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,
THE CITY OF LAURENTON POLICE DEPARTMENT

Respondents.

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

BRIEF IN SUPPORT OF PETITIONER

Team 9
Counsel for Petitioner,
Sarah Jones

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

QUESTIONS PRESENTED

I. Whether the Due Process Clause of the Fourteenth Amendment forbids state officials from avoiding constitutional accountability when its affirmative actions create a foreseeable danger that results in private violence.

II. Whether the Fifth Amendment requires the government to provide just compensation when state officials deliberately destroy an homeowner's property, rather than forcing one individual to bear alone the cost of a public burden.

STATEMENT OF THE CASE

On the evening of September 8, 2023, Petitioner Sarah Jones ("Ms. Jones") placed a frantic 911 call to report that her former boyfriend, Mark Baker ("Baker"), was intoxicated and threatening both her and her ten-year-old son, A.J. R. at 2. Officers Trent and Williams from the Laurenton Police Department responded within minutes. R. at 2. Upon arrival, Baker was visibly angry that Ms. Jones had called the police and threatened her because of it. *Id.*

Ms. Jones immediately informed the officers that Baker owned a handgun and other weapons and had a background in explosives from his military service. *Id*. Fearful for her and her child's safety, she asked whether she and A.J. should leave for the night. *Id.* Officer Trent, however, assured her that Baker "will be locked up until at least the morning," explaining that he had an outstanding domestic assault warrant in the neighboring county. *Id.* Relying on that assurance, Ms. Jones and A.J. remained in their home for the night. *Id.*

After leaving the scene with Baker in custody, Officer Trent told Williams what he had promised Ms. Jones. *Id.* Officer Williams reminded him that under a standing City policy, officers could not execute certain warrants when the county jail was over capacity. *Id.* County jail officials confirmed that the jail was indeed over capacity. *Id.* Without so much as notifying Ms. Jones – the very person they had assured was safe for the night – the officers seized only the handgun and personally drove Baker to his rental home, abandoning him there alone. *Id.*

Before sunrise the next morning, Baker retrieved two homemade bombs from his basement, packaged them – one inside Amazon-marked material – and drove to Ms. Jones's home. *Id.* He placed one bomb package on the front porch and another on the back porch. *Id.* When Ms. Jones awoke, she saw the front-porch package and, believing it to be an Amazon delivery, brought it inside. *Id.* As soon as she attempted to open it, the device detonated –

shattering her left femur, causing third-degree burns over her arms and face, and leaving her permanently hearing-impaired. R. at 3. A.J., standing nearby, suffered a fractured arm, lung contusions, and severe psychological trauma. *Id.* The explosion also damaged the front porch of the house. *Id.*

Responding officers and paramedics stabilized Ms. Jones and A.J. and transported them to the hospital. *Id.* While on the scene, police observed a second package on the back porch and summoned the LPD Bomb Squad. *Id*. Following protocol, the Bomb Squad secured the area and deployed a robot equipped with an X-ray system and an energetic tool to neutralize the device. *Id.* The X-ray revealed an explosive with a remote-detonation mechanism. *Id.* Because the maker of the bomb was not in custody, the squad attempted to disrupt the device before it could be detonated remotely. *Id.* The officers proceeded despite knowing that the bomb was highly sophisticated and designed to evade disruption, making the likelihood of success virtually non-existent. *Id.* As expected, the energetic tool failed, detonating the bomb. *Id.*

The resulting explosion leveled the rear half of Ms. Jones's single-story residence, collapsed part of the roof, and rendered the home unsafe and uninhabitable. *Id.* Expert testimony established that the house was so structurally unsound it had to be demolished and rebuilt, with estimated property damage of $385,000. *Id.* Ms. Jones also incurred temporary-housing costs and lost personal property. *Id.*

Ms. Jones filed suit under 42 U.S.C. § 1983 against the Respondents, the City of Laurenton and the Laurenton Police Department (collectively, the "City"). R. at 4. She alleged that the City violated (1) the Due Process Clause by affirmatively creating the danger that led to her and her son's injuries and (2) the Takings Clause by destroying her home without just compensation. *Id.*

The district court granted summary judgment for the City, declining to adopt the state-created danger doctrine, and that the Takings Clause does not apply to destruction of property in the exercise of police power. *Id.* Ms. Jones appealed, and the Thirteenth Circuit affirmed. R. at 2. The Supreme Court of the United States granted certiorari to both issues. R. at 13.

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit erred in absolving the City of Laurenton of constitutional accountability. Both the Due Process Clause and the Takings Clause exist to restrain the government from turning its power into a source of danger or unfairness toward the very citizens it is meant to protect. By releasing a violent offender in reliance on an official policy and later deliberately destroying an innocent woman's home, the City transformed its lawful authority into the instrument of Ms. Jones's harm. The Constitution does not tolerate such outcomes.

First, the City is liable under the state-created danger doctrine. The Due Process Clause forbids government officials from affirmatively creating or heightening a foreseeable risk of private violence through deliberate action. Every other federal circuit but two recognizes the principle as essential to substantive due process. The Thirteenth Circuit's refusal to do so leaves victims like Ms. Jones without recourse when the State's own conduct causes the very harm it was called to prevent. The City's officers assured Ms. Jones that her abuser would remain in custody overnight, then invoked a municipal jail-overcrowding policy to release him intoxicated and enraged. Its actions were not mere omissions but affirmative, policy-driven decisions that manufactured the danger leading to the bombing. The Constitution draws a clear line between the State's failure to protect and its active participation in creating danger. By crossing that line, the City violated the most basic promise of life and liberty.

