

REGENT UNIVERSITY SCHOOL OF LAW  
25TH ANNUAL LEROY R. HASSELL, SR. NATIONAL  
CONSTITUTIONAL LAW MOOT COURT COMPETITION

**No. 25-178**

IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM 2025

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

*Petitioner,*

v.

THE CITY OF LAURENTON, ET AL.

*Respondent.*

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

TEAM 6  
COUNSEL FOR RESPONDENT

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### QUESTIONS PRESENTED

- I. Whether the State-Created Danger Doctrine is a valid exception to Due Process Clause guaranteed under the Constitution of the United States?
- II. Under the Fifth Amendment, does the Takings Clause apply when private property is destroyed by the state actors when such actors are exercising their police powers to protect the health and safety of the public?

## STATEMENT OF THE CASE

### I. Statement of the Facts

**Domestic Disturbance.** On September 08, 2023, the Petitioner, Sarah Jones, called 911, stating that her ex-partner, Mark Baker, was threatening herself and A.J., Petitioner's ten-year-old son. Within minutes, Laurenton police deputies Trent and Williams responded to Petitioner's home. Petitioner reported that Baker owned firearms and dealt in explosives while serving in the United States military. Given that Baker was visibly upset and had an outstanding warrant from a neighboring county, he was quickly taken into custody by law enforcement.

Petitioner inquired about whether she and her son should vacate the home, and Officer Trent informed her that Baker would be booked into the county jail for the night. After leaving Petitioner's home with Baker in custody, Officer Williams informed Officer Trent that, in accordance with city policy regarding warrant execution and detention, Baker would not be booked into the jail due to overpopulation. Instead, the officers transported Baker to a property that he was renting at the time of the incident. Officers seized his handgun and left Baker alone at the property.

**Special Delivery.** In the early hours of September 09, 2023, Baker went to the basement of the rental home and packaged two homemade bombs in inconspicuous packaging and delivered one to Petitioner's front door and the other to her back porch. Petitioner walked outside, saw a delivery in "Amazon" packaging, picked up the package, and was met with an explosion. Upon the bomb's detonation, Petitioner suffered a broken femur, severe burns, and hearing loss. A.J. experienced a broken arm, contusions of the lungs, and mental anguish. As a result of the explosion, Petitioner's home was left with minor damages.

**Disruption vs. Detonation.** A neighbor called 911, first responders arrived, and Petitioner and her son were rescued. They were taken to the hospital seeking medical attention. Upon

searching the scene, law enforcement discovered the second bomb on the back porch. The Bomb Squad was mobilized to neutralize the threat. The Bomb Squad followed proper response protocol, deploying a robot equipped with x-ray capabilities to determine the nature of the explosive. They used the robot to attach a tool to the bomb which was meant to disrupt the energetic field of the explosive device. This device was routinely used to disrupt explosive devices where the maker is not in police custody. However, the explosive built by Baker was too sophisticated, and the tool was unable to disrupt its energetic field. As a result, Baker's homemade explosive was detonated. The rear portion of the home was nearly leveled as the explosive caused severe structural damage. Petitioner was forced to seek medical care, housing, and experienced the loss of her personal property due to the explosions.

## II. Procedural History

**No guarantees.** Petitioner filed suit against the City of LaFontaine under 42 U.S.C § 1983 and claimed that the city had violated her rights under the Due Process and Takings Clauses of the Constitution. Petitioner claimed that officer's misinformation about Baker's detention, their failure to notify her of his release, and the warrant policy governing his release violated her Substantive Due Process rights under the Fourteenth Amendment. Additionally, she argued that the detonation of the bomb and ultimate demolition of her home warranted a compensable taking under the Takings Clause of the Fifth Amendment. The District Court for the Eastern District of New Virginia disagreed on both fronts, granting summary judgment to the city. The District Court held that the State-Created Danger Doctrine is not a guaranteed exception to Substantive Due Process under the Constitution and that the Takings Clause does not apply to property damage that is brought about by the valid exercise of police power.

**A Constitutional concern.** Petitioner made a timely appeal to the Court of Appeals for the Thirteenth Circuit. Upon review, the court affirmed the decision of the lower court which

granted summary judgment to the city on both claims. The court concluded that the State-Created Danger Doctrine was not rooted in the text of the Fourteenth Amendment. The court stated that substantive due process was only intended as a limitation on government power. The decision reaffirmed the “no-duty rule”, reiterating that the Fourteenth Amendment does not impose an affirmative duty upon the government to protect citizens against the actions of private actors.

**The only exception.** The Thirteenth Circuit declined to accept the State-Created Danger Doctrine as an exception to the narrow protections outlined by the Fourteenth Amendment. As the State-Created Danger Doctrine is a judicially created exception to the no-duty rule, it is within the discretion of the courts to accept or reject the doctrine as an exception in due process claims. Furthermore, the court questioned the Constitutional foundation for the State-Created Danger Doctrine, citing questions which have arisen in circuits that allow for the exception. However, the court did recognize the “special relationship” exception to substantive due process created by the decision in *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189 (1989). As the Petitioner’s liberty had not been restricted by the city, there was no exception under which her due process claim could succeed. The Petitioner’s due process claim was rejected, with the court citing to state tort remedies as the proper avenue for relief.

**Protect and serve.** The court also rejected the Petitioner’s Takings Clause claim as the Petitioner’s property was destroyed during the exercise of the government’s police powers. The Thirteenth Circuit emphasized that property damaged because of law enforcement efforts to protect the public does not amount to a compensable taking under the Fifth Amendment. Petitioner’s claim was rejected because law enforcement was responding to an immediate threat, and the detonation of the bomb came about because law enforcement was acting to protect the



public. The court emphasized that Petitioner’s property was not destroyed or converted for public use or benefit and, therefore, was not a compensable taking. The decision stated that the interference with Petitioner’s property was physical in nature and was a consequence of the government’s duty protect its citizens through police powers. As the destruction of the property was not regulatory in nature or for public benefit, Petitioner’s claim was found to be improper.

### III. Standard of Review

The appropriate standard of review in this case is *de novo*. *Napue v. Illinois*, 360 U.S. 264, 271 (1959). It is the duty of the Court to independently review the facts and make Constitutional determinations. *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 121 (1954). Respondent does not oppose the existence of the warrant policy or the standard operating procedure of the Bomb Squad nor that the standard set in *Monell v. Dep’t of Social Services*, 436 U.S. 658 (1978) had been met. Summary judgement is appropriate when there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). All factual inferences are to be drawn in the favor of the non-moving party. *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014).

### IV. Statement of Jurisdiction

Petitioner’s case raises two questions under the Constitution of the United States, specifically the first question related to the Due Process Clause of the Fourteenth Amendment and second relating to the Takings Clause of the Fifth Amendment. The United States District Court for the Eastern District of New Virginia had jurisdiction under 28 U.S.C. §1331 (i.e., federal question jurisdiction). Under 28 U.S.C. §1291, the Court of Appeals for the Thirteenth Circuit had jurisdiction to review the decision of the District Court. The Supreme Court of the United States has jurisdiction under 28 U.S.C. §1254(1), given that the petition for writ of certiorari was both filed and granted in a timely manner.

## V. Opinions Below

In the District Court for the Eastern District of New Virginia, the Court sided with the City of Laurrenton. On appeal, the Court of Appeals for the Thirteenth Circuit upheld the District Court's decision. The Court of Appeals for the Thirteenth Circuit held that the case brought by the Petitioner did not give rise to liability under the Constitution. That decision appears on pages 1-13 of the record. The Petitioner then filed for a writ of certiorari to the Supreme Court of the United States. The order granting writ of certiorari can be found on page 13 of the record.

