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 PETITIONER

Counsel for Petitioner
Team 5

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I. Under the Fourteenth Amendment Due Process Clause and state-created danger doctrine, are state actors liable for injuries sustained by private parties resulting from the state actor's affirmative creation of the danger?

II. Under the Fifth Amendment Takings Clause, are private parties entitled to just compensation for the destruction of private property resulting from valid police power exercises?

STATEMENT OF THE CASE

Petitioner Sarah Jones (hereinafter "Petitioner"), in her individual capacity and on behalf of her minor child, appeals the judgment of the United States Court of Appeals for the Thirteenth Circuit finding that The City of Laurenton (hereinafter "Respondent"), by and through its agents, are not liable for the substantial destruction of her home during a controlled bomb demolition. R. at 1-2.

On Friday, September 8, 2023, Petitioner reported a bomb threat made by Petitioner's intoxicated former lover, Mark Baker (hereinafter "Baker"). *Id.* at 2. The Laurenton Police Department (LPD) quickly responded to Petitioner's home and discovered Mr. Baker. *Id.* Baker explained his military explosives training to officers and admitted to owning a firearm and other weapons. *Id.* The police took Baker into custody. *Id.* Fearing for her safety, Petitioner asked Officer Trent if she and her son should relocate. *Id.* Officer Trent informed Petitioner that Baker would remain in custody until the following morning. *Id.* Officer Williams reminded Officer Trent of the standing policy preventing criminal detention when the county jail was above capacity. *Id.* At the time of arrest, the county jail was above capacity, so officers seized Baker's handgun and left him at his home without surveillance. *Id.*

Overnight, Baker crafted two bombs and packaged them using Amazon packing materials. *Id.* Baker delivered the bombs to Petitioner's home, leaving one on the front porch and one on the back porch. *Id.* Petitioner noticed the package on the front porch and brought it inside.

Id. Upon attempting to open the package, the bomb detonated and injured both Petitioner and her son. *Id.* at 2-3. Petitioner sustained a broken femur, third-degree burns to her arms and face, and permanent hearing loss. *Id.* at 3. Petitioner's traumatized son sustained a fractured arm and bruising to the lung. *Id.* The bomb also caused damage to Petitioner's front porch. *Id.*

A neighbor heard the explosion and called emergency services. *Id.* The LPD deployed the Bomb Squad to disarm the second bomb. *Id.* The Bomb Squad sent a robot to disrupt the bomb system. *Id.* The robot's X-ray revealed that the bomb was controlled by remote detonation. *Id.* The robot's energetic tool was unable to disarm the bomb, and the bomb detonated. *Id.* The explosion destroyed half of the Petitioner's home, making it unlivable. *Id.* An expert declared the home structurally unsound, requiring that the home be torn down and rebuilt. *Id.*

Petitioner filed a complaint in the New Virginia District Court pursuant to 42 U.S.C. § 1983, (hereinafter Section 1983) alleging that Respondent was liable for Petitioner's injuries under the Due Process and Takings Clauses of the United States Constitution. *Id.* at 4. The basis of Petitioner's Due Process claim rested on the belief that Respondent affirmatively created the danger resulting in her injuries. *Id.* The basis of Petitioner's Takings Clause claim rested on the belief that Respondent destroyed Petitioner's home without just compensation. *Id. See also Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). The District Court entered summary judgment in favor of Respondent, holding that neither the Due Process Clause nor the Takings Clause create a state-created danger theory. R. at 4.

Petitioner appealed to the Court of Appeals for the Thirteenth Circuit. *Id.* The Thirteenth Circuit affirmed the District Court's judgment, holding that: (1) the state-created danger doctrine is not rooted in the Fourteenth Amendment; (2) the Fourteenth Amendment does not protect citizens against private actors (*see DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S.

189, 195 (1989)); and the Fifth Amendment does not protect citizens against direct government interference with physical property caused by the government's power to protect public safety. R. at 4-8. Petitioner timely filed a petition for writ of certiorari to the Supreme Court of the United States, and certiorari was granted on September 1, 2025. *Id.* at 13.

SUMMARY OF THE ARGUMENT

Petitioner's Fourteenth Amendment claims against the Respondent are rooted in the court-made state-created danger exception to *DeShaney*. Though government officers enjoy the affirmative defense of qualified immunity, the majority of the Circuit Courts have held that the defense of qualified immunity fails if the government agent created or enhanced the danger to the plaintiff. Based on the actions of the Respondent, the plaintiff would be able to establish a *prima facie* case to rebut the presumption of qualified immunity under the state-created danger doctrine. Additionally, if this Court were to enter judgment in opposition to the Petitioner, future plaintiffs would be left with limited ability to recovery in instances of government-caused private dangers. Therefore, Petitioner should be entitled to survive summary judgment, despite any defenses of qualified immunity, and the decision of the Thirteenth Circuit Court of Appeals should be reversed.

Respondent's actions resulted in a taking subject to the Fifth Amendment's Taking Clause because Respondent took permanent possession of Petitioner's home to ensure the public would be unharmed; therefore, the Thirteenth Circuit Court of Appeals's overall decision should be reversed. The Fifth Amendment's Takings Clause allows for just compensation when private property is taken for public use. Respondent took possession of Petitioner's property when its actions made the home permanently uninhabitable. The taking was executed to protect Petitioner's neighborhood; thus, relating the actions to serve the public. Even though an

emergency exception has been applied to the Fifth Amendment's Takings Clause, the situations the exception was applied to are not present in this case. Therefore, Respondent's actions are subject to the Fifth Amendment's Takings Clause, and the Thirteenth Circuit Court of Appeals' overall decision should be reversed.