Second, the City's deliberate destruction of Ms. Jones's home constitutes a compensable taking under the Fifth Amendment. The Takings Clause prevents the government from forcing a single citizen to bear alone the cost of protecting the public. Here, officers knowingly deployed a disruption tool despite recognizing that detonation was virtually certain, sacrificing Ms. Jones's home to safeguard the surrounding neighborhood. That calculated decision was not an unavoidable emergency but a planned act of public protection – a classic taking under *Armstrong*'s fairness principle. The Thirteenth Circuit's categorical exemption for police power destruction conflicts with this Court's repeated rejection of blanket exceptions to the Takings Clause. When the government deliberately destroys private property to protect the public, principles of fairness and justice demand that the resulting burden be shared by the public as a whole.

Recognizing liability here will not constitutionalize negligence or paralyze law enforcement. It will restore the balance the Framers intended: accountability when state power itself creates danger, and compensation when that power demands private sacrifice for public safety. The Constitution promises both security and fairness. Ms. Jones seeks only what it guarantees. For these reasons, we ask this Court to reverse and remand for further proceedings.

ARGUMENT

Summary judgment is proper if "the movant shows that 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). When reviewing a grant of summary judgment, the Court views the facts in a light most favorable to the nonmoving party. *Tolan v. Cotton*, 572 U.S. 650, 651 (2014). The Court reviews a district court's grant of summary judgment de novo. *Okin v. Vill. of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 427 (2d Cir. 2009).

I. Under the Due Process Clause of the Fourteenth Amendment, the City is Liable for Affirmatively Creating the Danger That Led to Ms. Jones's Injuries.

Ms. Jones brings this claim under 42 U.S.C. § 1983, which provides a civil remedy against any "person who, under color of [state law], subjects [another] to the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C.A. § 1983 (West 1996); *Collins v. City of Harker Heights*, 503 U.S. 115, 124 (1992). Local governments qualify as "persons" under the statute and may be sued directly when "execution of a government's policy or custom . . . inflicts the injury." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 660, 694 (1978). However, municipalities only face liability when the constitutional deprivation results from an official policy or established practice. *Id.* at 691–94. Although the City may attempt to invoke qualified immunity, that defense is inapplicable here. Qualified immunity protects only individuals, not municipalities or police departments. *Okin*, 577 F.3d at 432.

The constitutional right Ms. Jones seeks to vindicate arises from the substantive component of the Fourteenth Amendment's Due Process Clause, which protects individuals from arbitrary government action that deprives them of life, liberty, or property. U.S. Const. amend. XIV. This guarantee includes the right to personal security and bodily integrity – interests so fundamental that the state may not endanger them through deliberate indifference or conscience-shocking actions. *Collins*, 503 U.S. at 126; *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1064-65 (9th Cir. 2006).

In *DeShaney*, this Court explained that the Due Process Clause generally functions as a restraint on the state's power, not as a guarantee of protection from private harm. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 201 (1989). But the Court also recognized that different constitutional principles apply when the state played a part in the creation of the

danger or rendered an individual more vulnerable to harm. *Id.* That recognition laid the foundation for the *state-created danger doctrine*, under which state actors may be held liable when their affirmative conduct creates or heightens a danger to an identifiable person. *Kennedy*, 439 F.3d at 1063-65 (holding an officer liable where affirmative assurances of protection and then failing to provide such protection placed plaintiff in danger she otherwise would not have faced); *Kneipp v. Tedder*, 95 F.3d 1199, 1208-09 (3d Cir. 1996) (finding liability where officers affirmatively placed the plaintiff in a position of danger by separating her from her husband while intoxicated). The doctrine draws the constitutional line between the failure to act, which is generally not actionable, and affirmative state conduct that endangers a particular individual's rights. *Murguia v. Langdon*, 61 F.4th 1096, 1110–11 (9th Cir. 2023) (reaffirming that the state-created danger doctrine applies only when officials, through affirmative acts, create or increase a danger to an individual, and emphasizing that liability requires deliberate indifference rather than mere negligence). It ensures that the government does not transform its authority into an instrument of peril, thereby fulfilling the Fourteenth Amendment's purpose of protecting citizens from arbitrary exercises of state power.

The City crossed that line. After assuring Ms. Jones that her violent, intoxicated former partner would remain in custody overnight, the City nonetheless released him pursuant to an official city policy forbidding arrests during jail overcrowding. Its actions created the very danger that resulted in the bombing and catastrophic injuries to Ms. Jones and her ten-year-old son. This case does not ask whether the state must prevent all private harm, but whether it may use its authority in a way that endangers constitutionally protected rights. The Fourteenth Amendment forbids such a result, for due process exists to shield individuals from the arbitrary use of government power that threatens life, liberty, and property.

A. The Thirteenth Circuit's Refusal to Recognize State-Created Danger Departs From *DeShaney* and Isolates it From Nearly Every Other Circuit to Consider the Issue.

The Thirteenth Circuit erred in rejecting the state-created danger doctrine. Its decision isolates it from nearly every other federal circuit and departs from *DeShaney*'s clear logic. Every circuit to confront the issue – ten in total– has recognized that the Due Process Clause prohibits government officials from affirmatively creating or heightening danger to identifiable individuals. *See Irish v. Fowler*, 979 F.3d 65, 73 (1st Cir. 2020); *Okin*, 577 F.3d at 428; *Johnson v. City of Philadelphia*, 975 F.3d 394, 400 (3d Cir. 2020); *Callahan v. N. Carolina Dep't of Pub. Safety*, 18 F.4th 142, 146 (4th Cir. 2021); *Est. of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 491 (6th Cir. 2019); *Est. of Her v. Hoeppner*, 939 F.3d 872, 876 (7th Cir. 2019); *Villanueva v. City of Scottsbluff*, 779 F.3d 507, 512 (8th Cir. 2015); *Murguia*, 61 F.4th at 1111; *Est. of B.I.C. v. Gillen*, 761 F.3d 1099, 1105 (10th Cir. 2014); *Butera v. D.C.*, 235 F.3d 637, 651 (D.C. Cir. 2001).