## SUMMARY OF THE ARGUMENT

### I.

The United States Court of Appeals for the Thirteenth Circuit correctly held that the State-Created Danger exception was not applicable to Petitioners' substantive Due Process claim. The Fourteenth Amendment is not intended to protect citizens against danger posed by private actors, but against abuse of government power. As the State-Created Danger Doctrine is a judicially created exception for violations of Fourteenth Amendment due process rights, use of the doctrine by a claimant is not a clearly established right held by Petitioner.

To analyze the applicability of the State-Created Danger Doctrine, this Court should apply four factors that have emerged from case law in jurisdictions which allow the exception to be used. The Supreme Court and circuit courts have consistently held that, for the State-Created Danger Doctrine to apply, a clearly established right must be violated. First, law enforcement did not take affirmative action that increased or created danger of private violence to Petitioner by Mark Baker, as their acts were merely negligent or complied with city policies. Various courts have held that negligence cannot rise to the level of a Constitutional violation, and, thus, no clearly established right can be violated by negligent acts. Second, the acts of law enforcement were not "shocking to the conscience," as they did not act with malintent or reckless disregard for the safety of Petitioner or her son. Third, the Petitioner was not in state custody. Therefore, there was no "special relationship" which imposed an affirmative duty of protection upon the government. Finally, there was no foreseeable harm which was specific to Petitioner at the time of Baker's release because law enforcement acted with due care before releasing him.

As the State-Created Danger exception to the general ban on substantive Due Process claims is judicially created, Petitioner does not hold a Constitutional right to have the Court allow this claim. Further, Petitioner has failed to meet the threshold for claims brought under this

exception in other jurisdictions. Therefore, the Court should affirm the lower court's decision that Petitioner's 42 U.S.C § 1983 is not permissible under the State-Created Danger Doctrine.

## II.

The United States Court of Appeals for the Thirteenth Circuit was correct in its determination that the events that Petitioner endured at the hands of Mark Baker do not give rise to government liability under the Constitution. Therefore, this Court should affirm the lower court's decision that the Takings Clause of the Fifth Amendment does not require just compensation for destruction of property when it is a result of the valid exercise of police power. The Court should reach this decision for the following reasons. The actions by law enforcement in the present case fall under the government's police powers, as they were made in furtherance of protecting the public's health and safety. These actions were a proper use of the police power as they pass the variety of the tests set out in circuit courts, as well as the standards set by the Supreme Court of the United States. Thus, the Takings Clause cannot apply to the actions taken by the officers in the attempt to neutralize the bomb threat at Petitioner's residence.

## ARGUMENT

### **I. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT CREATE A DUTY TO PROTECT CITIZENS FROM PRIVATE HARM.**

The Due Process Clause of the Fourteenth Amendment was intended as a limitation on the use of government power and as protection against abuse of power under the color of law. The Supreme Court has consistently held that, if a claim is to be brought against the State under 42 U.S.C. § 1983, a government entity or execution of government policy must create or inflict the injury at issue, and a clearly established right must be infringed upon. *Monell v. Dep't of Social Services*, 436 U.S. 658, 690 (1978); *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014). However, citizens may of obtain relief in cases where the government is responsible for their safety and/or the injury at issue. The Supreme Court of the United States created a clear exception to the general no-duty rule of the Fourteenth Amendment of the Constitution in *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989), such that the state is liable for harms befalling a citizen when the state is a custodian of that person. The decision in that case also hinted at a potential exception to the no-duty rule for instances where the state has created a danger to a person. *Id.* at 198-99. The text of the Fourteenth Amendment does not include any exceptions to the no-duty rule but, the Court has acknowledged specific instances where the state could be liable for harms enacted by private actors. However, while the custodial or “special relationship” exception to substantive due process is a bright-line rule created by the Supreme Court, the State-Created Danger Doctrine is not, and it is within the discretion of the circuit courts to apply the doctrine to § 1983 claims. Therefore, there is no Constitutional duty upon the government to protect persons, like petitioner, from harms or dangers posed by private actors, like Mark Baker.

*A. The ability to bring § 1983 claims via the State-Created Danger Doctrine is not a clearly established right under the Constitution.*

Under the Fourteenth Amendment, persons are not guaranteed protection by law enforcement against the acts of private actors. While law enforcement may have a “duty to protect” as a part of their own standards, the Fourteenth Amendment does not impose an affirmative duty upon the government to protect its citizens from these private actors. Despite this general rule, narrow exceptions to the Fourteenth Amendment Due Process clause exist.

*DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.* created two different exceptions. First, it carved out an exception for “special relationships” where the government has restricted the liberty of an individual (e.g., custodial situations, etc.). *DeShaney*, 489 U.S. 189, 198-99 (1989). The decision also produced a judicially created doctrine which imposes liability upon the State for private danger when the government causes or creates the associated risk. *Id.* In *DeShaney*, a child was returned to the custody of an abusive parent though the Department of Social Services (“DSS”) was aware of abuse in the home. *Id.* at 191-93. As a result, the child acquired severe, irreversible brain damage, with the lack of intervention from DSS being cited as the proximate cause. *Id.*

In *Collins v. City of Harker Heights*, a city employee died while working on a stopped sewer line. *Collins*, 503 U.S. 115, 117 (1992). The employee’s widow brought a § 1983 claim but, the court declined to accept the State-Created Danger Doctrine as an appropriate exception. *Id.* at 130. The Supreme Court of the U.S. reiterated that the Due Process Clause of the Fourteenth Amendment does not guarantee citizens protection, only that it is a limitation on the use of government power. *Id.* at 126-27. The court stated that, absent abuse of government power in violation of a Constitutional right, §1983 claims cannot withstand analysis under the State-Created Danger Doctrine. *Id.* at 119-20. Petitioner was not entitled to the protection of law

enforcement nor was she entitled to receive information regarding the release of Baker. Baker's release was not arbitrary or done with reckless indifference to Petitioner's safety. The acts of law enforcement were consistent with the holding in *Collins*, such that law enforcement did not abuse their power as state actors, and Petitioner was not deprived of a Constitutional right.

As it is not an established right under the Due Process clause of the Fourteenth Amendment, the application and acceptance of the State-Created Danger Doctrine vary widely amongst Circuits. *Fisher v. Moore*, 73 F.4th 367, 371 (5th Cir. 2023). In *Fisher*, school officials failed to supervise two students as required by their individualized education plans, resulting in one student sexually abusing the other during school hours in the restrooms. *Id.* at 268-69. The Fifth Circuit rejected the petitioners' assertion that the school officials, and by extension the government employing those officials, were liable for the harm that befell the student being victimized. The court in *Fisher* held that the State-Created Danger Doctrine is not a mandate of the Constitution as it is a judicially created exception to Due Process and that it is within the discretion of the court to accept or reject that exception. *Id.* at 373-74; *See also DeShaney*, 489 U.S. 189 (1989).

