No. 25-178

In the Supreme Court of the United States

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**

BRIEF FOR RESPONDENTS

Team 8
Counsel for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes and Regulations

Other Authorities

QUESTIONS PRESENTED

I. Whether the Fourteenth Amendment Due Process Clause imposes a new and expansive duty on state actors to affirmatively protect its citizens from preexisting private violence in non-custodial scenarios, while attaching liability for any effort to combat that violence.

II. Whether the Fifth Amendment Takings Clause requires compensation when property damage occurs incidentally during a mandated exercise of police power to mitigate imminent physical harm that threatens an entire community.

STATEMENT OF THE CASE

1. Factual Background

This case stems from the City of Laurenton and its Police Department's (collectively, "Laurenton") multi-day efforts to diffuse the ticking time bomb that was Mark Baker. On September 8, 2023, Laurenton received a 911 call from Ms. Jones, reporting that her intoxicated former boyfriend, Mark Baker, was threatening her and her ten-year-old son. R. at 2. Within minutes, Officers Trent and Williams arrived at Petittioner's home to assess the situation. R. at 2. Immediately, the officers noticed Baker's aggressive demeanor, which was inflamed by the fact that Ms. Jones called 911. R. at 2. The officers quickly removed Baker from the premises and arrested him on a separate outstanding domestic assault warrant. R. at 2. While Ms. Jones asked whether she and A.J. should also leave the premises, the officers told her that Baker would be "locked up until at least the morning." R. at 2.

While en route to detain Baker, the officers received news that the county jail population was over capacity. R. at 2. To comply with a mandatory city policy, which prohibits executing domestic warrants when the jail is overcrowded, the officers took Baker to his separately rented home, without notifying Ms. Jones. R. at 2. And since Ms. Jones told the officers that Baker owned weapons and had a background in explosives, the officers seized Baker's handgun as a precaution. *See* R. at 2. But before sunrise, Baker had transported two homemade bombs from his rental home's basement to Ms. Jones's home. R. at 2. Baker deliberately staged the first bomb as an Amazon package and placed it on Ms. Jones's front porch. R. at 2. Upon waking up, Ms. Jones brought the Amazon package inside, and her attempt to open the package triggered the bomb's detonation, resulting in severe injuries to Ms. Jones and A.J., and minor damage to the home. R. at 2-3.

After hearing the explosion, an alarmed neighbor dialed 911. R. at 3. Upon arrival, Laurenton immediately took action to stabilize Ms. Jones and A.J., given their severe injuries. R. at 3. Further, paramedics promptly transported them to the hospital to attempt to mitigate the harm Baker's actions caused. R. at 3. However, Laurenton did not stop there. Instead, Laurenton took it upon itself to search the premises to ensure no other threat existed to Ms. Jones's property as well as to the properties of Ms. Jones's fearful neighbors. R. at 3. In the course of that search, Laurenton located another package on her back porch. R. at 3. Unlike the first bomb, purposely disguised to deceive Ms. Jones, this package was far less conspicuous, requiring immediate assessment from the proper authorities: the Laurenton Police Department Bomb Squad. R. at 3.

When the Bomb Squad arrived, its first instinct was not to go right to the bomb, but rather to take protective measures for Laurenton constituents. R. at 3. It first secured the scene and ensured everyone remained at a safe distance before assessing the package. R. at 3. Following mandated protocol to determine the contents of the package, the Bomb Squad deployed an X-ray system, which confirmed the presence of a second, far more sophisticated bomb. R. at 3. Unlike the contact trigger of the first bomb, this bomb contained a remote detonation mechanism designed to evade disruption. R. at 3. Without knowing Baker's whereabouts, Laurenton declared the bomb uncontrollable. R. at 3. Out of options, Laurenton had to use an energetic tool to attempt to disrupt it, even if the chances of success were slim. R. at 3. Unfortunately, despite every effort Laurenton took to mitigate the harm Baker began, the attempt to disrupt the bomb ultimately failed, causing its detonation. R. at 3. Baker's malicious actions thus resulted in Ms. Jones' injuries, including $385,000 in property damage, an uninhabitable home, as well as additional costs for temporary housing and personal property loss. R. at 3.

2. Proceedings Below

Ms. Jones filed suit against Laurenton under 42 U.S.C. § 1983, alleging violations of the Fourteenth Amendment Due Process Clause and the Fifth Amendment Takings Clause. R. at 1, 4. After discovery, the District Court for the Eastern District of New Virginia granted summary judgment in Laurenton's favor on both claims. R. at 4. On November 14, 2025, the Court of Appeals for the Thirteenth Circuit affirmed on both grounds, emphasizing that the Due Process Clause rejects the affirmative duty to protect against private violence, and that the Takings Clause is not triggered by traditional exercises of police power resulting in property damage. R. at 5, 8, 12. The Supreme Court of the United States granted Ms. Jones's Petition for Writ of Certiorari on September 1, 2025. R. at 13.

SUMMARY OF THE ARGUMENT

For the first time in this Nation's history, this Court is asked to expand state liability to consume all emergency response efforts, which would drastically undermine the constitutional framework promulgated by the Fourteenth and Fifth Amendments.

I. Laurenton did not violate Ms. Jones's Substantive Due Process rights, as the right she seeks does not exist in this Court's precedent nor the Constitution. The Fourteenth Amendment's Due Process Clause exists to protect the *people* from the *state*, rather than the *people* from the *people*. For centuries, this Court has upheld the spirit and text of the Constitution as the Framers intended: freedom from a state's arbitrary exercise of power, and a promise of state sovereignty. Despite this, circuits have relied on one sentence of this Court's dictum, in one single case, to create a dangerous doctrine—the state-created danger doctrine—which now threatens to swallow independent state tort policies wholly. The circuit's hodgepodge tests render the doctrine unmanageable. This Court should renounce this undue expansion, leave the nationwide implications of rulemaking to Congress, and reject this doctrine.

Should this Court accept this expansion and create a new Substantive Due Process right, Laurenton's conduct is insufficient for liability to attach. While the accepting circuits employ hodgepodge tests, Laurenton's conduct falls short of the generally accepted elements. Here, even if Ms. Jones faced a specific danger, Laurenton did not affirmatively act to casually increase the preexisting danger in a conscience-shocking manner. And even if this Court accepts the lowest culpability standard—despite being renounced by precedent—Laurenton's conduct was negligent at worst, which is plainly insufficient for constitutional liability. Therefore, Laurenton's conduct remains constitutional even if this Court establishes a new right.