Only the Fifth and Eleventh Circuits have hesitated, yet even those circuits have implicitly acknowledged its reasoning. In *Fisher*, the Fifth Circuit declined to adopt the doctrine absent direction from the Supreme Court but still identified the typical elements of creating a specific danger and deliberate indifference if they were to adopt. *Fisher v. Moore*, 73 F.4th 367, 372 (5th Cir. 2023). Similarly, in *Waddell*, the Eleventh Circuit declined to adopt the state-created danger doctrine, explaining that earlier "special danger" precedents had been superseded by *Collins* and that only conscience-shocking conduct can give rise to substantive due process liability. *Waddell v. Hendry Cnty. Sheriff's Office*, 329 F.3d 1300, 1305-06 (11th Cir. 2003).

The nearly uniform recognition of the state-created danger doctrine underscores its coherence and necessity. It implements *DeShaney*'s teaching that the State may not "play a part"

in the creation of the danger that injures its citizens. *DeShaney*, 489 U.S. at 201. Recognizing the doctrine here would restore uniformity among the circuits and reaffirm that the Fourteenth Amendment prohibits the government from transforming private threats into government-created peril.

B. The City's Conduct Meets Every Element of the State-Created Danger Doctrine.

Although these courts articulate the test with slight variation, they share a general structure. A plaintiff must show: (1) an affirmative act (2) that created or increased a particularized, foreseeable risk, (3) a causal link, and (4) the state's deliberate indifference to that known or obvious danger. *Murguia v. Langdon*, 73 F.4th 1103, 1112-13 (9th Cir. 2023). Some courts also require that the conduct "shock the conscience," ensuring that only "egregious" misconduct gives rise to liability. *Okin*, 577 F.3d at 431.

Having recognized the near-universal acceptance of the state-created danger doctrine, this Court should find that the City's conduct satisfies each element of the claim. The officers' actions were not mere negligence or oversight. They were deliberate choices that placed Ms. Jones and her son in a peril they otherwise would not have faced. It's affirmative assurances, policy-driven release of a violent and skilled offender, and disregard of an obvious, specific risk collectively transformed a private threat into a government-created catastrophe. Each element of the doctrine is satisfied here.

i. Laurenton officers took affirmative steps that transformed a private threat into a government-created danger.

The City's officers engaged in affirmative conduct that created and heightened a specific danger to Ms. Jones, satisfying the first element of the state-created danger doctrine. This element requires proof that state officials, through their own actions rather than inaction,

affirmatively created or enhanced the danger of private violence. *Id.* at 428. The doctrine draws a constitutional line between the state's passive failure to protect and its active participation in producing the risk of harm. *Id.* at 431-32 (clarifying that liability attaches only when officials, through affirmative conduct, create or increase a danger to an individual and act with deliberate indifference to that known risk). *See also Rakes v. Roederer*, 117 F.4th 968, 974 (7th Cir. 2024) (rejecting any requirement that plaintiffs must show that officials completely eliminated all avenues of self-help before liability attaches, and holding that due process may still be violated even when the victim retains some ability to seek aid).

The officers' actions here were not mere omissions. They affirmatively removed Ms. Jones's abuser from the scene, assured her that he would remain in custody overnight, and then, pursuant to a municipal policy, returned him to his own home – knowing his violent history, intoxication, and proximity to Ms. Jones and her son. Each step constituted an exercise of state authority that exposed Ms. Jones to a harm she otherwise would not have faced.

Federal courts have consistently recognized similar conduct as an affirmative act under the Due Process Clause. In *Irish*, the First Circuit held that state officers engaged in affirmative acts that created and enhanced a danger to the plaintiff where the officers left a voicemail for the plaintiff's abuser identifying themselves as state police, despite knowing he was violent and that notifying him would increase the risk to the victim. *Irish*, 979 F.3d at 68. The officers in *Irish* had repeatedly been warned that the assailant was terribly violent and had threatened to kill the victim if he discovered she had gone to police, yet the officers tipped him off without first securing her safety. *Id.* at 68–70. The court concluded that a jury could find this conduct affirmatively increased the danger to the plaintiff, as the officers' actions not only failed to protect her, but affirmatively made her situation more dangerous. *Id.* at 79.

Similarly, in *Kennedy*, the Ninth Circuit held that an officer's decision to inform a violent neighbor that he had been accused of molesting a child – without first warning or protecting the reporting mother – constituted an affirmative act creating a "particularized danger" that otherwise would not have existed. *Kennedy*, 439 F.3d at 1063. The officer promised to warn the frightened mother before contacting the suspect and to patrol her house at night. *Id.* at 1058. Despite knowing the violent tendencies of the suspect, such as attacking a girlfriend with a baseball bat and lighting animals on fire, the officer failed to follow his assurances. *Id.* at 1057-58. This failure emboldened a known aggressor and affirmatively created an actual, particularized danger that very same night. *Id.* at 1063. The violent neighbor later broke into the home and shot both the mother and father of the child. *Id.* at 1058. Ultimately, the court held that the officer's affirmative assurances and actions placed the plaintiff in a position of danger she otherwise would not have faced. *Id.* at 1064.

As in *Irish* and *Kennedy*, Laurenton officers affirmatively intervened in a volatile domestic violence situation, made explicit assurances of protection, and then took steps that directly increased the threat to Ms. Jones and her son. By removing Baker, promising confinement, and subsequently returning him home under an official city policy, the officers manufactured the conditions leading to the bombing. Ms. Jones relied on their representations in choosing to remain home with her son; absent those assurances, she would have left for safety. Thus, the officers' actions were not failures to act but affirmative exercises of state authority that set in motion a chain of events leading directly to harm.