In the instant case, the lower court cited concerns regarding the origins of the State-Created Danger Doctrine and its Constitutional footing. R. at 5. As the State-Created Danger Doctrine does not originate from the Constitution but, rather, from just two sentences in the *DeShaney* decision, the court is not bound to accept the doctrine as an exception to the Due Process clause of the Fourteenth Amendment. The lack of Thirteenth Circuit acceptance or precedent regarding the State-Created Danger Doctrine acts against Petitioner's claims, as there is no history of judicial acceptance of the doctrine within the Thirteenth Circuit, showing that the court has declined to assign liability to the government in instances of private danger. Further,

there was no special relationship between the government and the Petitioner that entitled her to a duty of protection as she was not in State custody nor was her liberty restricted by the State. Thus, the petitioner is not entitled to relief under § 1983 as there was no violation of a clearly established right held by petitioner.

*B. The Fourteenth Amendment is not intended to apply to the negligent, ignorant, or tortious acts of law enforcement officers.*

The State-Created Danger Doctrine was not created nor intended to address all tortious acts that may be committed by a state actor. Such broad application of the State-Created Danger Doctrine would transform Due Process law into tort law wherever a state actor is a tortfeasor. *Murguia v. Langdon*, 73 F.4th 1103, 1116 (9th Cir. 2023) (Bumatay, J., dissenting). Justice Bumatay emphasized that, if *DeShaney* was intended to carve out the State-Created Danger Doctrine as an exception to substantive Due Process, the Supreme Court of the United States would have explicitly done so in the decision. *Id.* at 1110. The current application of the State-Created Danger Doctrine is far too broad. Rather than holding the government responsible for Constitutional violations, the doctrine is often used to rectify the experiences of private citizens at the hands of other private citizens. *Id.* at 1103-04. While there were negligent acts committed by law enforcement in the present case, these acts do not rise to the level of constitutional scrutiny because the Petitioner did not have a clearly established right to have the government protect her or her son against the violent actions taken by Baker.

The court in *Daniels v. Williams*, 474 U.S. 327 (1986), examined the applicability of the State-Created Danger Doctrine to tort claims against state actors. In *Daniels*, a state inmate slipped on a pillow left on a staircase by a prison guard, suffering injuries related to the fall. *Id.* at 328. The court declined to accept plaintiff's § 1983 claim, citing that state tort remedies were sufficient. *Id.* at 332. As stated by the court in *Daniels*, the Fourteenth Amendment was intended



as a limitation on governmental power, not as a means of relief for claims of mere negligence. *Id.* at 331-32. The court reasoned that mere negligence does not rise to the level of Constitutional scrutiny, and that state tort remedies exist to provide relief for these types of claims. *Id.* at 339-40 (Blackmun, J., concurring). In a similar case, *Davidson v. Cannon*, 474 U.S. 344 (1986), the court reiterated the inapplicability of § 1983 for claims of mere negligence. In *Davidson*, a state inmate received a threatening note and alerted officers who failed to act in his aid. *Id.* at 345-46. The inmate failed to broach the subject with officer's again and was later attacked by another prisoner. *Id.* The court emphasized that there is no Fourteenth Amendment guarantee to protection by law enforcement, and that lack of due care does not meet the threshold for constitutional scrutiny. *Id.* at 347-48. Underscoring the decision was the court's rationale that only intentional acts and/or reckless indifference for the safety of an individual by a state actor can be the basis for a claim under the State-Created Danger Doctrine. *Id.*

The present case can be distinguished from cases like *Davis v. Brady*, 143 F.3d 1021 (6th Cir. 1998) and *Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989), where law enforcement acted with such deliberate indifference that their actions were in violation of a clearly established right. In *Davis*, a drunk man was turned away from a housing mission and eventually arrested for vandalizing the property. *Davis*, at 1023. Instead of booking him into jail, officers left the man on the side of a notoriously dangerous and busy highway where he was struck by a passing car. *Id.* The court agreed with the plaintiff that, considering the officers' knowledge of the dangers of the area where he was left, the man's inebriated state, and officers lack due of care for a detainee, that the officers acted with such indifference for the man's life which deprived him of his rights under the Fourteenth Amendment. *Id.* at 1027.

In *Wood v. Ostrander*, law enforcement officers left a woman stranded in a dangerous area with no transportation after arresting the driver of a vehicle she was traveling in. *Wood*, at 586. The woman was sexually assaulted shortly after she was left by officers. *Id.* The court held that, when considering the circumstances- leaving a young woman alone, without transportation or a means of communication, in an area known to law enforcement as being dangerous- the officers had a duty to protect her. *Id.* at 595-96. The knowledge of law enforcement and lack of assistance despite that knowledge was highlighted as the court's motivating factors in accepting the use of the State-Created Danger Doctrine in this case. *Id.* at 590.

Petitioner was not entitled to the protection of law enforcement and the misinformation given to her by law enforcement during their initial response does not rise to a deprivation of a clearly established right but, instead amount to a lack of due care. The information that Baker would be detained for the night did not transform law enforcements' regular duty of care into a guarantee of protection enforceable under § 1983. Officers may have negligently misrepresented the facts surrounding Baker's detention but did not affirmatively act in abuse of their power or with reckless disregard for Petitioner's life in his release. Officers displayed due care in their actions leading up to his release and as established by the decisions in *Daniels* and *Davidson*, did not owe petitioner a duty of protection against any further acts committed by Baker. Officers' failure to notify Petitioner of Baker's release faces is of the same nature. Officers failed to exercise due care but did not act with intent or reckless disregard. At the time of his release, officers had no reasonable suspicion that Baker possessed any other weapons or explosive devices, nor could they have foreseen the events to follow. The omission of information was a mere oversight, insufficient to warrant constitutional scrutiny.

C. *The city policy requiring the release of a detainee due to high jail population does not violate the Petitioner's due process rights as the policy did not create the danger posed to the Petitioner.*

Only when the execution of government policy inflicts harm to a person, may the government be held liable for harm that may befall them. *Monell*, at 690. Petitioner asserts that the City of LaGrange policy governing warrant execution and housing detainees on out-of-county warrants caused her to experience the harm central to this case. R. at 5. The governing policy requires that detainees being held on warrants not issued by the City of LaGrange be released if the jail is at maximum capacity. R. at 2. On the night in question, the jail was fully populated and city policy required Baker's release. *Id.* This policy in no way created danger to Petitioner. The release of Baker prior to the morning of Sept. 09, 2023, is superfluous to the harm Petitioner experienced as the policy did not create the risk to Petitioner nor embolden Baker to enact violence against her.

Unlike the facts of *Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, law enforcement did not act with such reckless disregard for the safety of Petitioner, nor did they violate a clearly established right held by the Petitioner. *Okin*, 577 F.3d 415 (2d Cir. 2009). In *Okin*, law enforcement repeatedly failed to intervene in domestic violence incidents and acted in a manner which emboldened an abuser, leading to severe abuse and harm to the victim. *Id.* at 419-26. Officers often shirked off the claims of abuse, failed to protect the victim, and befriended her abuser. *Id.* Plaintiff claimed that the government had failed to properly train officers as to the appropriate protocol in domestic violence situations and that the behavior of officers affirmed the actions of her abuser, leading to more severe abuse. *Id.* at 427.

The present case is akin to *Tanner v. County of Lenawee*, 452 F.3d 472 (6th Cir. 2006) where the Sixth Circuit declined to apply the State-Created Danger Doctrine to a domestic violence

incident. In *Tanner*, a man was heavily intoxicated and went to the home where his partner was residing. *Id.* at 474-77. The perpetrator in that case entered the home and murdered his partner and one of the homeowners, leaving the other homeowner with severe injuries. *Id.* Law enforcement responded to the scene but delayed entering the home as they were securing the scene. *Id.* The court concluded that, for liability to be assigned to the government, state actors must affirmatively act to increase or enhance the danger to a citizen, rather than be held responsible for an injury which came about during their regular duties. *Id.* at 478-80. The court went further, holding that private citizens have no constitutional right to protection or response from law enforcement, negating the claim of a substantive Due Process violation. *Id.* at 481.