II. Laurenton's valid exercise of police power during an emergency response resulting in incidental property damage to Ms. Jones's property does not require compensation under the Fifth Amendment Takings Clause. First, the Takings Clause limits only a state's eminent domain authority, including when the state physically appropriates private property or otherwise regulates property use *for a state-authorized public purpose*. Damage resulting from a valid police power exercise to mitigate imminent physical harm, as here, is not a state-authorized initiative serving a broader public purpose. Instead, it serves as an incidental benefit to the public from law enforcement's duty to protect its citizens from that harm. Thus, any incidental public benefit becomes irrelevant when a specific private individual, like Ms. Jones here, becomes the direct beneficiary of the law enforcement efforts to mitigate harm. In such instances, no compensation is required, so as not to require compensation for any lawful and reasonable law enforcement acts that result in some damage aimed at enforcing the law and preventing harm, thus inherently benefiting the public. Such a result would severely subvert both the constitutional framework and this Court's history and tradition.

Second, even if Takings Clause scrutiny applies to traditional police power exercises to mitigate imminent physical harm, Laurenton still owes Ms. Jones no compensation because it acted out of necessity. Actual necessity demands no compensation under the Takings Clause because traditional common law permits rights to access private property when a grave threat to persons or property exists therein. As it cannot be seriously doubted that a bomb poses a grave threat not only to the property it is on but also to the surrounding persons and properties, Ms. Jones's compensation claim fails outright.

ARGUMENT

Laurenton's conduct did not violate the Fourteenth or Fifth Amendments; thus, Laurenton did not deprive Ms. Jones of any right secured by the Constitution. A state actor is not liable under Section 42 U.S.C. § 1983 unless it "subjects" a person, or "causes [that person] to be subjected . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. This Court emphatically recognizes that nothing in the Due Process Clause of the Fourteenth Amendment "requires the State to protect . . . its citizens against invasion by private actors." *See, e.g.*, *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989). Additionally, the traditional exercise of police power to abate imminent physical danger does not violate the Fifth Amendment, even in instances of property damage. *See, e.g.*, *Bennis v. Michigan*, 516 U.S. 442, 452 (1996); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160-61 (2021). Laurenton did not have an affirmative duty to protect Ms. Jones from Baker's private violent acts, nor did Laurenton's law enforcement response to abate the danger caused by those acts "take" her property in any recognized manner. Therefore, Ms. Jones has no cognizable claim under 42 U.S.C. § 1983 insofar as the Fifth and Fourteenth Amendments.

I. Laurenton's conduct did not deprive Ms. Jones of a Fourteenth Amendment right.

Laurenton did not violate Ms. Jones's Fourteenth Amendment Substantive Due Process Rights, as the Clause does not require the state to affirmatively protect its citizens against private violence. The Fourteenth Amendment Due Process Clause guarantees that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. And this Court consistently holds that "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *See, e.g.*, *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 197 (1989). Contrary to this longstanding precedent, many circuits have "indulge[d] the legal fiction that an act of private violence may deprive [a] victim of a constitutional guarantee." *Gray v. Univ. of Colo. Hosp. Auth.*, 672 F.3d 909, 927 (10th Cir. 2012).

But even if this Court accepts the legal fiction that is the State-Created Danger Doctrine (the "Doctrine") and dramatically expands constitutional state duties, Laurenton still did not violate Ms. Jones's rights. Instead, its conduct is insufficient under the Doctrine's general test, as it did not affirmatively act to increase a risk of private violence in a manner that shocked the conscience. And while "[i]t would be inhumane not to feel a sense of outrage . . . or a sense of deep sympathy," this Court's "question is one of federal law, not one of sympathy." *Rivera v. Rhode Island*, 402 F.3d 27, 30 (1st Cir. 2005). Thus, Laurenton's conduct was constitutional.

A. Laurenton did not have a constitutional duty to protect Ms. Jones from private violence, as this Court does not—and should not—recognize the state-created danger doctrine.

This Court should emphatically reject the Doctrine as it violates the Constitution, undermines precedent, and its judicial acceptance "unquestionably involves policymaking rather than neutral legal analysis." *United States v. Carlton*, 512 U.S. 26, 41 (1994) (O'Connor, J., concurring). For centuries, this Court has held "that a State's failure to protect an individual

against private violence simply does not constitute a violation of the Due Process Clause." *DeShaney*, 489 U.S. at 197. While neither precedent nor the Constitution's Framers demand a state to protect its citizens from private harm, ten circuits have misread a single sentence of dictum in one case and required just that. *Id.* at 195-96; *but see Irish v. Fowler*, 979 F.3d 65, 73-74 (1st Cir. 2020).[1] This Court should reject this Doctrine, guide the circuits back to well-established principles, and leave policymaking to local state legislatures.

1. The state-created danger doctrine contravenes the spirit and text of the Constitution.

The Doctrine contradicts the Fourteenth Amendment as it undermines the negative rights model and tramples on federalism. *See, e.g.*, *Shelby County v. Holder*, 570 U.S. 529, 543 (2013); *DeShaney*, 489 U.S. at 195-96. The Due Process Clause acts "as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security." *DeShaney*, 489 U.S. at 195. The Clause's "language cannot fairly be extended to impose an *affirmative* obligation on the State" to protect individuals from private violence, nor does its "history support such an expansive reading of the constitutional text." *Id.* (emphasis added). If this Court accepts the Doctrine, it will fundamentally undermine a spirit recognized in the Constitution "for over a century." *Murguia v. Langdon*, 73 F.4th 1103, 1107-08 (9th Cir. 2023) (en banc) (Bumatay, J., dissenting).

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[1] Each circuit, except the Fifth and Eleventh Circuits, accept a variation of this Doctrine. *See, e.g.*, *Irish v. Fowler*, 979 F.3d 65, 74 (1st Cir. 2020); *Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, 577 F.3d 415, 428 (2d Cir. 2009); *Sanford v. Stiles*, 456 F.3d 298, 304-05 (3d Cir. 2006); *Doe v. Rosa*, 759 F.3d 429, 439 (4th Cir. 2015); *Doe v. Jackson Loc. Sch. Dist. Bd. of Educ.*, 954 F.3d 925, 932 (6th Cir. 2020); *D.S. v. E. 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. Ridgefield City*, 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, 651-52 (D.C. Cir. 2001); *but see Fisher v. Moore*, 73 F.4th 367, 372 (5th Cir. 2023) (stating it has never recognized the Doctrine); *Waddell v. Hemerson*, 329 F.3d 1300, 1305-06 (11th Cir. 2003) (neither explicitly accepting nor rejecting the Doctrine).

Moreover, the Doctrine destroys the Constitution's "delicate balance between federal and state sovereigns," which the Framers considered essential for a functioning society. *See, e.g.*, *Wyeth v. Levine*, 555 U.S. 555, 584 (2009) (Breyer, J., concurring) (citation modified); *see also The Federalist No.* 45, at 237-38 (James Madison) (Gideon ed., 2001). The Tenth Amendment announces that "[t]he powers not delegated to the [federal government] . . . are reserved to the States," and sovereign authority over tort law is paramount. U.S. Const. amend. X; *The Federalist No.* 45, at 237-38 (James Madison) (Gideon ed., 2001).