ARGUMENT

Under the Fourteenth Amendment, "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. This Court held in *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.* that the Due Process Clause of the Fourteenth Amendment does not require that the States protect their citizens' lives, liberties, and properties from the invasion of private actors. 489 U.S. 189, 195 (1989). Instead, the purpose of the Fourteenth Amendment's Due Process Clause, like the Fifth Amendment's Due Process Clause, is to prevent the State government "from abusing its power, or employing it as an instrument of oppression." *Davidson v. Cannon*, 474, U.S. 344, 348 (1986). However, a plaintiff may still bring claims against government actors under applicable legislation. *See* 42 U.S.C. § 1983 (2024).

In recent history, nine of the United States Circuit Courts of Appeals, including the District of Columbia Circuit, have developed and understood a "state-created danger doctrine" as an exception to *DeShaney*. *See Irish v. Fowler*, 979 F.3d 65, 74 (1st Cir. 2020); *Okin v. Village of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 428 (2d Cir. 2009); *Sanford v. Stiles*, 456 F.3d 298, 304 (3d Cir. 2006); *Doe v. Rosa*, 795 F.3d 429, 440 (4th Cir. 2015); *Doe v. Jackson Loc. Sch. Dist. Bd. of Educ.*, 954 F.3d 925, 932 (6th Cir. 2020); *D.S. v. East Porter Cnty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015); *Fields v. Abbott*, 652 F.3d 886, 891 (8th Cir. 2011);

Kennedy v. City of Ridgefield, 439 F.3d 1055, 1066 (9th Cir. 2006); *Estate of B.I.C. v. Gillen*, 710 F.3d 1168, 1173 (10th Cir. 2013); *Butera v. District of Columbia*, 235 F.3d 637, 652 (D.C. Cir. 2001). *But see Fisher v. Moore*, 73 F.4th 367, 374 (5th Cir. 2023); *Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1305-06 (11th Cir. 2003). The state-created danger doctrine allows a plaintiff to bring claims against a State actor when the actor causes or enhances the danger to the plaintiff distinct from general harm. *Irish*, 979 F.3d at 75. The Court should consider and apply the state-created danger doctrine in this matter, and set precedent to the inferior courts, because the Petitioner is able to show that the actions of the Respondent enhanced the danger to the Petitioner and her minor child.

Further, Petitioner is also owed just compensation under the Fifth Amendment's Takings Clause because Respondent made a possessory taking of Petitioner's private property for a public use; therefore, the Thirteenth Circuit Court of Appeals' overall decision should be reversed. "[P]rivate property [cannot] be taken for public use, without just compensation." U.S. CONST. amend. V. Interpreting the Fifth Amendment, for a *prima facie* Takings Clause claim, there must be a taking of property for public use with a remedy of just compensation available. *See Chicago, Burlington & Quincy R.R. v. City of Chicago*, 166 U.S. 226, 228 (1897).

The Court has held the Fifth Amendment's Takings Clause applies to eminent domain and police power, but each is distinct. *See Mugler v. Kansas*, 123 U.S. 623, 668–69 (1887). Also, a taking can be possessory or regulatory, depending on whether the government actually takes the property or regulation of the property diminishes the value. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427 (1982); *see also Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). However, it is "inappropriate to treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking,'

and vice versa." *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 323 (2002). Therefore, the Thirteenth Circuit Court of Appeals' overall decision should be reversed.

I. Under the Fourteenth Amendment, state actors should be held liable for injuries inflicted on private parties resulting from state-created dangers.

Qualified immunity is defined as "[i]mmunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights." *Qualified Immunity*, BLACK'S LAW DICTIONARY (12th ed. 2024). The purpose of qualified immunity is to protect government officials from the burdens of civil litigation when their conduct does not violate the constitutional rights that a reasonable person would have known. *Foy v. Holston*, 94 F.3d 1528, 1532 (11th Cir. 1996). This Court held that qualified immunity is measured objectively and claims that fail to meet this burden should be resolved by summary judgment. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Since *Harlow*, the scope of qualified immunity has been expanded and defined. *See Kentucky v. Graham*, 473 U.S. 159, 166-170 (1985). Plaintiffs seeking to recover under Section 1983 may hold a government agency liable for the actions of their agents acting in their official capacities. *Id.* at 169 (quoting *Brandon v. Holt*, 469 U.S. 464, 471 (1985)). Additionally, agents may be personally liable for their actions taken within their official capacities. *Hafer v. Melo*, 502 U.S. 21, 31 (1991). Finally, government agents usually have no affirmative duty to protect people from private violence. *Mears v. Connolly*, 24 F.4th 880, 883 (3d Cir. 2022). However, this Court has outlined situations when the government can be held liable for failing to protect people from private violence. *See DeShaney*, 489 U.S. at 199-200.

Under *DeShaney*, the State owes no affirmative duty to individuals under the Fourteenth Amendment except in two situations: (1) the government has a duty to protect individuals within their custody and (2) the government has a duty to protect individuals when the government is

responsible for creating the danger. *Id.* The Circuit Courts have construed the second situation's language to form two tests for determining whether a government agent may be liable for damages to a plaintiff under Section 1984. *See* Erwin Chemerinsky, *The State-Created Danger Doctrine*, 23 TOURO L. REV. 1, 3 (2007). The first test is the special relationship test. *See Beltran v. City of El Paso*, 367 F.3d 299, 307 (5th Cir. 2004). The second test is the state-created danger doctrine. *Irish*, 979 F.3d at 75.

Under the special relationship test, the government is obligated to protect an individual from dangers, including private violence, if the government agent, "through the affirmative exercise of its powers, acts to restrain an individual's freedom to act on his own behalf through . . . [a] restraint of personal liberty[.]" *McClendon v. City of Columbia*, 305 F.3d 314, 324 (5th Cir. 2002). Courts have been hesitant to permit use of the special relationship test in cases where a plaintiff has not been placed in custody. *See Roberson v. Roberson*, 646 F. Supp. 2d 846, 849 (N.D. Tex. 2009).