In the case at hand, the response of law enforcement to the initial call to Petitioner's residence was appropriate. Baker was detained, separated from the home, and all weapons known to law enforcement at the time were seized. At the time he was released, officers would have had no reason to search the residence where Baker was taken after his arrest, as there was no indication that he would have any explosive devices or other weapons at the residence. Law enforcement took the necessary steps to deescalate the situation and followed the appropriate policies set out for them by the City of Laurenton vis a vis detainee releases due to jail capacity. Neither law enforcement nor the warrant policy inflicted the harm experienced by the petitioner. Though the policy allowed for Baker to be released, law enforcement took reasonable steps (e.g., separating the parties, seizing firearms, etc.) to prevent any further incident between the two. Law enforcement acted appropriately and without reckless disregard for Petitioner's safety in following the warrant policy. Therefore, the City cannot be held liable for the harm experienced by petitioner because the execution of the warrant policy did not cause or inflict the harm upon

her, Baker did. Officers took reasonable precautions considering the circumstances and did not encourage, embolden, or allow Baker to enact such violence against Petitioner or her minor son.

Furthermore, the warrant policy was not arbitrary; there was a legitimate reason that the policy existed- to control the population that the local jail. The policy served to keep jail population manageable, as housing detainees on foreign warrants would compound existing issues related to overcrowding at the jail. The officers did not release Baker on a whim or with suspicion that he may enact deadly violence, but followed the applicable policy, going so far as to thoroughly search Baker for weapons before leaving him at a separate location with no readily available mode of transportation. Thus, the officers in this case were not exercising their power as state actors arbitrarily or with reckless disregard, but with compliance to a rational, legitimate policy and with due care.

**II. PETITIONER’S CLAIM DOES NOT MEET THE STANDARD FOR EXCEPTIONS TO SUBSTANTIVE DUE PROCESS SET BY *DESHANEY V. WINNEBAGO CNTY. DEP’T OF SOC. SERVS.*, 489 U.S. 189 (1989).**

Without guidance from the Supreme Court, the states have been left to devise their own tests in applying the State-Created Danger Doctrine. When applying decisions across various circuits, a piecemeal factors test can be applied to determine whether the State-Created Danger Doctrine is applicable in a § 1983 claim. *Johnson v. City of Phila.*, 975 F.3d 394 (3d Cir. 2020) (Porter, J., concurring); *Estate of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485 (6th Cir. 2019) (Murphy, J., concurring); *See also DeShaney*, at 201. Among the circuit courts allowing State-Created Danger claims, four elements have emerged: affirmative act(s) by state actors that create or increase the risk of harm to a private citizen, acts by state agents that are “shocking to the conscience”, a relationship between the government and a plaintiff which puts a plaintiff at greater risk of harm, and foreseeable harm to that is specific to a plaintiff.

A. *Law enforcement did not affirmatively act as to create or increase danger of private harm to Petitioner.*

Under the decision in *DeShaney*, there must be an affirmative act made by a state actor which infringes upon a constitutional right held by a private citizen. *DeShaney*, at 200. The requirement of an affirmative act which causes or increases harm to a private citizen is well-founded amongst various circuits which allow for § 1983 claims to be brought using the State-Created Danger Doctrine. This affirmative act must be done with intent to deprive a citizen of a constitutional right or with reckless indifference or disregard for the safety of a citizen. *Irish v. Fowler*, 979 F.3d 65, 73-74 (1st Cir. 2020); *Sacramento Co. v. Lewis*, 523 U.S. 833, 849 (1998).

The Seventh Circuit held in *Bowers v. De Vito* that there is a difference between a state actor's affirmative act which increases the risk of danger to an individual and failure to protect that individual. *Bowers*, 686 F.2d 616 (7th Cir. 1982). In *Bowers*, a state inmate with a violent history was institutionalized upon a plea of not guilty by reason of insanity to murder but was released from custody after five years. *Id.* at 617. In less than a year, he murdered another young woman. *Id.* The court declined to apply the State-Created Danger Doctrine to plaintiff's claims because there is no constitutional right to protection from the state from violence by private actors. *Id.* at 618-19. The court reasoned that, regardless of the criminal history of a private citizen who enacts violence, the state still has no affirmative duty to protect other private citizens against harm that they may enact under the Constitution. *Id.* Though his release was proximately related, the state did not create the danger to the victim; the perpetrator did. The court emphasized that the connection between his release and the murder was too attenuated for liability to be assigned to the state and that even if there was a duty to protect, the state did not actively create the danger at issue. *Id.* at 617-18.

The Sixth Circuit examined this issue in *Estate of Romain v. City of Grosse Pointe Farms* in 2019. *Estate of Romain*, 935 F.3d 485 (6th Cir. 2019). In that case, an abandoned vehicle was found near a river and, two months later, the body of a woman was found in the same river. *Id.* at 488-89. Despite the insistence of the woman's family, her death was ruled a suicide, and the case was closed. *Id.* It came to light that law enforcement had previously conducted questioning, had possession of the deceased's keys, etc. before officers knew that she was missing. *Id.* at 689-90. Plaintiffs asserted that the suspect investigation conducted by law enforcement pointed to a cover up and had increased the risk of foul play to the deceased. *Id.* at 489. The court, however, disagreed and stated that the acts of law enforcement did not affirmatively increase the risk of harm to that specific person because of a shotty investigation as there was no evidence that law enforcement was intentionally or recklessly acting against the woman's safety. *Id.* at 492.

In *Irish v. Fowler*, the First Circuit held that law enforcement leaving a voicemail regarding a pending matter on a suspect's cellphone was an affirmative action on part of the government which caused harm to the victim in the case. *Irish*, at 67-68. In *Irish*, a woman was kidnapped and raped by her ex-partner and law enforcement was informed of his potential violent nature should he learn about the investigation. *Id.* at 68. Despite this information, the man was contacted by law enforcement and retaliated, murdering the victim's loved ones, burning down a barn, and kidnapping and sexually assaulting the woman a second time. *Id.* at 69-71. The court concluded that the officers acted with deliberate indifference to the safety of the victim and, given the information that they possessed about the perpetrator, affirmatively acted to her detriment by contacting her abuser about the matter. *Id.* at 79. The court held that the State-Created Danger Doctrine must apply here because the reckless acts of law enforcement resulted in life-altering consequences. *Id.*

In the present case, the release of Baker did not cause the harm experienced by Petitioner, Baker himself caused the harm. Like *Bowers*, Baker's release was proximally related to the incident but did not cause the harm that petitioner suffered. The state did not have an affirmative duty to protect Petitioner against any act of private violence enacted by Baker after he was released from custody, nor did the state create the harm. This case is distinguished from *Irish* as the state did not make an affirmative act to enrage, embolden, or empower Baker to enact his violent revenge. Though the time between release and the bombing was far shorter than that in *Bowers*, the harm in this case was still too attenuated to be the direct cause as hours passed between Baker's release and the bombing. Even though law enforcement was aware of Baker's history, there was no affirmative duty upon the state to protect Petitioner as she is not entitled to protection from law enforcement. *See also Castle Rock v. Gonzales*, 545 U.S. 748 (2005) (the Supreme Court held that private citizens have no interest in the enforcement of civil protection orders).