While "the Constitution generally leaves the regulation of torts committed by public officials to the States," this Doctrine "has evolved along a course of repeated expansion—so much so that the Constitution now is the 'font of tort law' the Court has told us to avoid." *Murguia*, 73 F.4th at 1108, 1110 (en banc) (Bumatay, J., dissenting) (quoting *Paul v. Davis*, 424 U.S. 693, 701 (1976)). If this Court accepts the Doctrine, it must decide which test should govern state actors nationwide. But imposing a one-size-fits-all rule throws federalist principles to the wayside, squashes independent tort policies, and prevents local leaders from drafting state-specific legislation. *See DeShaney*, 489 U.S. at 203.

At its core, the Due Process Clause exists to "secure the individual from the arbitrary exercise of the powers of the government," not "to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society." *Daniels v. Williams*, 474 U.S. 327, 331-32 (1986) (citation modified); *Gray*, 672 F.3d at 919 (noting the Doctrine's "osmotic, ill-considered tendency to invade the province of both common law negligence and state tort law."). And to permit a tort in sheep's clothing to be a Constitutional deprivation "would trivialize the centuries-old principle of due process law." *Daniels*, 474 U.S. at 332.

2. This Court's precedent rejects the state-created danger doctrine.

This Court's precedent refutes the Doctrine, and continuously holds "that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests." *DeShaney*, 489 U.S. at 196; *Harris v. McRae*, 448 U.S. 297, 317-18 (1980). Despite this general no-duty rule, in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989), this Court explained one limited exception, namely, a custodial relationship. *DeShaney*, 489 U.S. at 197, 199-200. A custodial relationship is the sole exception to the no-duty rule, and only arises when the state's "affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself." *Id.* at 199-200. Therefore, the state must "assume some responsibility for [the individual's] safety and general well-being." *Id.* at 200. However, this exception only applies when a state takes a citizen into custody "through incarceration, institutionalization, or other similar restraint of personal liberty." *Id.* at 199-200; *see also Youngberg v. Romeo*, 457 U.S. 307, 317 (1982) (holding a duty arises when mental patients are involuntarily committed); *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) (holding a duty arises when a citizen in police custody requires medical care).

In *DeShaney*, this Court heard a devastating scenario where a father brutally beat his four-year-old son and left him with permanent brain damage. *DeShaney*, 489 U.S. at 191-93. However, because it was the boy's father—not the State—who caused the injuries, this Court rejected state liability, as the Due Process Clause exists "to protect the people from the State" rather "from each other." *Id.* at 196. However, in dictum, this Court stated "[w]hile the State may have been aware of the dangers that [the boy] faced in the free world, *it played no part in their creation, nor did it do anything to render him any more vulnerable to them*." *Id.* at 201

(emphasis added). As a result, many circuits have wrenched the sentence out of context and invented the new Doctrine. *See, e.g.*, *Irish*, 979 F.3d at 73-74.

This Doctrine is an alarming expansion of the no-duty rule, as it holds state actors liable for creating and enhancing private dangers without requiring a custodial relationship. *See id.* at 73-74. However, "[t]wo sentences from *DeShaney* are not enough to disrupt the constitutional landscape." *Murguia*, 73 F.4th at 1110 (en banc) (Bumatay, J., dissenting); R. at 6. And even if this Court intended to disrupt the landscape in some way, "it's doubtful that [this] Court meant to fashion a novel theory of substantive due process liability through such incidental language." *Murguia*, 73 F.4th at 1110 (en banc) (Bumatay, J., dissenting). Instead, *DeShaney affirmed* the no-duty rule, and considering the opinion in full, its dictum is best understood as an explanation for why the custodial "exception did not apply." *Id.* at 1110 (en banc) (Bumatay, J., dissenting); *see DeShaney*, 489 U.S. at 197.

3. This Court's acceptance will violate separation of powers principles and replace judicial neutrality with legislative policymaking.

If this Court accepts the Doctrine, it will have to create a single standard for state actors nationwide, and therefore engage in the kind of judicial policymaking that is antithetical to the separation of powers. First, not all circuits accept this Doctrine. *Keller v. Fleming*, 952 F.3d 216, 227 (5th Cir. 2020). Second, the accepting circuits lack harmony on the bench and issue splintered opinions with discordant rationale. *Johnson v. City of Phila.*, 975 F.3d 394, 404-05 (3d Cir. 2020); *id.* at 404-05 (Matey, J., concurring); *id.* at 405 (Porter, J., concurring). Third, the accepting circuits are at odds with one another, as each "has come up with a different test for when it should apply." *Murguia*, 73 F.4th at 1112-13 (en banc) (Bumatay, J., dissenting). Finally, *even when the circuits agree on a test*, they diverge over what conduct satisfies each element,

causing inconsistent and contradictory results across the circuits. *See e.g.*, *Doe v. Covington Cnty. Sch. Dist.*, 675 F.3d 849, 871 (5th Cir. 2012) (en banc) (Higginson, J., concurring).

While this Court may be tempted to establish a uniform rule, "[t]he picking and choosing among various rights to be accorded 'substantive due process' protection . . . unquestionably involves policymaking rather than neutral legal analysis." *Carlton*, 512 U.S. at 41 (O'Connor, J., concurring). In fact, this "Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in [these] uncharted area[s] are scarce and open-ended." *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). So, when this Court does rely on judicial interpretation to expand the Framers' intent, it requires that the fundamental right is "objectively, deeply rooted in this Nation's history and tradition." *Wash. v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

However, the Nation's history shows the Framers' intent to protect against oppressive and egregious *state* conduct, not "to ensure that those interests do not come to harm through other means." *See, e.g.*, *DeShaney*, 489 U.S. at 195. Now, judicial restraint tugs at this Court and reminds it to "exercise the utmost care" when asked to establish a new right, "lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court." *Collins*, 503 U.S. at 125; *Glucksberg*, 521 U.S. at 720. And just "one look at [this Doctrine's] variations is enough to make anybody question whether we've really exercised the utmost care . . . ." *Murguia*, 73 F.4th at 1112 (en banc) (Bumatay, J. Dissenting) (citation modified). Accordingly, this Court should reject the Doctrine.

B. Should this Court accept the state-created danger doctrine, Laurenton's conduct falls short of the circuits' test for liability.

Even if this Court adopts the Doctrine's uniformly recognized elements, Laurenton's conduct remains constitutional. Constitutional liability only attaches when a plaintiff can prove

each element: (i) the state acted affirmatively to create or increase a danger, (ii) the state's action caused the plaintiff's injury, (iii) the state's conduct shocks the conscience, and (iv) the danger was specific to the plaintiff. *See, e.g.*, *Irish*, 979 F.3d at 73-74. Even if Ms. Jones faced a specific danger, Laurenton's conduct was insufficient under the remaining elements.