The state-created danger doctrine is the theory that government officers should be held liable for damages when such a government officer either: (1) affirmatively places or causes an individual to be in danger; or (2) leaves an individual in a situation that was more dangerous than when the officer first encountered them. *Kneipp v. Tedder*, 95 F.3d 1199, 1208 (3d Cir. 1996) (quoting *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1153 (3d Cir. 1995)). The doctrine is based upon the duty assumed when individuals voluntarily undertake care of another person. *See* RESTATEMENT (SECOND) OF TORTS § 323 (AM. L. INST. 1965). The test has been used to impose liability upon government agents for their affirmative acts to create or increase the risk of private violence. *Irish*, 979 F.3d at 73-74.

Due to the divided opinion among the sister Circuits, this Court should establish a uniform determination for government liability. The Petitioner argues that the appropriate test is the state-created danger doctrine for the following reasons:

A. The Petitioner can establish a *prima facie* case to rebut the presumption of qualified immunity through the state-created danger doctrine.

To establish a claim under the state-created danger doctrine, a plaintiff must show that: (1) a state actor affirmatively acted to create or enhance a danger to the plaintiff; (2) the act created or enhanced a danger specific to the plaintiff and distinct from the danger to the general public; (3) the act caused the plaintiff's harm; and (4) the actor's conduct shocks the conscience. *Irish*, 979 F.3d at 75.

(i) The Respondent created and enhanced the danger to the Petitioner.

To create a danger to the plaintiff within the state-created danger doctrine, a government agent must either: (1) personally injure the plaintiff; or (2) put the plaintiff in a position of danger from private persons and fail to protect her when the government agent had knowledge of the danger. *See Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982). *See also Wood v. Ostrander*, 879 F.2d 583, 590 (9th Cir. 1989). Placing the plaintiff in the danger of private persons has become known as "putting an individual in a snake pit." Chemerinsky, *supra*, at 8 (citing *Ryan v. Burlington Cnty.*, 674 F. Supp. 464, 485 (D.N.J. 1987)). To enhance a danger under the state-created danger doctrine, a government officer must attend to a plaintiff and then leave the plaintiff in danger of a foreseeable injury. *Kneipp*, 95 F.3d at 1209. Leaving the scene causes the plaintiff to become more vulnerable than if the government officer had never intervened. *Id.*

In this case, there were four discrete dangers to the Petitioner. The first danger was the original domestic violence dispute that resulted in the dispatch of the LPD. The second danger

was the release of Mr. Baker from custody. The third danger was the bomb placed on the Petitioner's front porch. The fourth danger was the bomb placed on Petitioner's back porch. The Petitioner concedes that the first danger was neither the product of nor enhanced by the Respondent; the first danger was solely the product of Mr. Baker. However, the Petitioner argues that the second, third, and fourth dangers are products of the Respondent and were enhanced by the Respondent's actions.

Upon the arrest of Mr. Baker by the LPD, Officer Trent assured Petitioner that Mr. Baker would be in custody at least until the following morning. R. at 2. Officer Trent was quickly reminded by Officer Williams that the Respondent had issued a policy requiring officers not to execute arrest warrants when the county jail was above capacity. *Id.* It was not until after the arrest of Mr. Baker and assuring Petitioner that Officer Williams called to confirm the capacity of the county jail. *Id.* When Officer Williams was informed that the jail was, in fact, over capacity, the LPD released Mr. Baker without informing Petitioner of the same. *Id.*

The release of Mr. Baker from custody, and his known violent history, would leave the mind of a reasonable person to assume that Mr. Baker would be angry with Petitioner. Any action made by Mr. Baker after release from custody would be the direct result of the LPD's inaction to contact the county jail when officers knew of a prior ordinance requiring the same. The further inaction of failing to inform Petitioner of the release of Mr. Baker put Petitioner in danger. Though an argument could be made that the LPD could not have been aware of the specific danger to Petitioner, this is easily rebutted by the fact that Petitioner informed the LPD of Mr. Baker's prior knowledge and use of explosives. Therefore, the Petitioner could argue that the Respondent, through its officers of the LPD, created the danger of the bombings.

Upon the explosion of the bomb on the front porch, LPD returned to the scene and attempted to diffuse the bomb on the back porch. *Id.* at 3. The LPD Bomb Squad's deployment of the X-ray robot was designed to disrupt the frequency of the bomb and would detonate the bomb if unsuccessful. *Id.* When the robot was unable to disrupt the frequency of the bomb, the LPD detonated the bomb without taking any additional precautions. *Id.*

By not taking care to attempt to move the bomb before detonation, the detonation was the direct cause to the plaintiff's further injury. Such further injury may not have occurred if the LPD attempted to diffuse the bomb in a different way, attempted to move the bomb to another location to detonate, or attempted to contain the blast. Such failure by the LPD would be considered enhancement under the state-created danger doctrine.

By creating the ability of Mr. Baker to produce the bombs, and enhancement of the injury to the plaintiff by detonating a bomb without due care, the Respondent, by and through its Officers, would meet the first element of the state-created danger doctrine.

(ii) <u>The acts created and enhanced were specific to the Petitioner and distinct from the danger to the general public.</u>

Under the state-created danger doctrine, dangers resulting from the acts created and enhanced by the government agent must be distinct to the plaintiff. *Irish*, 979 F.3d at 75. To be distinct, the resultant harm needs to occur to an identifiable or discrete individual. *L.R. v. Sch. Dist.*, 836 F.3d 235, 245 (3d Cir. 2016). Harms that occur to "random" individuals are not considered distinct because they lack connection to the harm-causing party. *Id.* Therefore, to prove that the acts created or enhanced by a government agent are distinct, the victim-plaintiff must have been foreseeable. *Id.* at 247. Further, the danger cannot be voluntarily assumed by the plaintiff and the plaintiff could not have been placed on notice of the harm. *Id.* at 245.