*B. The conduct of law enforcement was not shocking to the conscience as officers did not act with intent to harm Petitioner nor with reckless disregard for her safety.*

The behavior of law enforcement or government policy must be "conscience shocking" or involve an arbitrary abuse of power. The actions must be so against society's core values that it cannot be tolerated in society for the State-Created Danger Doctrine to apply. *Collins*, at 125. Officers in the case at hand did not possess any inkling or actual knowledge that Baker would go on to plant an explosive device at Petitioner's home nor should a passing comment about Baker's military experience made during the initial response to Petitioner's home be enough to impose such knowledge on the officers. The acts of law enforcement made on September 09, 2023, do not rise to the level of "conscience shocking" because the acts were not intentionally harmful or done with reckless indifference to Petitioner's life, limb, or health.



The court affirmed the “shocking to the conscience” threshold in *Sacramento Co. v. Lewis*, 523 U.S. 833 (1998). In that case, law enforcement officers were dispatched to break up a fight which ended in a high-speed motorcycle chase and fatality of the motorcycle driver. *Id.* at 836-37. The court’s analysis of the applicability of the State-Created Danger Doctrine hinged upon the deliberation and intent of the actions of the officer. *Id.* at 853-55. The court held that, in high-stakes, split-second decisions that have no malintent, there is no basis for a claim rooted in a constitutional violation. *Id.* Such conduct is only “shocking to the conscience” if there is a deliberate and malicious deprivation of one’s Fourteenth Amendment Due Process rights. *Id.*

In a case involving precautionary measures, the Third Circuit declined to apply the State-Created Danger Doctrine to a negligence claim. *Kaucher v. County of Bucks*, 455 F.3d 418 (3d Cir. 2006). In *Kaucher*, the petitioner experienced an infection of an antibiotic-resistant *Staphylococcus Aureus* while working at a state penal institution. *Id.* at 420-22. The court held that the state had provided adequate training regarding infectious diseases to staff, sufficient protective and preventative care, and had taken measures to quarantine infected inmates, negating claims of “conscience shocking” acts rooted in failure to provide a certain medication to the infected. *Id.* at 435.

In the instant case, law enforcement merely failed to inform Petitioner that Baker was not booked into the jail but took all necessary precautions to prevent further incidents between the two. None of the actions of the officers in the case at hand should be construed as supportive of Baker or dismissive of the Petitioner’s experiences. The officers acted in compliance with city policy regarding warrant execution and acted with mere negligence in failing to properly advise or inform the Petitioner as to Baker’s detention. The officers did not possess any suspicion or knowledge that Baker would go on to plant an explosive device at Petitioner’s home nor should a

passing comment about Baker's military experience be enough to impose such knowledge upon the officers.

*C. There was no special relationship between the Petitioner and the government that imposed a duty upon the City of LaFontaine to protect the Petitioner from private harm.*

Under the decision in *DeShaney*, the state does owe citizens protection against private actors in custodial situations. *DeShaney*, at 199-200. Such duty is triggered when one is in state custody because their personal liberty has been deprived (e.g., arrest, detention, incarceration, commitment, etc.). The court in *DeShaney* reasoned that, since the state has restricted a citizen's liberty by taking them into custody, the state must then ensure that they are not exposed to undue danger or risk. *Id.* at 200. Historically, this exception is only applicable to circumstances where a plaintiff is a ward or custodian of the state, establishing a "special relationship" between the plaintiff and the state. The bomb was a danger to the public at large, not a danger specific to the plaintiff. *See generally Davis v. Brady*, 143 F.3d 1021 (6th Cir. 1998); *Murguia v. Langdon*, 73 F.4th 1103 (9th Cir. 2023).

In *Murguia v. Langdon*, the Ninth Circuit addressed "special relationships" between the state and a plaintiff. *Murguia*, 73 F.4th 1103 (9th Cir. 2023) (J. Bumatay, dissenting). In *Murguia*, a mother experienced a mental health crisis and her partner, with whom she shared five children, called 911 for assistance. *Id.* at 1105-06. Upon responding, law enforcement separated the children from the mother but ultimately returned them to her and allowed them to leave with a friend of the family. *Id.* A state agency transported the party to a housing shelter at the direction of the department of family and child services but, the sheriff's removed them from the shelter and left the mother alone with the children at a motel. *Id.* The mother later drowned two of her children in the motel bathroom. *Id.* The dissent stated that that, though they were frequently accompanied by law enforcement, the children nor the mother were ever in custody of

the state during this incident because they were not deprived of their liberty and their rights were not restrained by a state agency. *Id.* at 1115-16. It was posited by the dissent that the State-Created Danger Doctrine should not be extended beyond the custodial context, as the government has no duty to protect against danger posed by a private actor where a plaintiff's liberty or freedom has not been restricted. *Id.*

Petitioner was not in state custody during the incidents founding the present case. Under precedent case law, the state did not owe her a special duty of protection because there was no "special relationship" requiring such. Given that she was not restricted by law enforcement and was not deprived of her liberty, there was no "special relationship" between Petitioner and the City of Larenton that imposed an affirmative duty upon the government to protect her from any harm that may come about by a private actor. Law enforcement may have responded to the scene but did not owe Petitioner a special duty of protection.

*D. There was no foreseeable harm specific to Petitioner at the time Baker was released.*

The final piece of the test for the State-Created Danger Doctrine is whether there was a foreseeable harm specific to the plaintiff. According to the court in *Martinez v. California*, 444 U.S. 277 (1980), the harm resulting from a government action must be foreseeable and specific to the plaintiff if liability is to be assigned to the government under § 1983. Thus, the resulting danger or harm must be probable and anticipated in consideration of the actions of the state. For the harm to be specific, it must be solely experienced or directed at the plaintiff themselves rather than a threat to the public-at-large. Here, the threat of violence from Baker, specifically the bombing, was not foreseeable and was not just a safety threat to the Petitioner, but also to the surrounding public.

*Martinez* involved the release and recidivism of a violent offender. In that case, a sex offender was released from custody after being deemed "not amenable to treatment". *Id.* at 279-

80. The California Parole Board was aware of his prior attempted rape, violent tendencies, and aversion to treatment. *Id.* Five months after his release, he raped and tortured a fifteen-year-old girl. *Id.* It was held that the resulting rape and murder was too remote a consequence of the offender's release to impose liability upon the parole board. *Id.* at 285. The Supreme Court reasoned that the release of the offender did not place the plaintiff in "specific danger" nor was the parolee an agent of the parole board at the time of the attack on the plaintiff. *Id.* The Court highlighted that policies anchored in legitimate government interests are not arbitrary and that, in following such policies, the use of discretion by state actors is often necessary and should not be tantamount to a deprivation of life in cases like this. *Id.* at 281. The decision emphasized that legislation governing the actions of state agents, which could have a tangential impact on the likelihood that a death may occur, cannot be the basis for claims brought via the State-Created Danger Doctrine. *Id.*

Like in *Martinez*, a city law or policy underscores the Petitioner's claim. While the warrant policy may have set the stage for the bombing, the warrant policy was not the cause of the harm experienced by the Petitioner. The warrant policy allowed for the release of Baker but did not permit the acts later committed by Baker at the Petitioner's home. The policy may have set the stage for Baker's later crimes but did not grant Baker the authorization to commit such acts. Therefore, the city policy did not cause or create the harm suffered by Petitioner. Like the parole board in *Martinez*, law enforcement in this case should not be penalized for exercising appropriate discretion and following a legitimate policy. The acts of Mark Baker were deplorable but, the Court cannot impose liability upon the state for those actions simply because a policy existed that allowed for his release and was proximally connected to the resulting harm to Petitioner.