However, the contrast with *Pinder* underscores the constitutional magnitude of the City's conduct. In *Pinder*, the Fourth Circuit denied recovery where an officer's assurance that a domestic abuser would remain detained overnight proved unfounded when the officer charged

only minor offenses, resulting in the abuser's release and subsequent attacks against the victim and her family. *Pinder v. Johnson*, 54 F.3d 1169, 1175 (4th Cir. 1995). The court reasoned that the officer's behavior did not constitute an "affirmative act" because the release decision was not executed by the officer himself but by an independent judicial process. *Id.* at 1176–77. Here, by contrast, Laurenton's officers themselves carried out the release, directly invoking a city policy to override the outstanding warrant. Unlike *Pinder*, where the harm followed an intervening decision, the danger here was state-created at its inception: the officers' affirmative decision and official policy combined to produce the precise risk the Constitution forbids.

Therefore, Laurenton's officers took affirmative acts that created and heightened the danger to Ms. Jones. It's decisions – both the false assurance of protection and the policy-driven release – transformed a private threat into a government-created peril. This conduct satisfies the first element of the state-created danger doctrine and demonstrates the City's direct role in producing the harm.

ii. The risk to Ms. Jones was specific, immediate, and plainly foreseeable.

The danger to Ms. Jones was neither abstract nor generalized; it was immediate, specific, and entirely foreseeable to the City's officers. Under the second element, liability attaches when a state actor's affirmative conduct creates or increases a fairly direct and foreseeable risk of harm to an identifiable person. *Kneipp*, 95 F.3d at 1208. The risk must be specific in some "meaningful sense" to the plaintiff, not a generalized threat to the public. *Irish*, 979 F.3d at 74 (citing *Ramos-Piñero v. Puerto Rico*, 453 F.3d 48, 54 (1st Cir. 2006)).

Here, Laurenton officers knew that Baker was intoxicated, had potential access to more weapons, and enraged at Ms. Jones for calling 911. They also knew he had a documented history

of domestic violence, formal training in explosives, and an outstanding assault warrant. Despite this, they assured Ms. Jones that he would remain in custody overnight – only to release him under a citywide policy against jail bookings during overcrowding. Those choices made Baker's retaliation not just foreseeable, but inevitable.

Courts consistently hold that when officers knowingly expose victims to violent offenders, they create a foreseeable and particularized risk of harm. In *Kennedy*, the Ninth Circuit found such risk "obvious" and specific when an officer, aware that a suspect was violent, promised to warn a mother before confronting her daughter's molester but instead notified the suspect's family first. *Kennedy*, 439 F.3d at 1057-58, 1063-64. The officer knew the suspect had violent tendencies and lived nearby, yet the officer failed to provide protection after giving false assurances. *Id.* at 1058. The next morning, the suspect broke into the plaintiff's house and shot both her and her husband as they slept. *Id.* The court held the harm was a foreseeable result of the officer's affirmative acts that emboldened a known aggressor and created a particularized danger. *Id.* at 1063-64.

Like the officer in *Kennedy*, Laurenton's officers were fully aware that Baker was a known aggressor and had threatened violence that very night. Both cases involve police assurances that induced reliance – promises of protection that lulled victims into remaining in the very places where they were later attacked. But Laurenton's officers acted with even more knowledge of the risk: unlike the officer in *Kennedy*, who merely told a neighbor of an investigation, these officers personally observed Baker's rage, removed him from custody, and returned him to his home alone. Their conduct made Baker's retaliation against Ms. Jones not only foreseeable but certain.

The same pattern appears in *Irish*, where detectives investigating a victim's kidnapping and rape by her ex-boyfriend knew he had threatened to kill her if she involved police, yet one officer left a voicemail on the abuser's phone identifying himself as law enforcement. *Irish*, 979 F.3d at 67-70. Within hours of hearing the message, the abuser committed arson, murdered the victim's boyfriend, shot her mother, and kidnapped and raped her again. *Id.* at 69-71. Because the harm was direct and plainly foreseeable, the First Circuit held the officers' conduct affirmatively made her situation more dangerous. *Id.* at 75.

Like the detectives in *Irish*, the City had direct warnings about a violent abuser's threats, knew he possessed weapons, and yet took deliberate action that predictably triggered retaliation. But Ms. Jones case is even stronger: whereas the officers in *Irish* inadvertently alerted the aggressor, here the City affirmatively delivered him back to freedom and concealed that release from the victim. In both cases, the victims relied on police assurances for safety, but Ms. Jones faced a targeted attack made possible by an explicit municipal policy.

The contrast with *Johnson* further illustrates why the risk here was constitutionally distinct. There, dispatchers failed to convey a family's location during a house fire, leading to three deaths. *Johnson*, 975 F.3d at 401-02. The Third Circuit rejected liability because the danger arose from a tragic miscommunication, not a specific, foreseeable harm caused by affirmative acts. *Id.* at 401. The family's harm existed before any state involvement; Ms. Jones's did not. Laurenton's officers directly produced the danger by releasing Baker and misleading Ms. Jones into staying home. The harm here, unlike in *Johnson*, was both foreseeable and particularized to a single, identifiable victim.

In sum, the City acted with clear knowledge that its conduct would place Ms. Jones in harm's path. Its assurances and subsequent release of Baker were not isolated mistakes but

deliberate decisions that exposed an identifiable victim to violence. The danger was specific, particularized, and entirely predictable – precisely the kind of risk the Fourteenth Amendment forbids the State to create.

iii. The officers' assurances and policy-driven release directly caused the bombing.