In this case, as stated above, *supra* Subsection (i), the initial cause for the deployment of the LPD was the plaintiff's imminent distress and harm at the hands of Mr. Baker. The Respondent would likely argue that Mr. Baker's prior history of domestic violence would cause him to be a danger to the community, and not specifically to the Petitioner, making her not a distinct victim. However, the measurement of distinction is not regarding the actions of Mr. Baker (or other third party), but regarding the actions of the Respondent. The Respondent deployed the LPD to quell the danger imposed by Mr. Baker. *See* R. at 2. Failing to communicate with the county jail caused a direct line of harm to the Petitioner, and not any random plaintiff. Additionally, Petitioner informed the LPD of Mr. Baker's propensity for bombing. *Id.* This created a foreseeable harm. Though a bomb is a threat to a radius of people, the bombs were left on the Petitioners front and back porches. This created a foreseeable plaintiff in the Petitioner.

Additionally, the LPD's statement to Petitioner, about how Mr. Baker would be in custody at least overnight, would lead a reasonable person to assume that Petitioner would be safe, at least for the night, in her own home. Respondent will likely argue that remaining in the home would be a voluntary assumption of the danger. *See* Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 BYU L. REV. 1, 34-35 (2014) (arguing that a victim of domestic violence has the option to find another residence undisclosed to an abuser). *See also* RESTATEMENT (SECOND) OF TORTS § 496C cmt. f (AM. L. INST. 1965) ("[if] the defendant has already violated his duty to the plaintiff, by creating a dangerous condition or situation, . . . [and] plaintiff discovers the danger, and voluntarily proceeds in the face of it, he is barred from recovery by his assumption of the risk."). However, this argument falls flat due to the traditional notion that a person should feel safest in their home. *See* I. Bennett Capers, *Home*

is Where the Crime Is, 109 MICH. L. REV. 979, 979 (2011). The mere fact that a plaintiff can find an alternative, and chooses not to, is not sufficient to prove a voluntary assumption of danger; the failure to choose the alternative must also be unreasonable. *See Coyne v. Cronin*, 386 F.3d 280, 288 (1st Cir. 2004) (arguing a plaintiff must actually know of a substantial risk of serious harm and disregard that risk to show deliberate indifference).

Based on the foreseeable harm of bombing based upon the LPD's knowledge of the overcrowded jail and of Mr. Baker's propensity for bombing, the acts of the LPD by failing to communicate with the Petitioner or properly disarming the bomb would lead a reasonable mind to believe that the danger to the Petitioner was distinct to the danger to the general public.

(iii) The acts of the Respondent caused the Petitioner's harm.

When measuring causation under the state-created danger doctrine, the proper measure is proximate cause. *See*, *e.g.*, *D.S.*, 799 F.3d at 798. *See also Kneipp*, 95 F.3d at 1209 n. 22 ("the state-created danger theory contemplates some contract such that the plaintiff was a foreseeable victim of a defendant's acts sin a tort sense").

Based upon the arguments made in Subsection (ii), *supra*, the release of Mr. Baker from custody created a foreseeable harm to the Petitioner. Respondent's agents were aware that Petitioner was a target of Mr. Baker, and that Mr. Baker was angry with Petitioner at the time that LPD arrested him. R. at 2. By releasing Mr. Baker from custody and failing to inform Petitioner, a danger was created to the unknowing Petitioner, through Mr. Baker, creating a foreseeable plaintiff in the Petitioner. By creating a discrete danger to the Petitioner and not to a generalized group, the burden of proximate causation is met.

(iv) The acts of the Respondent shock the conscience.

The final prong in establishing a state-created danger exception is to prove that the government agent's affirmative action or failure to act would shock the conscience. *Irish*, 979 F.3d at 75. The "shock the conscience" test, when applied to Section 1983 claims, requires that the government agent's actions be so outrageous, uncivilized, or intolerable that the actions do not comport with the traditional ideas of fair play and decency within substantive due process. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998) (quoting *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957)).

The substantive portion of the Due Process Clause is violated when the actions taken by a government agent "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense." *Collins v. Harker Heights*, 503 U.S. 115, 128 (1992). This Court held that negligent tort harms are "beneath the threshold of constitutional due process" and do not ordinarily shock the conscience. *Lewis*, 523 U.S. at 849. However, tort harms similar in nature to acts of criminal culpability, including deliberate injury, have risen to conscience-shocking levels. *Id.* (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). Additionally, in opportunities where government agents can make reasoned and rational decisions, and choose not to, such behavior may constitute deliberate indifference and shock the conscience. *Rivera v. Rhode Island*, 402 F.3d 27, 36 (1st Cir. 2005). To show deliberate indifference, a plaintiff must demonstrate that the government agent knew of a substantial risk and disregarded that risk. *Irish*, 979 F.3d at 75.

