement's ability to protect the public by shielding them from liability for property damage caused by good faith attempts to respond to imminent public danger. In this case, the City's actions qualify for the public-necessity exemption. Thus, Jones's Takings Clause claim fails as a matter of law.

## CONCLUSION

The district court and Thirteenth Circuit Court correctly rejected the state-created danger doctrine and held that the City is not liable under the Due Process Clause for injuries inflicted by a private party. The district court and Thirteenth Circuit also correctly determined that the City does not owe just compensation for property damage due to a valid police power exercise. For the foregoing reasons, the Respondent, the City of Laurenton, et al., respectfully request that this Court affirm the district court and appellate court's decision granting the City's motion for summary judgment on both Jones's Due Process Clause claim and Takings Clause claim.

/s/ Team No. 2

Attorney for Respondent