The City's actions were the direct and foreseeable cause of Ms. Jones's and her son's catastrophic injuries. The third element of the state-created danger doctrine requires a causal nexus between the government's affirmative acts and the resulting harm. *Irish*, 979 F.3d at 74. Liability attaches when the state's conduct creates or sets in motion a chain of events leading directly to the deprivation of life or liberty. *Kneipp*, 95 F.3d at 1210. It is not necessary that the government be the sole or immediate cause of harm, only that its actions foreseeably and substantially contributed to the result. *Kennedy*, 439 F.3d at 1063-64 (holding that a state actor's liability arises where affirmative conduct placed the plaintiff in greater danger than she would have faced otherwise, even if a private actor directly inflicted the harm).

Here, the City's conduct was the catalyst for the bombing that injured Ms. Jones and her son. Its assurances that Baker would remain jailed induced her to stay home. Its policy-driven decision to release him to his unsecured home while enraged placed him in a position to attack her. But for those choices, Baker would have remained detained overnight, without the opportunity to construct or deliver the explosives that night. The officers' conduct thus did more than permit harm, it actively created the sequence that made the attack possible.

The causal link here mirrors the one found sufficient in *Kneipp.* There, police officers stopped a visibly intoxicated couple walking home on a frigid night, sent the husband ahead, and left the wife alone to find her way. *Kneipp*, 95 F.3d at 1202-03. She was later found unconscious,

suffering severe hypothermia that left her permanently brain damaged. *Id.* at 1203. The Third Circuit held that a reasonable jury could find the officers' affirmative acts increased the risk of harm and directly caused the injuries because, by separating the woman from her husband and failing to ensure her safety, the officers intervened in a way that rendered her more vulnerable to danger. *Id.* at 1211.

The parallels to Ms. Jones's case are unmistakable. Like the officers in *Kneipp*, Laurenton police affirmatively intervened in a dangerous situation, gave the victim assurances that induced reliance, and then left her exposed to a foreseeable threat. In *Kneipp*, sending the victim home alone in freezing temperatures produced the very harm the officers should have prevented. Here, returning Baker home – intoxicated, violent, and unmonitored – was the decisive act that allowed the bombing to occur.

In sum, the officers' decision to release Baker and mislead Ms. Jones was not a remote event but the immediate catalyst for the attack. The actions created the danger, placed the victim within its reach, and set in motion the precise chain of events that caused her injuries. Under *Kneipp*, the causal link between Laurenton's conduct and Ms. Jones's harm is constitutionally sufficient to satisfy the third element of the state-created danger doctrine.

iv. By promising protection and then secretly releasing a violent, skilled abuser, the officers acted with deliberate indifference that shocks the conscience.

The City acted with deliberate indifference to a danger it both recognized and created. The fourth element of the state-created danger doctrine requires that government officials exhibit deliberate indifference or conduct so egregious that it "shocks the conscience" toward a known or obvious risk of harm. *Okin*, 577 F.3d at 431.

The officers' conduct meets that standard. They were explicitly warned that Baker possessed weapons, had explosives training, and was intoxicated and enraged. Ms. Jones pleaded for guidance, asking whether she and her son should leave their home. In response, Officer Trent assured her that Baker would be locked up until morning. Despite knowing this assurance induced reliance, the officers released Baker under the City's overcrowding policy, failed to notify Ms. Jones, and left him unsupervised. Those choices were not mistakes in judgment; they reflected a conscious disregard of a known, lethal risk.

This level of culpability mirrors the deliberate indifference found in *Irish*. There, police investigating a rape ignored explicit warnings that the suspect would become violent if confronted and, without providing protection, left a voicemail identifying themselves as officers. *Irish*, 979 F.3d at 70-71. Within hours, the suspect embarked on a deadly rampage that killed two people and severely injured the plaintiff. *Id.* at 69-71. The First Circuit held that a reasonable jury could find deliberate indifference because the officers knew of a substantial risk of serious harm and disregarded that risk by taking an affirmative step that predictably provoked the attack. *Id.* at 78.

Like the detectives in *Irish*, the City ignored explicit warnings that its actions would endanger a known victim. Both cases involve victims who relied on official assurances of safety, only to be betrayed by reckless indifference to clearly foreseeable violence. But Laurenton's officers acted with even greater culpability. They not only disregarded the danger but affirmatively created it by physically returning Baker home. Their conduct, deliberate and wholly unnecessary, transcends negligence and enters the realm of conscience-shocking abuse of power. *See Waddell,* 329 F.3d at 1309 (declining to find deliberate indifference where officers merely released an inmate informant who later caused a fatal drunk-driving crash, reasoning that

the harm was too attenuated from the officers' conduct and reflected negligence rather than a conscious disregard of known danger).

In sum, the City did not act in haste or confusion; it acted with full awareness of a deadly risk and indifference to its consequences. By disregarding that danger and by misleading Ms. Jones into remaining at home, they transformed private threats into government-created peril. Its conduct shocks the conscience and satisfies the deliberate-indifference requirement under the state-created danger doctrine.

C. The City's Jail Policy Prioritized Administrative Convenience Over Constitutional Duty, Rendering the City Liable Under *Monell*.

The City's municipal policy directly caused the constitutional violation. Under *Monell*, local governments are liable when "execution of a government's policy or custom . . . inflicts the injury." *Monell*, 436 U.S. at 694. Municipal liability attaches when a policy or custom reflects deliberate indifference to the constitutional rights of those affected by it, or when it affirmatively directs or authorizes the conduct causing harm. *Id.* at 691-94.