The shock the conscience test is also based on timing. *Id.* ("Where officials have the opportunity to make unhurried judgments, deliberate indifference may shock the conscience, particularly where the state official performs multiple acts of indifference to a rising risk of acute and severe danger"). If there is little time to make a reasoned judgment call, a higher level of culpability is required to shock the conscience. *Id.*

In this case, the choice to release Mr. Baker from custody was made immediately after Officer Williams learned that the county jail was over capacity. R. at 2. This means that the choice occurred on Friday evening, September 8, 2023, the same evening which the 911 call was placed and Mr. Baker was detained. *See id.* Overnight, Mr. Baker was able to assemble the two bombs that he intended to deliver to Petitioner. *Id.* Not once did LPD officers contact Petitioner to inform her of the danger. *See id.* The next morning, upon discovery of the second bomb, LPD officers attempted to diffuse the bomb via the X-ray robot. *Id.* at 3. However, pursuant to the LPD policy, the bomb was detonated. *Id.* Based upon the time-scale requirement of the shock the conscience test, there are four discrete actions taken by the Respondent's agents: (1) the choice to return Mr. Baker to his residence; (2) the choice to seize Mr. Baker's gun; (3) the failure to contact Petitioner; and (4) the decision to detonate the bomb.

The first choice was made immediately after being informed that the county jail was over capacity. Within this choice there are two conscience-shocking concerns. The first concern is that the Respondent issued a policy stating that arrest warrants should not be executed when the jail is above capacity. *Id.* at 2. This means that the Respondent, a government, has passed legislation to prohibit the detention and arrest of individuals suspected of criminal activity. *See id.* This also means that the officers must abide by this regulation or suffer the Respondent's consequences. *See id.* The second issue is that the officers chose to release Mr. Baker without considering any reasonable alternatives. *Id.* at 2-3. The LPD officers were placed in a precarious position. On one hand, the officers intended to execute an arrest warrant in accordance with their duties. *See id.* at 2. On the other hand, the officers released a known dangerous individual into the public as to not suffer the Respondent's punishment. *Id.* The choice to release Mr. Baker was not immediate. Prior to Officer Williams calling the county jail, both Officers Williams and

Trent knew that there was a chance that Mr. Baker would need to be released. *See id.* Once learning of such, neither officer considered a reasonable alternative to releasing Mr. Baker. *See id.* Because Mr. Baker was in the custody of the LPD, there was time to contact a supervisor for additional direction. Officers Trent and Williams did not need to immediately choose to release Mr. Baker.

The second choice was made just before releasing Mr. Baker to his residence. By seizing Mr. Baker's firearm, Officers Trent and Williams likely assumed this would eliminate the danger to the Petitioner because Mr. Baker was no longer armed. *See id.* However, Officer Trent knew that Mr. Baker was still dangerous because Petitioner informed him of Mr. Baker's bombmaking skills. *See id.* The choice to strip Mr. Baker of his weapon, though ineffective in preventing further harm to Petitioner, was a rational choice on the part of the LPD. Leaving Mr. Baker alone at his residence, however, was irrational. The officers knew Mr. Baker was dangerous and should have been in jail at least overnight. *Id.* The officers did not try to guard Mr. Baker's residence. *Id.* The officers did not call for any additional resources or seek guidance from the LPD. Though timing would suggest that the choice to strip Mr. Baker of his firearm was immediate, this action was likely made earlier, when Petitioner informed Officer Trent of Mr. Baker's ownership of a firearm and other weapons. *See id.*

The third choice was made throughout the night. Officers Trent and Williams—despite both knowing that Mr. Baker was dangerous—released Mr. Baker from custody and did not make any effort to contact Petitioner, the instant victim responsible for their deployment. *See id.* Hours passed before Petitioner learned that Mr. Baker was released from custody, and she only did so when she encountered the first bomb. *Id.* at 3. A reasonable mind could assume that

Officers Trent and Williams never intended to inform Petitioner of their choice to release Mr. Baker.

The fourth choice occurred the following morning. After a neighbor's 911 call, the LPD was dispatched to Petitioner's home for a second time within 24 hours. *Id.* The LPD officers were informed of the possibility of a bomb and prepared accordingly by requesting the assistance of the Bomb Squad. *Id.* The Bomb Squad's choice to use the X-ray robot was made to protect the lives of the neighborhood and reflected the policies issued by the Respondent. *See id.* Upon the failure of the Bomb Squad to disarm the bomb, the choice was made to immediately detonate the bomb. *Id.* This, again, presents two conscience-shocking concerns. First, the Respondent issued a policy that mandated the detonation of bombs, regardless of their location. *See id.* This means that, wherever a non-diffusible bomb existed, it would be detonated. *See id.* This also means that the LPD officers must comply with the Respondent's policy or suffer consequences. *See id.* Second, the LPD officers, again, chose to immediately detonate the bomb without considering any other reasonable alternatives. *See id.* Upon reporting that the X-ray robot was unsuccessful, officers could have requested guidance from their superiors. Additionally, officers could have taken other reasonable measures to transport the bomb to safer location for detonation. The choice to detonate the bomb on the Petitioner's porch was a conscious decision by officers. Though it was an immediate choice, it did not need to be and could have been made after thorough consideration of alternatives.

The choices of the LPD officers arise to a level of deliberate indifference because rational choices could have been made, and the officers consciously disregarded the opportunity to consider such rational choices. Additionally, the policies enacted by the Respondent forced the hands of the Respondent's agents and were the primary cause of Mr. Baker being released from

custody. Such actions by the Respondent and the LPD would rise to the level of conscience-shocking sufficient to satisfy a claim against due process.

* * *

Based on the foregoing arguments, this Court should find that a *prima facie* case of Amendment XIV due process violation exists under the state-created danger doctrine.

B. The state-created danger doctrine is widely accepted among the divided Circuit Courts.

Since this Court's decision in *DeShaney*, the Circuit Courts have been split with how to best determine an exception to qualified immunity. Chemerinsky, *supra*, at 3. The Circuits agree that a government has a duty to protect a person within their custody. *DeShaney*, 489 U.S. at 199-200. How the Circuits differ, however, is how best to apply an exception where the government creates the danger. Chemerinsky, *supra*, at 3.