1. Laurenton did not affirmatively act to create or increase the risk of private danger.

Laurenton did not take affirmative action and therefore could not have created or increased a risk of private danger. The Constitution does not "impose an affirmative obligation on the State" to protect citizens from private violence; therefore, "a plaintiff must show that the state actor created or increased the risk of private danger, and did so directly through affirmative acts, not merely through inaction or omissions." *See, e.g.*, *DeShaney*, 489 U.S. at 191, 195 (holding that inaction is insufficient in § 1983 claims); *Doe v. Rosa*, 795 F.3d 429, 439 (4th Cir. 2015). Ms. Jones contends that Laurenton affirmatively increased her vulnerability to private violence with three distinct acts. *See* R. at 2-3. But each alleged action was mere *inaction*, and "the absence of an affirmative act by the state . . . is fatal to the claim." *See, e.g.*, *Ramos-Pinero v. Puerto Rico*, 453 F.3d 48, 55 n.9 (1st Cir. 2006). While Ms. Jones's injuries are tragic, the state's conduct failed to meet the standard for constitutional liability. *Burella v. City of Phila.*, 501 F.3d 134, 147-48 (3d Cir. 2007) (holding that inaction is "deficient as a matter of law").

First, Ms. Jones contends that Laurenton affirmatively increased her vulnerability to danger by telling her that Baker would be "locked up until at least the morning." R. at 2. However, the circuits hold that "assurances of protection from the State do not constitute affirmative conduct sufficient to invoke . . . constitutional liability." *See e.g.*, *Gray*, 672 F.3d at 925. For example, in *Pinder v. Johnson*, a state officer arrested the plaintiff's former boyfriend, Pittman, during a domestic disturbance, and despite the officer's assurances "that Pittman would

be locked up overnight," they released him that night without alerting the plaintiff. *Pinder v. Johnson*, 54 F.3d 1169, 1172 (4th Cir. 1995) (en banc). Relying on the officer's promises, the plaintiff returned to work that evening, and sadly, upon release, Pittman set her home on fire and killed her three children sleeping inside. *Id.* at 1172 (en banc). Notwithstanding these brutal facts, the court found that the case was "purely an omission claim" based on a promise, thus rejecting state liability. *Id.* at 1174-76 (en banc). Like *Pinder*, Laurenton's promise that Baker would remain in jail overnight constitutes an omission, not an affirmative act.

But even if Laurenton's promise constitutes an affirmative act, liability *still* would not attach, as a promise only enhances danger when a custodial relationship exists. An affirmative duty arises "not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf." *DeShaney*, 489 U.S. at 200; *Rivera*, 402 F.3d at 38. Therefore, a "state's promises, whether false or merely unkept," does not constitute a deprivation unless the state has forced the citizen, "against [their] will, to become dependent on it." *Rivera*, 402 F.3d at 38. Here, Ms. Jones chose—on her own free will—to stay at home that night and to open the disguised package. *See* R. at 2; *Pinder*, 54 F.3d at 1175 (rejecting state liability, despite tragedy, when plaintiff did not meet the custodial exception). Therefore, "providing [Ms. Jones] with false assurances of protection upon which she relied" did not trigger the affirmative duty to protect. *Rivera*, 402 F.3d at 37.

Second, Ms. Jones contends that Laurenton affirmatively increased her vulnerability by returning Baker to his home rather than arresting him on an outstanding warrant. *See* R. at 2-3. However, the "failure to incarcerate" does not constitute an affirmative act. *Pinder*, 54 F.3d at 1175; *Waddell v. Hemerson*, 329 F.3d 1300, 1306-07 (11th Cir. 2003) (finding no due process

right to be protected from an individual's release from confinement). Even though the officers knew Baker had other weapons—*even if they knew his subsequent plan with them*—liability would not attach, as "[i]t is not enough to allege that a government actor failed to protect an individual from a known danger of bodily harm or failed to warn the individual of that danger." *See, e.g.*, *Lombardi v. Whitman*, 485 F.3d 73, 79 (2d Cir. 2007); *see also Johnson v. City of Biddeford*, 92 F.4th 367, 378 (1st Cir. 2024) (holding that an officer's failure to arrest or even check for accessible weapons was not an affirmative act); R. at 2.

Third and finally, Ms. Jones contends that Laurenton affirmatively increased her vulnerability by failing to inform her of Baker's released." R. at 2. But a state's failure "to warn the individual of [a] danger" is plainly insufficient for liability, as "inaction by the state in the face of a known danger is not enough to trigger [an] obligation." *See, e.g.*, *Lombardi*, 485 F.3d at 79; *Reed v. Gardner*, 986 F.2d 1122, 1125 (7th Cir. 1993). Instead, passive knowledge or "merely standing by when [the state] could have acted to prevent a tragedy" constitutes *inaction*, and absent a custodial relationship, is deficient. *See e.g.*, *Pinder*, 54 F.3d at 1174-75; *see also Windle v. City of Marion*, 321 F.3d 658, 661-62 (7th Cir. 2003) (rejecting liability when a police officer failed to assist, despite knowing the teacher was molesting their minor student). Because there is no right "to be protected by the state against being murdered by criminals or madmen," Laurenton's failure "to protect [Ms. Jones] against such predators . . . does not violate the due process clause." *Bowers v. De Vito*, 686 F.2d 616, 618 (7th Cir. 1982).

Above all, this Court must remember "[i]n a creation of risk situation, where the ultimate harm is caused by a third party, [it] must be careful to distinguish between conventional torts and constitutional violations, as well as between state inaction and action." *See, e.g.*, *Soto v. Flores*,

103 F.3d 1056, 1064 (1st Cir. 1997). And here, it was Baker's affirmative acts—not the State's—that caused Ms. Jones's injuries.

2. Laurenton did not cause Ms. Jones's injuries.

Laurenton's conduct was insufficient under the Doctrine's causal requirement, as it was Baker's conduct—not Laurenton's—that set the ticking time bomb in motion. When a state *enhances* rather than *creates* a danger, causation is much harder to prove. *Rivera*, 402 F.3d at 34. And since "an increased risk is not itself a deprivation," liability only attaches when the "harm ultimately caused was a foreseeable and a fairly direct result of the state's actions," otherwise, liability would attach despite remote state action. *See, e.g.*, *id.* at 37-38; *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 908 (3d Cir. 1997). And here, Laurenton's actions were far too remote.

A causal chain breaks when state actors merely return citizens to a preexisting danger. *See, e.g.*, *Stiles v. Grainger County*, 819 F.3d 834, 855 (6th Cir. 2016). Here, the danger to Ms. Jones existed long before Laurenton acted, and an officer who "affirmatively return[s] a victim to a preexisting situation of danger does not create or increase the victim's risk of harm." *See, e.g.*, *id.* at 855; *DeShaney*, 489 U.S. at 191, 195. Instead, to satisfy the causal requirement, a state must use its "authority to create an opportunity that would not otherwise have existed for the third party's crime to occur." *Johnson v. Dallas Indep. Sch. Dist.*, 38 F.3d 198, 201 (5th Cir. 1994). However, Baker was intoxicated, angry, and threatening Ms. Jones long before she called Laurenton. R. at 2.