The City's jail-overcrowding policy satisfies that standard. The policy expressly directed officers not to execute certain outstanding arrest warrants when the county jail exceeded capacity, without any regard to the nature of the offense, the immediacy of the risk, or the danger posed to victims. Officers invoked that policy in releasing Baker, despite knowing his violent background and recent threats. That municipal directive was the moving force behind the violation of Ms. Jones's substantive due process right to personal security. Additionally, the City's policy was not a negligent omission but a deliberate choice to prioritize administrative convenience over public safety. By design, it ensured that dangerous offenders like Baker would be released into the community, predictably endangering those they had just threatened.

Beyond doctrinal sufficiency, recognizing *Monell* liability here serves critical policy interests. The state-created danger doctrine provides domestic violence victims "judicial recourse when state actors create or exacerbate the danger of domestic violence."[1] Denying municipal liability, by contrast, deprives domestic violence victims' judicial recourse that those in virtually every other circuit enjoy and perpetuates systemic impunity for state-enabled abuse.[2]

Additionally, the doctrine's application in the domestic violence context creates an incentive for state actors to effectively handle domestic violence incident and promotes accountability when official conduct transforms private threats into lethal outcomes.[3] Without *Monell* liability, municipalities can evade responsibility by attributing misconduct to rogue officers, even when those officers act pursuant to explicit city directives.

The refusal to recognize municipal liability undercuts the Fourteenth Amendment's core function – to protect individuals from arbitrary exercises of state power that endanger life and liberty.[4] By enforcing *Monell*'s principles here, this Court would ensure that local governments remain accountable when official policies, not mere individual negligence, convert foreseeable violence into constitutional deprivation.

Recognizing *Monell* liability also serves a vital deterrent purpose. When municipalities face liability for policies that foreseeably endanger domestic violence survivors, they are

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[1] Max Giuliano, *State-Created Danger: The Fifth Circuit's Refusal to Address the Problem and Its Devastating Effect on Domestic Violence Victims*, 127 PENN ST. L. REV. 929, 953 (2023).

[2] *Id.* at 959-60.

[3] *Id.* at 960.

[4] Matthew Pritchard, *Reviving Deshaney: State-Created Dangers and Due Process First Principles*, 74 RUTGERS U.L. REV. 161, 207-10 (2021).

incentivized to reform arrest and detention practices, improve inter-agency communication, and eliminate dangerous blanket policies. In sum, the doctrine's adoption would not only align with precedent but promote sound public policy by ensuring that victims of domestic violence are afforded judicial recourse when state actors create or exacerbate danger.

The Constitution does not compel the state to shield every citizen from private violence, but it forbids the state from using its own power to endanger them. The City did exactly that. Acting under a policy that valued expedience over safety, its officers assured Ms. Jones of protection, released her abuser into the night, and left her and her son to face the danger the City had created. This was not negligence but a deliberate use of state authority that turned a private threat into a government-made catastrophe. Because the Fourteenth Amendment exists to prevent such abuses of power, denying the doctrine here would abandon the Constitution's promise that state actors will not be the instrument of its citizens' harm.

II. The Thirteenth Circuit Erred in Holding That the Fifth Amendment Does Not Require Compensation When the Government Destroys an Innocent Citizen's Home Under the Guise of Police Power.

A. The Fifth Amendment's Core Purpose Is to Prevent Government from Forcing a Single Citizen to Bear a Public Burden Alone.

Ms. Jones brings her Takings Clause claim under 42 U.S.C. § 1983, which provides a cause of action against municipalities that deprive individuals of rights secured by the Constitution. *Monell*, 436 U.S. at 690-94. Because the City acted pursuant to an official policy and protocol order, municipal liability properly attaches under § 1983.

The Fifth Amendment states that private property shall not be taken for public use, without just compensation. U.S. Const. amend. V. Its purpose is to prevent the 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). The Thirteenth Circuit's decision does precisely what *Armstrong* forbids – forcing Ms. Jones alone to absorb the $385,000 cost of protecting the public.

B. The Thirteenth Circuit Erred by Allowing a Categorical "Police Power" Exemption from the Takings Clause.

The Thirteenth Circuit's categorical exemption for police power actions conflicts with this Court's precedents rejecting blanket exceptions to the Takings Clause. The inquiry turns not on governmental motive, but on the effect of its conduct and the fairness of burden allocation. *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31-37 (2012) (holding that temporary flooding by federal water releases constituted a compensable taking because no decision of this Court authorizes a blanket exception to our Takings Clause). *Lech* distinguished between the State's eminent domain authority, which permits the taking of private property for public use with compensation, and its police power, which allows regulation of private property for the protection of public health, safety, and welfare without compensation. *Lech v. Jackson*, 791 F. App'x 711, 714 (10th Cir. 2019). Nonetheless, when acting under the police power, a government "can go too far" and thereby trigger the duty to compensate. *John Corp. v. City of Houston*, 214 F.3d 573, 578 (5th Cir. 2000) (recognizing that the Supreme Court's regulatory takings doctrine rests on the principle that a city's exercise of its police power "can go too far," and when it does, it constitutes a compensable taking).

However, the Thirteenth Circuit's reliance on *Lech* is misplaced. In *Lech*, police damaged a family's home while attempting to apprehend an armed fugitive who had barricaded himself inside after breaking in. *Lech*, 791 F. App'x at 713. The standoff lasted nineteen hours, during which officers fired multiple rounds of tear gas, breached the home's doors and walls with a

BearCat armored vehicle, deployed explosives to create new entry points, and sent in tactical units leaving the home uninhabitable. *Id.* at 713-14. The Tenth Circuit held that no taking occurred, reasoning that the officers' destruction fell under the State's police power to enforce criminal laws rather than its eminent domain authority. *Id.* at 717-19. The court concluded that the damage was merely incidental to law enforcement efforts to protect public safety, not a public use or appropriation. *Id.* Because the destruction in *Lech* resulted from an ongoing emergency and a reactive standoff – not a deliberate, planned use of private property for public protection – the case does not excuse the City's premeditated demolition of Ms. Jones's home.