The two major hypotheses are the special relationship test and the state-created danger doctrine. *Id.* at 3-4. Under the special relationship test, the government must have some form of special relationship with the plaintiff that establishes a duty to the plaintiff. *Doe ex rel. Magee v. Covington Cnty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 862 (5th Cir. 2012). If the government breaches their duty to the plaintiff, causing injury, the plaintiff has may have a viable claim under Section 1983. *Id.* The special relationship test has only been adopted by three Circuits—the Second, Fifth, and Eleventh. *See Irish*, 979 F.3d at 74. *See also* Chemerinsky, *supra*, at 3-4. The Eleventh Circuit is the sole Circuit Court that utilizes strictly the special relationship test. *See id.* Every other circuit, including the District of Columbia Circuit, utilizes some form of the state-created danger doctrine. *See Irish*, 979 F.3d at 74. The Fourth and Fifth Circuits require a combination of the two exceptions. Chereminsky, *supra*, at 3-4. Under this combined standard, the government must have a special relationship with the plaintiff and create the danger leading

to the plaintiff's injury. *Id.* The Second Circuit allows for either test to be raised to rebut the presumption of qualified immunity. *Id.* at 4.

Recently, support for the state-created danger doctrine has been challenged. *See Fisher*, 73 F.4th at 373-74 ("rights protected by substantive due process must be deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty") (internal quotations omitted). *See also Nix v. Franklin Cnty. Sch. Dist.*, 311 F.3d 1373, 1376 (11th Cir. 2002) ("[c]onfining liability to more culpable actors . . . is in accordance with the intent of the Due Process Clause[]"). The Fifth and Eleventh Circuits are the main proponents of these challenges. *See id.* The challenges, however, are rooted not in opposition to the doctrine, but in questions pertaining to it. *Fisher*, 73 F.4th at 376 (Higginson, J., dissenting) ("[f]or over a decade, our court has refused to answer").

The state-created danger doctrine, as outlined in *Irish*, is sufficient to remedy the qualms of the minority Circuits. 979 F.3d at 75. The test gives four elements necessary to establish a *prima facie* case of due process infringement. *Id.* The test requires that the government's action (or inaction) create or enhance the danger to the plaintiff. *Id.* The test also requires that the danger be specific to the plaintiff. *Id.* Such a restriction prevents "random" plaintiffs from seeking remedy under Section 1983. *L.R.*, 836 F.3d at 245. The test also requires the high burden that the actions or omissions of the government agent shock the conscience. *Id.* Though the Circuit Courts have disputed as to whether omissions would rise to the level of due process, the prevailing claim is that detestable failures to act should be considered. *Rivera*, 402 F.3d at 36.

The state-created danger doctrine is the most appropriate test to determine whether qualified immunity can be challenged. *See* Chemerinsky, *supra*, at 24-25. Even Circuit Judges in opposing Circuits agree. *See Fisher*, 73 F.4th at 375 (Wiener, J., concurring) ("[i]t is well past

time for this circuit to be dragged screaming into the 21st century by joining all those other circuits that have now unanimously recognized the state-created danger of action"). This Court should adopt the state-created danger doctrine due to the assent of the majority of the Circuit Courts and due to its high protections and burden.

C. The denial of Petitioner's claims and use of the state-created danger doctrine would severely limit the ability of future plaintiffs to recover.

As a matter of public policy, the state-created danger doctrine, if denied by this Court, will have numerous consequences for the future of Section 1983 plaintiffs. Without the doctrine, the presumption of qualified immunity will become harder to rebut by victims of tortious government conduct. There would likely be a large increase in Section 1983 claims resolved by summary judgment because the plaintiffs: (1) do not have a special relationship with the government; or (2) were not in custody at the time of conduct. *See Harlow*, 457 U.S. at 818. Additionally, a decline of this doctrine may incentivize governments to disregard misconduct of their agents. *See* Christopher M. Eisenhauer, *Police Action and the State-Created Danger Doctrine: A Proposed Uniform Test*, 120 DICK. L. REV. 893, 916 (2016). This is a slippery slope that can lead to government agents' disregard for their duties and responsibilities simply because they can no longer be held liable for injuries. *See id.*

The state-created danger doctrine should survive and should become uniform for all Circuits. *See id.* at 918. Scholars have proposed a three-prong test *in lieu* of *Irish*'s four-prong test. *See* Elizabeth G. Poole, *An Unattainable Standard: Analyzing the Fourth Circuit's Approach to the State-Created Danger Doctrine*, 101 N.C. L. REV. 871, 882-83 (2023). This three-prong test has the same enhancement and conscience shocking requirements as the *Irish* test, but also explicitly requires an objective standard. *Id.* at 883. Disputes of material fact are best left to juries, not to summary judgment. *See* FED. R. CIV. P. 56(a).

The future of *DeShaney* is now in the hands of this Court. The decision made now will have consequences for all the inferior courts and will determine the future of Section 1983 claims. The People rely on the ability of exceptions like the state-created danger doctrine to hold their governments liable when appropriate. As stated so eloquently by Judge Merritt, "by refusing to recognize the doctrine, we signal our citizens that when government action lights the fuse of foreseeable private violence, the courthouse doors will be slammed shut." R. at 11 (Merritt, J., dissenting).

This Court should adopt the state-created danger doctrine as a uniform test to rebut the presumption of qualified immunity under Section 1983. Based on the doctrine's elements, the plaintiff must meet a high burden when showing how a government agent's actions caused their injury. Without a similar check on the government, citizens would suffer their injuries without recourse. The majority of the Circuit Courts already use some variation of this test, ensuring that government agents do not willfully engage in tortious conduct. Additionally, Petitioner in this matter would likely be successful in asserting her own claim under the state-created danger doctrine. Therefore, this Court should reverse the judgment of the Thirteenth Circuit, adopt a uniform state-created danger doctrine, and find that Petitioner has met her burden of showing that a material dispute exists such to rebut the presumption of qualified immunity. Such a material dispute has the opportunity to subject the Respondent to liability.