In *Waddell v. Hemerson*, a confidential informant was released into the public on conditional release related to a drug investigation. *Waddell v. Hemerson*, 329 F.3d 1300 (11th Cir. 2003). However, during his release, the informant violated the conditions by consuming alcohol. *Id.* at 1302-03. The informant left the area without notice and was found to be driving under the influence (“DUI”) which caused an automobile accident, leaving two victims injured. *Id.* The Court in the Eleventh Circuit rejected the assertion that the state was liable for the plaintiffs’ injuries because the DUI was not a foreseeable consequence of the informant’s release. *Id.* at 1308-09. The court stated that there was not a “special danger” posed to the plaintiff and that officers could not have expected that the informant would drink and drive and/or cause a motor vehicle accident. *Id.* at 1305, 1309. The court determined that “special danger” factors are superseded by the nature of the acts. *Id.* at 1305. It was reiterated by the court that the key factor in determining state liability in these types of claims hinges upon whether the acts were “conscience shocking”. *Id.*

In the instant case, there was not “special danger” to the Petitioner that was distinguishable from danger posed to the public-at-large. At the time he was released, officers had no knowledge that Baker was constructing bombs in the residence or that he planned to take revenge on the petitioner. The bombing of Petitioner’s home was not a foreseeable outcome of the domestic incident occurring earlier that evening. At the time Baker was transported from the home and released, there was no indication to officers that the Petitioner would fall victim to a bombing at the hands of Baker. While the harm was certainly intended for the Petitioner, the bombing was not foreseeable by law enforcement, nor would they have suspected that she be a target of such violence at the time Baker was released from custody. Furthermore, any risk to

Petitioner posed by Baker was not distinguishable from danger posed to the public because the bombs were designed for mass destruction, rather than specific harm or damage to Petitioner.

Petitioner has failed to satisfy the basic requirements for claims brought under the State-Created Danger Doctrine as method of imposing liability upon the government for harm inflicted by a private actor. Even if Petitioner was entitled to protection by the government against Mark Baker, the facts fail to meet the threshold for similar claims. Petitioner's claim shows insufficient evidence that the government was the cause of her injuries, that police acted with more than mere negligence in the handling of the case, that there was a special relationship between Petitioner and the government which entitled her to protection, or that the harm was foreseeable and specific to Petitioner. Therefore, the Court should affirm the lower court's decision that Petitioner's 42 U.S.C § 1983 is not permissible under the State-Created Danger Doctrine.

### **III. THE GOVERNMENT IS NOT SUBJECT TO LIABILITY UNDER THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT WHEN STATE ACTORS EXERCISE POLICE POWERS.**

Among the government's many powers is the authority to take private property in narrow circumstances. There are two powers, dictated by specific circumstances, by which the government may take such action: eminent domain and police powers. Eminent domain is defined as the power of the government to take private property and convert it for public use, with such taking being subject to just compensation. *Black's Law Dictionary* (11th ed. 2019). On the other hand, police powers are the fundamental authority of the government to regulate private interests in furtherance of public interest or morals. William J. Novak, "The American Law of Overruling Necessity: The Exceptional Origins of State Police Power", *In States of Exception in American History*, CAMBRIDGE UNIVERSITY PRESS, 97 (2020). When the government acts to

preserve public health and safety, it is exercising police powers by way of the public-necessity doctrine, not eminent domain.

*A. The actions of the City of Laurenton Police Department are consistent with the public-necessity doctrine, and those actions were reasonable under the surrounding circumstances.*

1. The actions of law enforcement in this case fall under the police powers of the government.

Government actions are considered the exercise of police power when the actions further the interest in the health and safety of the public. In the instant case, the goal of the police intervention to the bomb threat was to protect the Petitioner, her son, and any surrounding witnesses from the danger posed by the second bomb. This scenario does not implicate the government's eminent domain power as the damage to Petitioner's residence was not a taking for the public use, as the property was not converted for public benefit. Petitioner's property was not taken to the benefit of the public, like erecting a public park or widening a highway, rather for the protection of the Petitioner and the public at large by way of law enforcement's response and intervention to a violation of the law. It is regrettable that Petitioner's property was destroyed in the officers' attempts to diffuse the bomb but, the actions of said officers were in furtherance of the public safety and, therefore, those actions are valid uses of the police power.

2. The actions taken were proper under the government's police powers.

The Supreme Court has clearly stated that, in claims brought under the Takings Clause of the Fifth Amendment, analysis of such claims must be fact specific. *Yawn v. Dorchester Cnty.*, 1 F.4th 191, 197 (4th Cir. 2021). As there is no bright-line rule for evaluating such claims, Courts have created unique factors to aid in evaluating the merit of Takings Clause claims.

The Sixth Circuit has rejected Takings Clause claims akin to Petitioner's without addressing any purported exceptions to the Takings Clause. The Sixth Circuit stated that, in

absence of the Plaintiff identifying or establishing that the police had taken private property while conducting a lawful arrest, there was no implication of the Fifth Amendment even when the property was damaged in furtherance of the exercise of police powers. *Slaybaugh v. Rutherford County*, 114 F. 4<sup>th</sup> 593, 603 (4<sup>th</sup> Cir. 2024). More specifically, in the Seventh Circuit, the Court turned to the reasonableness of the actions of state agents. In *Johnson v. Manitowoc*, the court stated that, to determine whether the actions of law enforcement were a proper use of police powers, the court must consider the surrounding circumstances and the values being furthered by said actions. *Johnson v. Manitowoc Cnty.*, 635 F.3d 331, 335 (7<sup>th</sup> Cir. 2011). The reasonableness standard is a totality of the circumstances test, requiring that the intrusion into an individual's rights be balanced with the degree of the interest being furthered. *Id.* at 335. The court in *Johnson* emphasized that it was imperative to consider the evidence is viewed from the perspective of the officer at the time of the search to determine the reasonableness of their actions. *Id.* In *Johnson*, a convicted felon was released from custody based upon DNA evidence. *Id.* at 332-33. The felon was later charged a second time with murder, and the Plaintiff's property was destroyed during the search for evidence, conducted under a search warrant. *Id.* The court in *Johnson* determined that the damage to the Plaintiff's property was reasonable as the actions taken by law enforcement to discover the evidence would have appeared reasonable to officers at the time they were taken. *Id.* at 335.

In applying the reasonableness standard to the present case, this Court should deem the actions of the officers at the time of their response to the scene reasonable. First, the officers secured the area so onlookers were at a safe distance away from the explosive should detonation occur. Since the threat to public safety in this case was a bomb, certain precautions like securing the area needed to be taken to keep the public safe as the bomb could have caused any number of



harms to occur including, but not limited to, fires or flying debris. Second, the bomb squad used specialized equipment that is intended for the purpose of neutralizing bombs via disruption of the energetic field of the explosive. Though the likelihood of disrupting the bomb's energy signal was low, this device was the equipment that the squad typically used in situations such as this one, even though detonation was likely to occur.

The Supreme Court of the United States applied a different factor in *Ark. Game and Fish Comm'n v. United States*, evaluating the degree of invasion into private interests to determine whether the action of diverting a waterway which caused flooding to a wildlife management area was proper under the police powers of the government. 568 U.S. 23 (2012). With its analysis, the court looked to the principles of foreseeability, causation, and intention. The court determined that temporary takings are compensable, but each claim must be considered on a case-by-case basis, evaluating a variety of factors to determine whether eminent domain or police powers apply. *Id.* at 34.