Unlike the chaotic pursuit in *Lech*, the Laurenton officers were not acting in exigent circumstances. The scene had been secured, the area evacuated, and the decision to deploy a disruption breaching tool was deliberate, calculated, and made with full knowledge that it would destroy the home. This is not incidental damage; it was a planned, foreseeable demolition performed for the collective safety of the public. Whereas the *Lech* officers acted under the pressure of immediate gunfire, the Laurenton Bomb Squad made a reasoned tactical choice that shifted the burden of a public safety measure entirely onto Ms. Jones. The fairness rationale in *Armstrong*, and not the immunity principle of *Lech*, should govern here.

Categorically exempting police power actions undermines the Takings Clause's central purpose: ensuring the public, not a single homeowner, bears the cost of public protection. When government can destroy innocent property without consequence, it creates irrational incentives for municipalities to externalize costs onto individual citizens. Recognizing compensation here would not hinder police discretion. It would simply require the public to pay for the benefits it receives, aligning constitutional duty with basic fairness.

C. The City's Destruction of Ms. Jones's Home Was a Deliberate and Foreseeable Taking for Public Use – Not an Unavoidable Necessity.

The City's decision to detonate the explosive was deliberate and not an act of sudden necessity. Officers had secured the area, X-rayed the device, and determined that detonation was virtually certain before authorizing the tool's use. Because the destruction of Ms. Jones's home was a foreseeable and direct result of the City's chosen course of action, it constitutes a compensable taking under the Fifth Amendment.

The Takings Clause applies when government action has the predictable effect of appropriating or destroying private property, even if the government did not desire that result. *Ark. Game*, 568 U.S. at 39 (explaining that courts must consider "the degree to which the invasion is intended or is the foreseeable result of authorized government action"); *See also Yawn v. Dorchester Cnty.*, 1 F.4th 191, 195 (4th Cir. 2021) (quoting *Moden v. United States*, 404 F.3d 1335, 1342 (Fed. Cir. 2005)) (claimant must show the government "intended to invade a protected property interest or that the asserted invasion is the *direct*, *natural*, or *probable* result of an authorized activity and not the incidental or consequential injury inflicted by the activity") (emphasis added).

In *Yawn*, the Fourth Circuit affirmed summary judgment for the county, holding that the unintentional death of the plaintiffs' bees following a mosquito-control operation was not a compensable taking because the harm was neither intended nor foreseeable. *Yawn*, 1 F.4th at 196-97. After state health officials warned of a potential Zika outbreak, the county authorized aerial pesticide spraying to prevent disease spread. *Id.* at 192-93. The county issued public notices, provided the pilot with maps marking local beehives, and instructed him to turn off the sprayer near those locations. *Id.* at 193-94. However, one group of beekeepers did not receive

notice and failed to take precautions; the next morning, they discovered their colonies dead. *Id.* The plaintiffs sued, claiming the aerial spray constituted a taking under the Fifth Amendment. *Id.* at 194. The Fourth Circuit concluded that the county's actions were a legitimate exercise of police power and that the harm was "an unfortunate consequence" of public health measures rather than a deliberate or predictable invasion of private property. *Id.* at 194-96. Because the harm were neither intended nor foreseeable, the court held the Takings Clause did not require compensation. *Id.* at 197.

Unlike *Yawn*, the destruction of Ms. Jones's home was deliberate, not incidental, and its consequences were entirely foreseeable. Laurenton officials had time to secure the area, X-ray the device, and deliberately chose to deploy a disruption tool knowing detonation was virtually certain. This was not a negligent failure or an unforeseen mishap. It was a calculated decision to sacrifice one home to safeguard the surrounding neighborhood. Unlike the county in *Yawn*, which took every reasonable step to avoid harm, the City knowingly selected a method that made destruction inevitable. Because the loss here was the direct and foreseeable result of a conscious tactical choice to use Ms. Jones's property as a shield for public protection, the Fifth Amendment's fairness principle demands compensation.

This Court has long rejected the idea that only purposeful acquisitions trigger compensation. In *Ark. Game*, the Court held that temporary flooding, though unintended, was compensable because it was the foreseeable consequence of authorized government conduct. *Ark. Game*, 568 U.S. at 38. The same principle governs here: foreseeability, not form or motive, may define a taking.

Recognizing compensation in this context serves the Takings Clause's central purpose: ensuring that individuals are not forced to bear burdens properly shared by the public. A rule

denying recovery whenever government acts for safety would eviscerate the Fifth Amendment, allowing municipalities to externalize the costs of protection onto the very citizens they are sworn to safeguard. Compensating Ms. Jones does not punish law enforcement; it honors the constitutional commitment that even legitimate exercises of power must remain fair.

D. The Public-Necessity Doctrine Is Narrow and Does Not Excuse the City's Conduct.

The public-necessity doctrine provides only a narrow defense for truly unavoidable, time-critical emergencies such as fires, epidemics, or wartime destruction. *See United States v. Caltex*, 344 U.S. 149, 154-55 (1952) (denying compensation where the military destroyed oil facilities under immediate and overwhelming wartime necessity). These instances reflect a singular context: situations in which delay would have meant certain catastrophe. *See Baker v. City of McKinney*, 93 F.4th 251, 252-57 (5th Cir. 2024) (Elrod & Oldham, JJ., dissenting from denial of reh'g en banc) (criticizing the panel's use of the "necessity" exception to the Takings Clause; explaining that historical fire and war cases involved inevitable losses, not deliberate destruction of intact property, and that fairness principles require compensating innocent owners whose property is destroyed for public safety).