II. The Fifth Amendment's Takings Clause requires just compensation when the government performs a taking of property for public use; therefore, Petitioner is owed just compensation for the destruction of her home because Respondent detonated the explosive to protect the public.

In the present case, the main inquiry pertains to the police power taking and public use elements of the prima facie Takings Clause claim. The inquiries of whether Petitioner's home is property and the determination of the just compensation value of Petitioner's home will not be

analyzed because they are immaterial to the presented question. Additionally, the analysis of a regulatory taking will not be included because Respondent used no regulatory governmental action to take Petitioner's home.

A. The Fifth Amendment Taking Clause's taking requirement is established because Respondent created a permanent possessory taking of Petitioner's home.

No formal proceeding is required to constitute a taking. *See First Eng. Evangelical Lutheran Church v. Los Angeles Cnty.*, 482 U.S. 304, 316 (1987). A taking has no clear definition; however, the Court held that "a permanent occupation of real property" is a taking. *Loretto*, 458 U.S. at 427. A taking can be constituted when the taking of private property requires "some people alone to bear public burden 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).

Petitioner is entitled to just compensation because Respondent made a possessory taking when it destroyed Petitioner's home to protect the neighborhood. Respondent was not required to make any formal proceedings, and it did not do so, because Respondent took possession of Petitioner's property while the Petitioner was being transported to the hospital. *See* R. at 3. Then, Respondent took permanent control of Petitioner's property because detonating the explosive ruined Petitioner's home and made it "uninhabitable." *Id.* Petitioner lost her property, and because of Respondent's using its police power, the government took permanent control of Petitioner's property because the home was left uninhabitable. Using the standard in *Loretto*, Respondent's action constituted a taking because Respondent took permanent occupation of Petitioner's property by destroying the home and making it uninhabitable. Therefore, Respondent made a possessory taking of Petitioner's property subject to the Fifth Amendment's Takings Clause.

Respondent's taking of Petitioner's property is subject to the Fifth Amendment's Takings Clause because the public should bear the cost of preserving public safety, not just Petitioner. Using the rationale from *Armstrong*, Respondent's taking was in furtherance of protecting the public neighborhood, and in the virtue of fairness, the public should bear the financial burden, not just Petitioner. *See Armstrong*, 364 U.S. at 49. The public will bear the financial burden when Respondent justly compensates Petitioner, because Respondent would likely use county and state taxes to compensate Petitioner. Respondent made a possessory taking by taking permanent control of Petitioner's home without violating any procedural safeguards to ensure public safety; therefore, the Thirteenth Circuit's overall decision should be reversed.

B. Respondent's actions were for public use because the intentional detonation was rationally related to protecting the neighborhood; therefore, Petitioner is owed just compensation under the Fifth Amendment's Takings Clause.

"The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for a 'public use' and upon payment of 'just compensation.'" *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994). A public use taking is "rationally related to a conceivable public purpose." *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984). The United States Court of Federal Claims held damage to private property is "a taking for public use" when it has "been altered . . . for public benefit." *Bachmann v. United States*, 134 Fed. Cl. 694, 696 (2017).

In *Bachmann*, a couple owned a rental property, and it was currently rented to a tenant. *Id.* at 695. A third party entered the property without the owner's or tenant's knowledge. *Id.* The third party was followed by federal and state police to attempt to apprehend the third party. *Id.* The federal and state police surrounded the property and used weaponry to draw the third party out of the property. *Id.* The property was severely damaged, and the owners filed a Fifth

Amendment Takings Clause claim. *Id.* The Court of Federal Claims held that the police's actions did not constitute a taking because the police performed a traditional police function by arresting the third party. *Id.* at 697. Additionally, this court held that damage is inevitable in certain situations, and repayment for repairs is not considered under the Fifth Amendment's Takings Clause. *Id.*

Respondent's police power enabled a taking for public use because the detonation of the explosive was a reasonable method to serve the public. The bomb was placed at the Petitioner's residence, which is a part of a neighborhood. Respondent was concerned that the bomb would endanger neighbors, so Respondent "ensur[ed] everyone was at a safe distance before assessing the" explosive. R. at 3. It was clear that neighbors were in the zone of danger because a neighbor was close enough to hear the first explosion and call 911. *Id.* Respondent then detonated the second device to protect the public when Respondent determined it could not safely diffuse the device, which meant it would remain a public danger until it exploded. The intentional detonation of the explosive served the public because it eliminated the future threat to the public. Similar to *Midkiff*, Respondents made a reasonable decision to protect the public by detonating the bomb. *See Midkiff,* 467 U.S. at 241. Even though the decision was reasonable, the action was for public use, thus creating a taking subject to the Fifth Amendment's Takings Clause. Respondent's actions were a taking for public use because the detonation of the explosive was a reasonable decision to protect the public neighborhood; therefore, the taking is subject to the Fifth Amendment's Takings Clause.

Respondent's police power was not a traditional police function; therefore, it was a taking subject to the Fifth Amendment's Takings Clause. Respondents used a bomb squad to attempt to diffuse the bomb to ensure public safety. However, unlike *Bachmann*, Respondent did not

conduct a traditional police function because Respondent did not destroy private property to arrest or capture a potential fugitive. *But see Bachmann*, 134 Fed. Cl. at 695. Respondent did not execute a traditional police function like an arrest or seizure and instead detonated an explosive. Also, *Bachmann* stated that repairing property because of police power does not constitute a taking, but in the present case, Petitioner's home cannot be repaired and must be replaced. *Id.* at 697. Petitioner's situation is vastly different from *Bachmann* because Petitioner lost her entire property, and it was the result of nontraditional police functions; therefore, *Bachmann* and other precedents derived from *Bachmann* should not rule here. Therefore, Respondent's actions constituted a taking for public use because the taking was a nontraditional police function that reasonably benefited the public; therefore, the Thirteenth Circuit's overall decision should be reversed.