In the instant case, the likelihood that the bomb could detonate was high, as the builder was unknown at the time, not because of Baker's military expertise. Though, Baker did have a background in explosives but, at the time officers responded to Petitioner's home this was not known to the bomb squad. Thus, the officers took extra precautions to make sure that those on the premises were securely away from any danger because the sophistication of the device was unknown at the time. For example, they set up a barricade to keep onlookers away from danger during the process of diffusing the bomb and used the energy tool to attempt to neutralize the threat.

While the officers did cause the detonation of the bomb planted by Baker, there was no intent on part of officers detonate the device. The officers knew there was a chance, that in

attempting to disrupt the detonator, the bomb may still explode but, the attempt to neutralize the threat was done with hopes of preventing a second explosion. The responding officers used all precautionary measures to prevent and/or limit further damage and used due care and diligence in their efforts. Like in *Ark. Game and Fish Comm 'n*, while the government may have caused the flooding, there was no intent to cause harm or damage behind their actions. *Id.* Balancing foreseeability, causation, and intent, this Court should hold that, as there was no intent to damage petitioner's property and actions were taken to prevent detonation, the officers acted appropriately under their police powers.

3. The Takings Clause of the Fifth Amendment does not apply to the Petitioner's claim.

The Court should determine that this case is an issue of police power, therefore, the Takings Clause should not apply. As stated by the Seventh Circuit in *Baker v. City of McKinney*, "The Takings Clause does not apply when property is retained or damaged as a result of the government's exercise of its authority pursuant to some power other than the power of eminent domain" *Baker v. City of McKinney*, 145 S. Ct. 11 (2024). When acting under its police powers, the government is not liable for a taking, except in instances where it has made the rule or regulation which state actors must follow. *Monell v. Department of Social Services*, discussed this rule, stating that a municipality may not be sued under § 1983 for torts committed by an employee, only when the execution of a government policy or rule, official or unofficial, inflicts the injury at hand. *Monell*, 436 U.S. 658, 694 (1978). The protocol that the officers were following does not fall under this category as it was not a practice mandated by the city. The use of the energetic tool that detonated the bomb was just that, a tool that may be employed by first responders should they choose to do so. The facts do not show that there was an official or unofficial policy which required that this tool be used in bomb response but only that it was left

to the discretion of the bomb squad to decide what actions to take. As previous decisions state, the government is not liable when a government employee commits a tortious act while on the job, only when the government has caused the injury. *Id.* at 694.

The actions taken by the Bomb Squad were not based on a government policy or custom created by lawmakers or city officials. Use of the energetic tool was a practice employed by the bomb squad based upon the experience and discretion of the officers in high stakes situations such as the one in this case. The decision to use the tool was not one made by lawmakers which required officers of the law to act in a specific manner when responding to bomb threats, but by first responders reacting to an active and on-going threat. This being the case, the government cannot be held responsible for the decisions made by the bomb squad during their response to the threat at Petitioner's home.

*B. The destruction of Petitioner's property does not constitute a compensable taking.*

1. Under the public-necessity doctrine, no compensation when the property is destroyed in a good-faith effort to prevent imminent public disaster.

The public-necessity doctrine provides an additional, independent basis for the dismissal of Petitioner's Takings Clause claim. This doctrine aligns with common law principles which exempt the government from liability when it acts in furtherance of the morals, safety, health, etc. of the public. Furthermore, the blunt language of the Fifth Amendment is not a comprehensive promise to make whole every person that suffers damages but acts as a safeguard against the abuse of government power by state agents. *United States v. Caltex (Philippines), Inc.*, 344 U.S. 149, 155 (1952).

The safety of the public overrides all considerations of private losses. *Id.* at 154. In *United States v. Caltex (Philippines), Inc.*, the United States Army destroyed waterfront terminal facilities in Manila (Philippines) owned by the plaintiffs to prevent the facilities from being

overtaken by Japanese troops for use in their own military efforts in World War II. *Id.* at 150-51. U.S. Army officials sent letters addressed to each of the oil companies, stating that that the depots were being requisitioned by the U.S. Army and, subsequently, the facilities were demolished to prevent the oil supplies from falling into enemy hands. *Id.* After the war concluded, Caltex demanded compensation for all property used or destroyed by the U.S. Army in the war efforts. *Id.* The oil company argued that the destruction of the oil depots created a right to fair compensation by the United States for what was destroyed during the war. *Id.* at 152. The court reversed and held that there was no constitutional right to compensation held by Caltex. *Id.* at 156. The court reasoned that it is a long-standing common law principles that in situation where danger is imminent, the government is authorized to destroy the property of some to protect the property and lives of many more. *Id.* at 154.

If the actions of police are necessary to ensure public safety, then the public-necessity doctrine applies, and plaintiffs are not entitled to compensation under the Takings Clause of the Fifth Amendment. *Baker v. City of McKinney*, 145 S. Ct. 11 (2024). In *Baker v. City of McKinney*, a fugitive kidnapped a teenage girl and took shelter in a home in which he had previously worked as a handyman. *Id.* Once police arrived, the fugitive told police that he intended to shoot his way out. *Id.* Police tried to draw the fugitive out by launching tear-gas grenades through the windows to cease the stand-off and protect the surrounding community. *Id.* When the tear-gas did not work, officers used explosive devices to break down the front and garage doors and bulldozed the fence surrounding the backyard of the home. *Id.* The damage to the home amounted to \$50,000. The explosions permanently maimed the homeowners' dog, the employment of the tear gas required that a hazardous materials team to remediate the home due to toxic gas, and left the home in unlivable and irreparable condition, destroying everything of

value to the owners. *Id.* The court reasoned that the actions of law enforcement were necessary because the destruction of the property was done to protect the surrounding public from an armed, dangerous individual. *Id.* at 12. The court held that the homeowner was not entitled to compensation as the destruction was a result of public necessity. *Id.* The court further held that, since the common law principles aligned with the lower court's decision, the homeowner's claim was without merit. The Fifth Circuit, compelled by history and precedent, adopted a narrower rule, holding that the Takings Clause does not demand compensation where property has been damaged during officers' response to an active emergency or in attempt to prevent imminent harm. *Id.*

In the present case, the Bomb Squad was required to act before the bomb could be detonated remotely or by an internal mechanism. Once the Bomb Squad secured the area, they used their expertise to create a course of action and deployed a robot to inspect the device. This is comparable the Chief Engineer in *Caltex* notifying that the depots were being requisitioned by the U.S. Army. Through the robot, the officers discovered that the explosive had a remote detonation mechanism and, because the maker of the bomb was not in custody, the device was uncontrollable. The destruction of the depots in *Caltex* is like the destruction in the present case because it was meant to serve a public need. To promote public safety, the bomb squad inspected the device, attempted to neutralize it, and, ultimately, detonated it, knowing that the area was secure and that those around were located a safe distance away from the device.

The properties in *Baker* and the current case both concern extensive destruction of private property by local officials but done to protect the public. In *Baker*, the court found that a means to an end in emergency circumstances is justified. The court in that case held that the destruction was valid because it was to protect the surrounding community. The same principle applies to the

present case because the detonation of the second explosive was a means to protect the public from an uncontrolled explosion at a time when the area was not secure and passersby could be placed in danger. Like the actions of police in *Baker*, the actions of law enforcement in the present case were necessary to prevent imminent harm to the community and, thus, justifiable under the public-necessity doctrine.