The City may invoke *Caltex*, where U.S. forces destroyed petroleum facilities to prevent their capture by invading troops. *Caltex* 344 U.S. at 151-52. The Supreme Court denied compensation, emphasizing the immediate, imminent, and overwhelming necessity of the wartime emergency. *Id.* at 154-55. The destruction there was compelled by advancing enemy forces and required instant military response. *Id.*

The City's situation was entirely different. No active threat prevented deliberation; officers had secured the perimeter, cleared the area, and possessed time to decide how to

proceed. Unlike the military in *Caltex*, the City was not acting under wartime duress but under a controlled, domestic scene. Its choice to employ a tool that would certainly demolish the structure was a calculated method, not an unavoidable sacrifice. Where *Caltex* involved moment-to-moment survival, the City's actions reflected administrative convenience – the hallmark of a taking rather than an act of public necessity. This was not a split-second act to avert disaster, but a reasoned decision that balanced competing interests and placed the full cost of public safety on one homeowner. That deliberate choice lies outside the narrow boundaries of public necessity. *See Mugler v. Kansas*, 123 U.S. 623 (1887) (cautioning that the police power must remain "necessary and reasonable" to avert harm, not a blanket justification for uncompensated destruction).

Fairness, not fault, defines the constitutional remedy. The Takings Clause does not punish law enforcement for acting lawfully; it simply ensures that the financial burden of protecting the community is borne by the public as a whole. Compensating Ms. Jones respects that balance – strengthening, rather than chilling, effective policing.

E. The City Appropriated Ms. Jones's Home for Public Use by Using It as a Sacrificial Shield.

The Takings Clause applies when the government deliberately makes private property serve a public function. *Ark, Game*, 568 U.S. 23 at 31 (stating when the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner). Here, Laurenton officers converted Ms. Jones's home into a de facto blast-containment shield, absorbing the detonation to protect the surrounding neighborhood. That deliberate choice transformed her home into temporary public infrastructure, satisfying the "public use" requirement. Even brief or partial occupations trigger the duty to

compensate. *Ark. Game*, 568 U.S. at 31-32 (2012) (recognizing that even temporary physical invasions constitute takings when they serve public objectives). The City's deliberate use of Ms. Jones's home as a barrier against explosion fits squarely within these precedents: it was a direct, physical appropriation for a public purpose, not mere collateral damage.

The City may argue that no "use" occurred because the property was destroyed, not retained. But the Fifth Amendment's guarantee does not depend on whether the public reaps a lasting benefit, only whether the government deliberately employed private property to achieve a public end. *Ark. Game & Fish*, 568 U.S. at 37-38 (rejecting categorical exemption for temporary government invasions because they advance public purposes just as permanent appropriations do). The destruction of Ms. Jones's home thus functioned as a compelled sacrifice for the public's safety.

In sum, Laurenton treated Ms. Jones's home as a public safety instrument. The Takings Clause ensures that when the government converts a citizen's property into public infrastructure, even for a moment, the cost of that public benefit must be shared by all, not borne by one.

F. Recognizing a Taking Here Preserves Both Constitutional Fairness and Public Safety.

Compensating Ms. Jones does not punish law enforcement. It fulfills the Constitution's promise of fairness. The Takings Clause was designed to ensure that no individual "alone bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong*, 364 U.S. at 49. That principle applies most powerfully in moments of crisis, when government must act swiftly for collective safety but inevitably inflicts harm on the innocent. The constitutional remedy is not to restrict such action, but to ensure the cost is shared by the community it protects.

Providing just compensation after lawful emergencies preserves both fairness and trust. Denying recovery to innocent homeowners risks hollowing out the Takings Clause by allowing necessity to swallow its protection. *Baker v. McKinney*, 145 S. Ct. 11, 12 (2024) (Sotomayor, J., respecting denial of cert.). Paying victims afterward upholds public legitimacy and encourages municipalities to plan, insure, and budget responsibly for foreseeable risks.

Nor will recognizing a taking here open the floodgates. Courts have long cabined recovery to situations involving deliberate and foreseeable destruction of innocent property, not incidental damage during active combat or chaotic emergency response. *Ark. Game*, 568 U.S. at 38-39 (emphasizing that takings inquiries remain fact-intensive and situational); *Yawn*, 1 F.4th at 197 (4th Cir. 2021); *Bachmann v. United States*, 134 Fed. Cl. 694, 698 (2017) (stating "[s]uch a cause of action would require a highly fact-intensive analysis, considering the lawfulness or reasonableness of the police action, the temporal nature of the action, whether personalty or realty were involved, and the economic impact on the property.") That careful, case-specific scrutiny, not categorical immunity, keeps the Clause balanced and practical.

Ultimately, allowing compensation in this case vindicates the Fifth Amendment's dual purposes: protecting individual security while preserving the moral legitimacy of public power. When government uses private property as the price of public safety, justice requires it to pay that price openly, rather than hiding it in the ruins of one family's home.

The Thirteenth Circuit's categorical exemption for police power destruction erodes the Fifth Amendment's core guarantee of fairness. Because the City deliberately used Ms. Jones's home as a shield for the public's safety, fairness and justice demand that the public share the cost of that sacrifice. The Fifth Amendment was written precisely to prevent government from forcing one citizen to bear a burden meant for all. Recognizing a taking here preserves that

constitutional promise. It ensures accountability without restraining emergency action and reaffirms that public necessity cannot nullify private rights. Thus, the judgment below should be reversed and remanded for proper application of the Takings Clause.

CONCLUSION

FOR THE FOREGOING REASONS, Petitioner respectfully requests that this Court reverse the judgment of the United States Court of Appeals for the Thirteenth Circuit and remand the case for further proceedings.

Respectfully submitted,

/s/ ___Team 9_____

Counsel for Petitioner