Moreover, the Sixth Circuit rejected liability when a perpetrator "had a backpack containing a gun before [a] meeting, and afterwards" the state returned the "backpack containing the same gun," as the state simply returned the plaintiff to a preexisting danger. *Franz v. Oxford Cmty. Sch. Dist.*, 132 F.4th 447, 451 (6th Cir. 2025). Likewise, Baker retrieved two homemade bombs from his basement that were *already built and constructed*. R. at 2; *Franz*, 132 F.4th at

451 (rejecting liability despite returning a weapon to the perpetrator, because it "put the plaintiffs 'in no worse position'") (quoting *DeShaney*, 489 U.S. at 201). Laurenton did not cause this injury; instead, it was Baker who set the ticking time bomb in motion.

Furthermore, Ms. Jones's injuries occurred the morning after the officers returned Baker to his home. *See* R. at 2. Here, Laurenton's actions were "separated from the ultimate harm by a lengthy period of time and intervening forces and actions," and the causal link was destroyed. *See, e.g.*, *Henry v. City of Erie*, 728 F.3d 275, 285 (3d Cir. 2013). And finally, it was Ms. Jones, herself—not Laurenton—who brought the disguised bomb inside and triggered its detonation. R. at 2-3. While Laurenton sadly returned Ms. Jones to a preexisting danger, tragedy is insufficient for causation. *Gray*, 672 F.3d at 926 (finding act predicated on police policies as "too remote to establish the necessary causal link between the danger to the victim and the resulting harm.").

3. Laurenton's conduct did not "shock the conscience."

Laurenton's conduct falls short of this Court's culpability requirement, as this Court permits "only the most egregious official conduct" that shocks the conscience to establish a substantive due process claim. *See, e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 846-48, 853 (1998) (describing requisite conduct as brutal, offensive, malicious, and sadistic). And because malicious and sadistic *state conduct* is at issue, the analysis "must focus not on what will typically be egregious misconduct by a *private party*, but on the *state action* that increased the risk of that misconduct." *See, e.g.*, *Estate of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 494 (6th Cir. 2019) (Murphy, J., concurring).

Laurenton's conduct falls short of this Court's extremely high bar for conscience-shocking behavior. Circuits find conscience-shocking conduct when officers conspire and give a "9 mm Glock handgun" to an individual and order them to shoot a citizen. *Hemphill v. Schott*,

141 F.3d 412, 419 (2d Cir. 1998). But here, the officers arrived at Ms. Jones's home within minutes, listened to her worries, swiftly removed Baker from the premises, and seized Baker's gun as a precautionary measure. R. at 2. The officer's conduct was not malicious, sadistic, or done with the intent to injure. While they returned Baker to his apartment, "officers cannot be expected to make an arrest . . . in response to every complaint," and Laurenton's policy *prohibited them* from taking such action. *See, e.g.*, *Villanueva v. City of Scottsbluff*, 779 F.3d 507, 513 (8th Cir. 2015); R. at 2. Instead, it was Baker's conduct that was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *See, e.g.*, *Lewis*, 523 U.S. at 847 n.8.

While deliberate indifference is sufficient in custody settings, this Court has never found it sufficient "in a non-custodial context." *Waldron v. Spicher*, 954 F.3d 1297, 1310 (11th Cir. 2020).[2] But even if this Court accepts this low standard, circuits have "never suggested that failing to arrest can be rendered actionable simply by labeling such failure deliberate indifference." *Welch v. City of Biddeford Police Dep't*, 12 F.4th 70, 79 (1st Cir. 2021) (Kayatta, J., dissenting) (stating to "conclude otherwise would be to overrule *DeShaney*."). Instead, an officer's "failure to arrest . . . potentially support[s] a negligence suit but not a federal claim." *Id.* at 80 (Kayatta, J., dissenting); *DeShaney*, 489 US. at 202 (stating the Due Process Clause "does not transform every tort committed by a state actor into a constitutional violation."). Here, the officers were negligent, at worst, and this Court holds that negligence is "categorically beneath

[2] Deliberate indifference requires state actors to "know of and disregard an excessive—that is, an extremely great—risk to the victim's health or safety." *See, e.g.*, *Waddell*, 329 F.3d at 1306. While the Ninth Circuit—and only the Ninth Circuit—permits this deficient standard, negligence is far below it. *Kennedy v. Ridgefield City*, 439 F.3d 1055, 1064-65 (9th Cir. 2006); *Negligence*, *Black's Law Dictionary* (12th ed. 2024) (defining negligence as the "failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.").

the threshold of constitutional due process." *See, e.g.*, *Lewis*, 523 U.S. at 849. Therefore, Laurenton did not violate Ms. Jones's Fourteenth Amendment Substantive Due Process rights, even if this Court accepts the Doctrine. *See, e.g.*, *id.* at 849.

II. Laurenton's valid police power exercise to abate imminent harm does not entitle Ms. Jones to compensation under the Takings Clause.

Laurenton's law enforcement response, designed to mitigate imminent physical danger, does not trigger Fifth Amendment Takings Clause scrutiny. The Fifth Amendment, applicable to the States through the Fourteenth Amendment, guarantees that private property shall not be taken *for public use* without just compensation. *See* U.S. Const. amend. V. (emphasis added). "The Fifth Amendment's guarantee . . . was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). However, "the government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain." *Bennis v. Michigan*, 516 U.S. 442, 452 (1996). Further, "many government-authorized physical invasions will not amount to takings" when imminent peril necessitates property destruction. *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160-61 (2021); *Baker v. City of McKinney, Texas*, 145 S. Ct. 11, 12 (2024) (Sotomayor, J., statement concurring in denial of certiorari). In this case, Laurenton exercised its traditional police power, not its eminent domain power, to address an imminent physical threat posed by a bomb, thereby not implicating the Takings Clause. However, even assuming that the Takings Clause reaches traditional police powers, Laurenton's efforts to control an otherwise uncontrollable bomb amounted to actual necessity, thus eliminating the compensation requirement.

A. Laurenton acted pursuant to an exercise of governmental authority apart from its eminent domain authority; thus, Laurenton did not effect a compensable taking.

Laurenton's actions fall within its traditional state police power, not its eminent domain power, thus not implicating the Fifth Amendment. This Court recognizes two eminent domain power categories: physical and regulatory appropriations for some public purpose. *See Cedar Point Nursery*, 594 U.S. at 147-49. Physical takings require the government to appropriate public property for itself or a third party, and they justify compensation categorically. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982). However, "[d]ifferent rules apply to State laws that merely restrict how land is used. A use restriction that is 'reasonably necessary to the effectuation of a substantial government purpose' is not a taking unless it saps too much of the property's value or frustrates the owner's investment-backed expectations." *Sheetz v. County of El Dorado, California*, 601 U.S. 267, 274 (2024) (quoting *Penn Cent. Trans. Co. v. New York City*, 438 U.S. 104, 123 (1978)); *see also Cedar Point Nursery*, 594 U.S. at 149 (recognizing that a regulation may effect a physical taking). Because the Takings Clause's application depends on history and precedent, the Takings Clause does not scrutinize property effects resulting from a governmental exercise of authority implicating neither recognized category. *See Tyler v. Hennepin County*, 598 U.S. 631, 637-44 (2023); *Bennis*, 516 U.S. at 452; *see, e.g.*, *Nat'l Bd. of Young Men's Christian Ass'ns v. United States*, 395 U.S. 85, 92 (1969) (holding that the government owes no compensation when damage occurs during an attempt to protect property). Therefore, Laurenton's traditional police power encompasses emergency responses that neither appropriated nor regulated Ms. Smith's property and thus falls outside the Fifth Amendment's scope.