C. Just compensation is required because the narrowly applied emergency exception is not applicable to the present situation.

Respondent owes Petitioner just compensation for her home because of the bomb detonation because an emergency exception is narrowly applied to situations do not present in the given situation; therefore, the Thirteenth Circuit Court of Appeals' overall decision should be reversed. This Court held that it is not concerned with "how weighty the public purpose behind" a permanent possessory taking is, and just compensation is required. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992). However, compensation may not be owed when property is destroyed for public use during wartime or any events in relation to an ongoing war. *See United States v. Caltex*, 344 U.S. 149, 154 (1952); *see also United States v. Pewee Coal Co.*, 341 U.S. 114, 114-15 (1951).

Although an emergency exception has been applied to the Fifth Amendment's Takings Clause claims, it is narrowly applied to situations dissimilar to the one in the present case; thus, Respondent cannot use the emergency exception. Respondent's taking did not occur during wartime or in a manner to prevent danger as a result of a war action; thus, the narrowly applied emergency exception is not applicable here. There are no facts or statements in the record that show Baker's actions or Respondent's taking were conducted to further or prevent wartime situations. The Court recognized in *Caltex* that an emergency exception may be applied to governmental takings under the public necessity doctrine, but only in extreme situations, such as war. *See Caltex*, 344 U.S. at 153-54. Here, there were no ongoing extreme events, like war, that could satisfy the Court's rationale in *Caltex* because no facts suggested any additional events were tied to the explosion other than domestic retribution. Also, the Court further restricted the emergency exception scope for the Fifth Amendment's Taking Clause in *Lucas* by saying no exception is applicable when the government performs a permanent possessory taking. *See Lucas*, 505 U.S. at 1015. As stated above, Respondent made a permanent possessory taking by detonating the explosive, making Petitioner's property uninhabitable. Respondent made a permanent possessory taking, and no emergency exceptions can be applied to these situations per the Court's precedent; therefore, Petitioner is owed just compensation from Respondent.

D. The result of Respondent not owing Petitioner just compensation would neglect the Fifth Amendment's Takings Clause because Americans would lose certain protections against Governmental police power.

The Thirteenth Circuit's overall decision should be reversed because affirming the decision would allow governmental actions to avoid the Fifth Amendment's Takings Clause by using police power. The Fifth Amendment's Takings Clause was the first provision of the Bill of Rights to be applied to the states. *See Chicago*, 166 U.S. at 231-32. Also, the creation of the Fifth

Amendment's Takings Clause was to ensure Americans could retain property rights, and in the event their property was taken by the government, they would be justly compensated, especially if it benefited the public. *See Armstrong*, 364 U.S. at 49; *see also Landgraf*, 511 U.S. at 266.

In this case, Petitioner lost her home because of the Respondent's reasonable action. Under the Court's possessory taking precedent, Respondent's police power actions are a taking subject to the Fifth Amendment's Takings Clause. The finding that Respondent's actions did not constitute a taking subject to the Fifth Amendment's Takings Clause flies in the face of the purpose of the clause. The Supreme Court found the Fifth Amendment's Takings Clause was so crucial to Americans that it was the first provision of the Bill of Rights the Court applied to state governments. Furthermore, the legislative intent behind the Fifth Amendment's Takings Clause carries significant weight in determining when to apply the clause; otherwise, Congress would not have written it, because the legislature valued the clause highly. Also, the Court held that a governmental taking that benefited more than a single private citizen is a taking subject to the Fifth Amendment's Takings Clause. Given the facts provided in the record, this case was a permanent governmental taking of an American's home, which cannot be repaired, and the public benefited from the taking. Not applying the Fifth Amendment's Takings Clause in the present case would give the government a method to dodge providing just compensation, which could lead to the government infringing on property rights and depriving Americans of any defense against an over-zealous government.

However, there are still limitations imposed to protect the government from continuously paying just compensation every time police power is used. The Court's jurisprudence has provided that when a repair can just compensate the property owner, the government is not obligated to provide the repair. *See Bachmann*, 134 Fed. Cl. at 697. In the present case, the repair

limitation is not applicable because Petitioner's home cannot be restored. Therefore, the Fifth Amendment's Takings Clause should be applied to Respondent's actions.

The Thirteenth Circuit Court of Appeals' overall decision should be reversed because Respondent's actions constituted a permanent possessory taking subject to the Fifth Amendment's Takings Clause. Respondent's intentional detonation of the explosive resulted in the government's permanent possession of Petitioner's home because the explosion caused the home to be permanently uninhabitable. Respondent's taking was for public use because the explosion was detonated to ensure the public's safety. No emergency exception can be applied because, based on the facts provided, there were no extreme ongoing events, like war, related to the bombings. If this Court re-affirms the case, the result could expand the government's leeway under the Fifth Amendment's Takings Clause, resulting in government infringement on Americans' property rights and negating any consequences to the government. Therefore, the Thirteenth Circuit Court of Appeals' overall decision should be reversed.

CONCLUSION

For the reasons stated herein, the Petitioner respectfully requests that the Court reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit and remand this case to the United States District Court for the District of New Virginia for further proceedings.

Respectfully submitted this the 10th Day of November, 2025.

Team 5
Counsel for Petitioner