2. Petitioner does not satisfy the elements needed to prevail on a Takings Clause claim under the Fifth Amendment.

To prevail on a Takings Clause claim, a plaintiff must establish (1) that it had a protectable property interest and (2) that the government action constitutes a taking without just compensation. *e.spire Communs., Inc. v. N.M. Pub. Regulation Comm'n*, 392 F.3d 1204 (10th Cir. 2004). The destruction of the Petitioner's property in the case at hand was done to protect the surrounding public. While the facts of this case are terrible, when the government acts to protect public safety, it exercises its police power properly under the public-necessity doctrine, insulating it from liability in claims like Petitioner's. This is different from the government exercising its power of eminent domain where the government must make fair compensation for takings later converted for public use. As seen in *Lech v. Jackson*, when the intrusion into private interests is physical, as opposed to regulatory, the distinction between these two powers is dispositive. 791 F. App'x 711, 716-17 (10th Cir. 2019). The detonation of the device at the home of the Petitioner was done to protect the responding officers and surrounding community. The "taking" in the instant case was motivated by protecting the public. Thus, as officers were acting in furtherance of public safety, a legitimate government interest, the destruction of the residence cannot be considered a taking. Furthermore, since the property was not altered for pure public benefit, such as a park or community center – rather, to protect the community from near certain

harm – the Petitioner does not have a specific protectable property interest as required for such claims. *Bachmann v. United States*, 134 Fed. Cl. 694 (2017).

Therefore, because the Petitioner (1) does not have a specific protectable property interest and (2) the government action by the City of Laurenton is not a taking without just compensation, the elements needed to prevail on a Takings Clause claim under the Fifth Amendment are not satisfied by the claim at hand.

### CONCLUSION

The State-Created Danger Doctrine is not applicable to Petitioners’ substantive Due Process claim because it is not a clearly established right, and the claim falls short of the requirements for a claim using the doctrine brought under 42 U.S.C § 1983. The Fourteenth Amendment does protect citizens against danger posed by private actors, but against the abuse of government power. The text of the Constitution does not include any exception to the “no-duty rule” of the Fourteenth Amendment but, the Supreme Court has recognized an exception to substantive due process for custodial situations and created a bright-line rule for “special relationships”. The Court’s decision in *DeShaney* imposed an affirmative duty upon the government to protect citizens where their liberty has been restricted by the state. *DeShaney*, at 198-99. However, the *DeShaney* Court did not create a rule for the State-Created Danger Doctrine as an exception to the “no-duty rule” because it did not intend to create such a rule. The Court recognized that when state-created dangers exist, there may be an avenue for relief but left it in the hands of the circuits to accept or decline to accept such claims. Thus, it is within the discretion of this Court to accept or deny the doctrine as a method of relief, as protection by the government against violence enacted by private citizens is not a clearly established Constitutional right held by Petitioner.

For the State-Created Danger Doctrine to apply, a clearly established right must be violated. As law enforcement did not take affirmative action that increased or created danger of private violence to Petitioner by Mark Baker, they did not violate a clearly established right of the Petitioner. Their failure to inform of Baker's release was negligent but, his release complied with City police and was done with due diligence on part of law enforcement. Furthermore, the acts of law enforcement fell short of the "shocking to the conscience" threshold, as they did not act with malintent or reckless disregard for the safety of Petitioner or her son. Additionally, Petitioner was not in state custody, so there was no "special relationship" which imposed an affirmative duty upon the government to protect her against Mark Baker, causing her claim to fall short of the third factor of the patchwork-style test for the State-Created Danger Doctrine. Finally, as there was no foreseeable harm which was specific to Petitioner at the time of Baker's release, law enforcement cannot be held liable for his acts because they acted with due care before releasing him by searching him for weapons and removing him from the home. Officers could not have foreseen that Baker would go on to plant multiple explosives because of a mild domestic disturbance nor should they be deemed to have possessed knowledge about his level of knowledge regarding explosives because of a passing comment made by Petitioner at the scene. Petitioner's claim fails to meet the threshold created in other circuits for State-Created Danger claims. The Thirteenth Circuit has repeatedly declined to accept the State-Created Danger Doctrine, and, given the shortcomings of Petitioner's claim, the Court should again decline to accept the doctrine as an exception to substantive due process.

The loss that Petitioner endured at the hands of Mark Baker do not give rise to government liability under the Constitution as the Fifth Amendment does not require just compensation for destruction of property when it results from the exercise of police power. The



property destruction in this case occurred as a byproduct of state actors ensuring the protection of the public, not a conversion of private property for public benefit. The actions by law enforcement in the present case are justifiable under the public-necessity doctrine as such actions were necessary to ensure the health and safety of the surrounding community at the time of the bomb threat. Law enforcement had a duty to protect the surrounding community from the threat posed by the explosives at Petitioner's home and the destruction that followed was a consequence of that duty. The Bomb Squad's efforts to disrupt the explosive were not an abuse of power nor an unreasonable response to the threat at hand. The actions of law enforcement were a proper exercise of police power and do not constitute a compensable taking under the Takings Clause as the property was not destroyed or converted for public use or benefit. Thus, Petitioner's Takings Clause claim is moot because the destruction was justifiable and occurred during the exercise of police power.

Petitioner's claim is lacking on all fronts. Petitioner is not entitled to protection against harm from private actors and has failed to establish that the city and/or law enforcement created or increased the risk of harm posed to her at the time Baker was released from custody. The negligent actions of law enforcement cannot rise to the level of a Constitutional violation because they did not intend to deprive her of her life, liberty, or property. Further, the release of Mark Baker was done with due care and without reckless disregard for the safety of the Petitioner. Officers removed Baker from the home, took him to a secondary location, and searched his person for weapons. At no point did the responding officers have cause to search Baker's property for other weapons or have suspicions that he possessed explosives at the property and, thus, performed their duties with the requisite standard of care. The failure of

Petitioner to satisfy the requirements set out by other circuit courts is evidence that the State-Created Danger Doctrine should not apply to the present case.

As for the destruction of Petitioner's property, the damage to the residence is not a compensable taking under the Fifth Amendment as it was the result of public necessity. There was no malintent behind the actions of law enforcement nor was the property converted for public use. The Petitioner failed to establish that there was a government custom or policy that gave rise to the destruction, as the use of the energy tool was within the discretion of the Bomb Squad. Officers acted with due diligence in attempting to protect the public and avoid damage but, given the nature and sophistication of the device, the destruction was a side effect of protecting the larger public. The intrusion into the property interest held by petitioner was far outweighed by the protection of the surrounding public.

While the events of this case are tragic, if the Court were to accept the State-Created Danger Doctrine as a substantive due process exception and/or deem the destruction of Petitioner's residence a compensable taking, tort law would be forever changed. A decision by the Court for Petitioner would impose liability upon the state for the acts of individual state agents solely because the tortfeasor is employed by the government. The bar for § 1983 claims would be much too low, opening the government up to liability in cases of negligence or necessity where no constitutional violation has occurred. The government has no affirmative duty to protect non-custodial, private citizens from harm by private actors and, in certain circumstances, may intrude upon private interests for legitimate state interests, like protection of the public. Therefore, the Court should affirm the decision of the Thirteenth Circuit.

Respectfully submitted,  
Team 6  
Counsel for Respondent