1. Laurenton's actions implicated only its traditional police power to respond to emergent situations, not its regulatory police power.

The Fifth Amendment Takings Clause does not limit traditional police power exercises outside the regulatory context. Fundamentally, "[t]he power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of the residents cannot be doubted." *Thornhill v. Alabama*, 310 U.S. 88, 105 (1940); *see also Berman v. Parker*, 348 U.S. 26, 32 (1954). Such duty falls under a State's "police power," subject only to constitutional limits. *See Panhandle E. Pipe Line Co. v. State Highway Comm'n of Kansas*, 294 U.S. 613, 619 (1935). As interpreted, the Fifth Amendment limits only a state's eminent domain power, not its traditional police power to prevent imminent harm. *See Cedar Point Nursery*, 594 U.S. at 147-149.

While this Court refers to the term "police power" casually in the Fifth Amendment context, this Court has never recognized a crossover between a state's eminent domain power and its police power except in the regulatory context. *See Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 240 (1984) ("There is . . . a role for courts to play in reviewing a legislature's judgment . . . *when the eminent domain power is equated with the police power*." (emphasis added)); *see also Baker*, 145 S. Ct. at 13 (Sotomayor, J., statement concurring in denial of certiorari) (noting that this Court never addressed police power in the law enforcement context for Takings Clause purposes). That is, when the state either imposes a formal law or considers and authorizes land-use restrictions that go "too far." *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *see, e.g.*, *Penn Cent. Transp. Co.*, 438 U.S. at 108-09; *Loretto*, 458 U.S. at 421. When evaluating a regulatory takings claim, a compensation claim depends on an analysis of the deliberated legislative judgment behind the regulation because "the legislature, not the judiciary,

is the main guardian of the public needs to be served by social legislation." *Berman*, 348 U.S. at 32; *see Penn Cent. Transp. Co.*, 438 U.S. at 126.

However, a state's police power to mitigate imminent harm involves no deliberated legislative judgment. Unlike the time afforded to carefully planned governmental projects, law enforcement cannot abandon its duty to act promptly to abate imminent physical danger by planning with the state instead. *See United States v. Caltex, Inc.*, 344 U.S. 149, 154 (1952) (holding that "the safety of the state . . . overrides all considerations of private loss" in instances involving imminent peril); *Nat'l Amusements Inc. v. Borough of Palmyra*, 716 F.3d 57, 63 (3d Cir. 2013). As such, any "deliberation" in assessing imminent physical danger presented by another party does no more than prevent that party from realizing some strategic value that the situation presents. *See Caltex, Inc.*, 344 U.S. at 155. Because deliberation in abating imminent danger results from prompt law enforcement judgment, not from deliberated legislative judgment, regulatory takings jurisprudence has no dominion. *See Midkiff*, 467 U.S. at 240.

Accordingly, the duty to protect constituents from physical harm overrides the compensation requirement. *See Nat'l Amusements Inc.*, 716 F.3d at 63. For example, in *National Amusements Inc.*, the borough closed an open-air flea market that posed safety concerns posed by thirty-year-old unexploded munitions left behind from when the site operated as a weapons testing facility. *See id.* at 60-61. The Court of Appeals for the Third Circuit quickly dismissed that claim, stating: "[i]t is difficult to imagine an act closer to the heartland of a state's traditional police power than abating the danger posed by unexploded artillery shells." *Id.* at 63. On that basis, the court held that the closure constituted a valid police power exercise, which did not require compensation, even without an imminent threat. *Id.*

So, too, here. Like *National Amusements Inc.*, Laurenton's prompt mitigation efforts corresponded to an unexploded explosive device. *See* R. at 2-3; *Nat'l Amusements Inc.*, 716 F.3d at 60. However, unlike in *National Amusements Inc.*, the bomb here presented an imminent detonation threat given the first bomb's detonation and Baker's unknown whereabouts, rendering a lengthy clear-out measure for the entire neighborhood impossible. *See* R. at 2-3; *Nat'l Amusements Inc.*, 716 F.3d at 61. Thus, Laurenton's police power exercise to prevent harm posed by unexploded explosive devices does not require just compensation. *See Nat'l Amusements Inc.*, 716 F.3d at 61.

Consequently, actions pursuant to traditional police power exercises cannot fall within Takings Clause scrutiny without otherwise undermining the constitutional framework. *See, e.g.*, *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1154 (Fed. Cir. 2008) (analyzing the Takings Clause's inapplicability when no due process violation existed). While the term "police power" has no fruitful bounds, it may not exceed what the state *reasonably* deems prejudicial to the general welfare. *Berman*, 348 U.S. at 32; *Mugler v. Kansas*, 123 U.S. 623, 663 (1887). Because the Takings Clause may only evaluate *regulatory* police power, quick-step state law enforcement measures that affect property must instead be subject to the reasonableness analyses found elsewhere, namely in the Fourth Amendment and Due Process Clauses. *See Lowther v. United States*, 480 F.2d 1031, 1033-34 (10th Cir. 1973) (holding that when the government destroys private property without authority to do it, it acts contrary to the due process clause); *cf. United States v. Urban*, 710 F.2d 276, 279 (6th Cir. 1983) (holding bomb squad "render safe" operations eminently reasonable under the Fourth Amendment). If condensed into an undifferentiated whole, a proper Fourth Amendment police action would trigger the Fifth Amendment in any instance resulting in property damage that also incidentally benefits the

public, which undermines consistent findings to the contrary. *See United States v. Ramirez*, 523 U.S. 65, 69-70 (1998); *Cedar Point Nursery*, 594 U.S. at 161; *Nat'l Bd. of Y.M.C.A.*, 395 U.S. at 92; *AmeriSource Corp.*, 525 F.3d at 1154.

Here, Laurenton's actions did not involve its regulatory police power, and thus cannot trigger compensation under the Takings Clause. Laurenton responded to a 911 call from a neighbor, who reported an explosion on Ms. Jones's property. R. at 3. The 911 call immediately triggered Laurenton's duty pursuant to its traditional police power to act promptly to protect not only Ms. Jones's property, but also the individuals residing in the same neighborhood. *See Nat'l Amusements Inc.*, 716 F.3d at 61; *Berman*, 348 U.S. at 32. Nothing in the record indicates that Laurenton hesitated in its initiative to instead carefully formulate a plan boasting New Virginia's judgment as to what public benefit would justify the encroachment. Instead, Laurenton's bomb squad's prompt judgment ensured that Baker could not realize the situation's strategic value. R. at 3; *see also Caltex, Inc.*, 344 U.S. at 155. Baker had complete control in the moment, and the only means Laurenton had to perform its duty to the public was to attempt to disrupt the bomb while prioritizing safety as much as possible. *See* R. at 3. Therefore, any public benefit Laurenton's constituents realized resulted from its duty to promptly abate danger, rather than from a state-authorized contemplation.[3] *Cf. Pennsylvania Coal Co.*, 260 U.S. at 415; *Loretto*, 458 U.S. at 421. Thus, Laurenton's actions lie beyond the Taking Clause's grasp, and demand analysis elsewhere. *See Bennis*, 516 U.S. at 446-52; *AmeriSource Corp.*, 525 F.3d at 1154-55.

[3] While police protocols guided Laurenton, nothing in the record indicates that the state authorized those protocols after careful deliberation. *Cf.* 34 U.S.C § 10441 (noting an optional program to incentivize federal and state intervention when forming police protocol).

2. Nothing in this Court's history or tradition grants the Takings Clause control over prompt law enforcement action to address imminent public harm.

Regardless of constitutional framework implications, subjecting prompt law enforcement responses to address imminent physical danger subverts this Court's history and precedent. History and precedent play a central role in defining the Takings Clause's scope. *See Tyler*, 598 U.S. at 637-44. While recent jurisprudence expanded eminent domain to include regulatory police power, this Court's precedent, dating back over one hundred years, maintains a clear distinction between governmental authority exercises for law enforcement purposes and eminent domain authority. *See, e.g.*, *Chicago, B. & Q. Ry. Co. v. Illinois*, 200 U.S. 561, 593–94 (1906); *Bennis*, 516 U.S. at 452-53 (holding that seventy-five years of tradition dictates that property affected through a state's effort to combat illegal activity evades the compensation requirement); *Hurtado v. United States*, 410 U.S. 578, 588 (1973) ("The Fifth Amendment does not require that the government pay for performance of a public duty that is already owed."); *Cedar Point Nursery*, 594 U.S. at 161 (stating that "government searches that are consistent with the Fourth Amendment cannot be said to take any property rights from landowners").

Notably, "where . . . the private party is the particular intended beneficiary of the governmental activity, fairness and justice do not require that losses which may result from that activity be borne by the public as a whole, even though the activity may also be intended to benefit the public incidentally." *Nat'l Bd. of Y.M.C.A.*, 395 U.S. at 92 (internal quotations omitted); *see also Bedford v. United States*, 192 U.S. 217, 225 (1904). Thus, "[i]f the injury complained of is only incidental to the legitimate exercise of governmental powers for the public good, then there is no taking of property for the public use, and a right to compensation, on

account of such injury, does not attach under the Constitution." *Chicago, B. & Q. Ry. Co.*, 200 U.S. at 593-94.

Accordingly, most circuits uniformly exempt reasonable law enforcement responses resulting in incidental damage from the Takings Clause. *See Lech v. Jackson*, 791 F. App'x 711, 713, 717-19 (10th Cir. 2019) (holding that no taking occurred when police used explosives to apprehend a fugitive resulting in damage to a home because the actions fell within its police power); *Johnson v. Manitowoc County*, 635 F.3d 331, 334-36 (7th Cir. 2011) (holding that a takings claim is a "non-starter" when officers damaged private property during lawful searches); *AmeriSource Corp.*, 525 F.3d at 1154 (holding that no taking occurs when the government uses its police power to enforce criminal laws); *Bachmann v. United States*, 134 Fed. Cl. 694, 696 (Fed. Cl. 2017) (holding that "property damaged incidental to exercise of police power" does not constitute a taking because the property is not turned over or altered for public benefit); *Zitter v. Petruccelli*, 744 F. App'x 90, 96 (3d Cir. 2018) (holding that no viable Takings claim existed because the government acted pursuant to a lawful search warrant). While some circuits worry about exempting police powers in general,[4] such circuits nonetheless recognize that no taking exists when incidental damage occurs during lawful law enforcement responses. *See Baker v. City of McKinney, Texas*, 84 F.4th 378, 384 (5th Cir. 2023); *Yawn v. Dorchester County*, 1 F.4th 191, 195-96 (4th Cir. 2021); *see also Slaybaugh v. Rutherford County*, 114 F.4th 593, 601 (6th

[4] Such circuits caution that the term "police powers" include the ability to impose laws and regulations, which are potentially subject to the Takings Clause analysis; thus, a categorical rule for "police powers" *in general* would run afoul of this Court's precedent. *See Baker v. City of McKinney, Texas*, 84 F.4th 378, 383 (5th Cir. 2023); *Yawn v. Dorchester County*, 1 F.4th 191, 195 (4th Cir. 2021); *Slaybaugh v. Rutherford County*, 114 F.4th 593, 597 (6th Cir. 2024). As noted above, this interpretation overlooks the context in which this Court has exclusively placed the term in, which is the power to regulate through formal long-term legislation or deliberated state authorization. *See, e.g.*, *Midkiff*, 467 U.S. at 240.

Cir. 2024) (noting that police officers' lawful conduct, such as executing a search warrant, sometimes requires damaging property to perform their duties properly). In fact, any finding to the contrary would unravel the strong protection this Court affords law enforcement in addressing an emergency. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 335 (2002) (stating that "orders temporarily prohibiting access to crime scenes, businesses that violate health codes, fire-damaged buildings, or other areas that we cannot now foresee . . . have long been considered permissible exercises of the police power" that do not require compensation).

Given this, no compensable taking occurred when Laurenton responded to threats posed to Ms. Jones' property because it did not seize or alter her property for public use. As discussed above, Laurenton received a 911 call detailing an explosion in a residential neighborhood, which triggered its independent duty—distinct from its eminent domain authority—to act promptly. *See* R. at 3; *Nat'l Amusements Inc.*, 716 F.3d at 61; *Bachmann*, 134 Fed. Cl. at 696. When Laurenton responded to address the threat, Ms. Jones, her young son, and her property became the direct beneficiaries of its efforts. *See* R. at 3; *Nat'l Bd. of Y.M.C.A*, 395 U.S. at 92. Because Baker controlled the undetonated bomb remotely and clearly demonstrated the desire to cause harm, protocol demanded a prompt attempt to disrupt the otherwise uncontrollable bomb. *See* R. at 3. Understanding the potential risk, Laurenton diminished the risk as much as possible by securing the scene and moving people to a safe distance before assessing the bomb. *See* R. at 3. Despite the unsuccessful attempt to disrupt the bomb, Laurenton did not act pursuant to some greater New Virginia initiative, but rather to promptly abate danger in its own municipality. *See* R. at 3; *see Bachmann*, 134 Fed. Cl. at 696-98. Because Ms. Jones was "the particular intended beneficiary of the governmental activity," and Laurenton did not turn over or otherwise alter her

property under its eminent domain power, it did not "take" Ms. Jones's property. *See Nat'l Bd. of Y.M.C.A.*, 395 U.S. at 92; *Bachmann*, 134 Fed. Cl. at 696.

B. Even if this Court finds that the Takings Clause may scrutinize governmental authority beyond eminent domain, Laurenton's actions fall squarely within this Court's long-recognized necessity exception.

Notwithstanding a finding that police powers apart from eminent domain may trigger the Takings Clause, this Court's historically recognized necessity exception provides a safe harbor encompassing Laurenton's actions to address a bomb. "This Court's precedent suggests that there may be, *at a minimum*, a necessity exception to the Takings Clause." *Baker*, 145 S. Ct. at 12 (Sotomayor, J., statement concurring in denial of certiorari) (emphasis added). The exception "accords with the common law principle that in times of imminent peril—such as when fire threatened a whole community—the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved." *Id.* at 13 (internal quotations omitted). Accordingly, this Court maintains that "government-authorized invasions will not amount to takings" when inevitable damage will occur or when averting serious, imminent harm to a person or property necessitates the invasion. *See id.* at 13 (describing circumstances that this Court found actual necessity); *Cedar Point Nursery*, 594 U.S. at 160-61. Because the second bomb posed a significant harm risk to Ms. Jones and her property, Laurenton's disruption attempt did not exacerbate the inevitable risk to Ms. Jones's property and thus falls squarely within the Takings Clause's necessity exception.

Unlike some government invasions, the Fifth Amendment Takings Clause does not disturb traditional common law privileges to access private property. *See Cedar Point Nursery*, 594 U.S. at 160-61. Included in traditional common law privileges is the right to destroy real and personal property in cases involving actual necessity. *Id.* Actual necessity consists of the right

"to prevent the spreading of a fire or to forestall other grave threats to the lives and property of others." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 n.16 (1992). Historically, this Court has found actual necessity in situations involving ongoing or otherwise imminent peril and exempted the government from compensating aggrieved property owners. *See Nat'l Bd. of Y.M.C.A.*, 395 U.S. at 93; *Caltex, Inc.*, 344 U.S. at 155; *Bowditch v. City of Boston*, 101 U.S. 16, 16-17 (1879); *see also Tyler*, 598 U.S. at 639 (emphasizing history and precedent in determining Takings Clause applicability).

When private misconduct poses an ongoing property risk, only sufficiently direct and substantial government involvement in additional property deprivation triggers the Takings Clause. *See Nat'l Bd. of Y.M.C.A.*, 395 U.S. at 93; *see also* Restatement (Second) of Torts § 197 (1965). In *National Board of Young Men's Christian Associations*, looters and rioters entered the petitioner's YMCA building in Panama, causing significant damage. *Id.* at 86-87. Following orders, United States troops in the area entered the building to eject the rioters, which resulted in heavy attacks directed at the buildings and officers throughout the night. *Id.* at 87. Rejecting a compensation claim, this Court noted that the officers did not intend to take the property; instead, they intended to defend it from existing peril. *See id.* at 93. As such, the increased damage from Laurenton's involvement was not sufficiently direct and substantial to warrant compensation. *Id.*

So, too, here. Like *National Board of Young Men's Christian Association*, Baker, a private individual, engaged in misconduct by placing two bombs on Ms. Jones's property. *See id.* at 986-87; R. at 2. The first bomb's explosion caused severe damage to Ms. Jones, her child, and her property before any involvement from Laurenton, including several broken bones, burns, hearing loss, lung contusions, and front porch damage. *See* R. at 2-3. A 911 call ordered Laurenton to mitigate the remaining danger posed by the second bomb, which was located on

Ms. Jones's back porch. *See* R. at 3. While the second bomb remained intact, the first bomb's successful detonation inherently increased the danger that the second bomb would also detonate. *See* R. at 3. However, unlike the first bomb, the second bomb featured sophisticated remote-controlled detonation, posing a greater risk not only to Ms. Jones's property but also to the surrounding neighborhood. *See* R. at 3 (noting that the bomb demanded a prompt disruption attempt). Without Mr. Barker in custody, Laurenton could only contain the threat through a disruption attempt. *See* R. at 3. Thus, Laurenton followed protocol to mitigate the effects that the uncontrollable bomb already posed. *See* R. at 3. Therefore, any increased damage from Laurenton's attempt to defend Ms. Jones's property from further damage is not sufficiently direct and substantial to warrant compensation. *See Nat'l Bd. of Y.M.C.A.*, 395 U.S. at 93.

Additionally, when government actions merely hasten an inevitable loss that imminent peril poses, the government does not take the property for a subsequent use for Fifth Amendment purposes. *See Caltex, Inc.*, 344 U.S. at 155; *Bowditch*, 101 U.S. at 16-17. In *Bowditch*, a large fire broke out, which threatened the petitioner's property. *See Bowditch*, 101 U.S. at 16. To contain the fire, three fire engineers ordered the premises' total demolition, including the petitioner's then-unharmed property. *Id.* at 16. The demolition successfully contained the fire but also rendered the petitioner's property uninhabitable. *Id.* However, this Court held that the necessity to control the spread of the fire removed the state's compensation requirement. *Id.* at 17.

Here, Laurenton's disruption attempt mirrors an attempt to arrest a fire spread. Like the building that initially harbored the fire, the first bomb's detonation created the "fire" on Ms. Jones's property. *See* R. at 3; *Bowditch*, 101 U.S. at 16. As noted above, the second bomb posed a significant risk for detonation, heightened by Baker's unknown whereabouts. *See* R. at 3. Thus,

the risk demanded Laurenton's disruption attempt to prevent the spread of the "fire." *See* R. at 3; *Bowditch*, 101 U.S. at 16. Despite the detonation risk, it remained the only option. *See* R. at 3. If the bomb squad did not attempt disruption, Baker could detonate the bomb at any time without warning. *See* R. at 3 (noting that Baker was not in custody). However foreseeable the disruption success, Laurenton ensured the best outcome by controlling the "spread" through a disruption attempt in a controlled environment. *See* R. at 3; *see also Bowditch*, 101 U.S. at 16-17 (lending deference to law enforcement regarding combating imminent peril, even in the event of destruction). By following all protocols to secure the scene and moving people to a safe distance, Laurenton diminished the risk as much as physically possible, which would not have been possible if the bomb had remained undisturbed. *See* R. at 3. Thus, despite any hastened loss to Ms. Jones's property, the necessity to control the danger "spread" posed by an undetonated bomb falls squarely within the "traditional common law to access private property." *See* R. at 3; *Bowditch*, 101 U.S. at 16-17; *Cedar Point Nursery*, 594 U.S. at 160-61. Therefore, Ms. Jones's compensation claim inevitably fails. *See Cedar Point Nursery*, 594 U.S. at 160-61.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

/s/_Team 8_____
Team 8
Counsel for Respondents