No. 24-

IN THE

Supreme Court of the United States

ESTATE OF TE'JUAN JOHNSON,

Petitioner,

v.

AMANDA RAKES, ADMINISTRATOR OF THE ESTATE OF AMYLYN SLAYMAKER AND NEXT FRIEND TO THE MINOR CHILDREN G.C. AND M.C.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Faced with a Section 1983 substantive due process claim under a "state-created danger" exception to the general rule that there is no constitutional duty to protect a private citizen from harm, the three appellate judges on the Seventh Circuit panel issued three separate opinions with three different outcomes. The disparate reasonings of the three judges on the Seventh Circuit panel, and similar divisions within the circuit courts, highlight the serious need for this Court to clarify the limitations of the remedies available under the Due Process Clause as well as the application of qualified immunity where constitutional rights are uncertain. To that end, the questions presented for review are:

1. Whether a theory of liability under the Fourteenth Amendment based on "state-created danger" is incompatible with the purpose of the Due Process Clause "to protect the people from the State, not to ensure that the State protect[s] them from each other?" *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989); *see also Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005) ("[T]he benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under the Due Process Clause, neither in its procedural nor in its 'substantive' manifestations.").

2. If a theory of liability under the Fourteenth Amendment based on "state-created

danger" exists consistent with the purpose of the Due Process Clause, does a police officer who misrepresents to an individual that a threatening person will be confined thereby assume an affirmative constitutional duty to protect that individual from harm?

3. Whether a police officer who misrepresents to an individual that a threatening person will be confined is entitled to qualified immunity in the absence of clearly established law that he thereby assumed an affirmative obligation under the Due Process Clause to protect that individual from harm?

PARTIES TO PROCEEDING

1. Petitioner is the Estate of Te'Juan Johnson. Mr. Johnson, who passed away before this action was filed, was a police officer employed by Charlestown, Indiana.

2. Respondent is Amanda Rakes, Administrator of the Estate of Amylyn Slaymaker and next friend to the minor children G.C. and M.C.

3. Jonathan P. Roederer, a police officer employed by Charlestown, Indiana, was a party to the proceedings in the district court and the circuit court. Judgment in his favor was affirmed by the Seventh Circuit. He is not involved in this Petition.

RELATED CASES

- *Rakes v. Roederer*, No. 4:21-cv-0114-JMS-KMB, United States District Court for the Southern District of Indiana. Judgment entered March 30, 2023.

- *Rakes v. Roederer*, No. 23-1816, United States Court of Appeals for the Seventh Circuit. Judgment entered September 25, 2024. Rehearing *en banc* denied November 7, 2024.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Page

Page

Constitutional Provisions

Statutes, Rules and Regulations

Page

OPINIONS AND JUDGMENTS BELOW

The United States District Court for the Southern District of Indiana entered summary judgment for Petitioner. *Rakes v. Roederer*, 2023 WL 2712370 (S.D. Ind. March 30, 2023) (App., pp. 61a-126a.) The Seventh Circuit, in a split decision, reversed the judgment in favor of Petitioner and denied rehearing *en banc*. *Rakes v. Roederer*, 117 F.4th 968 (7th Cir. 2024), *reh'g denied en banc*, 2024 WL 4714322 (7th Cir. November 7, 2024). (App., pp. 1a-60a and 127a-129a.)

STATEMENT OF JURISDICTION

The Seventh Circuit had jurisdiction from the district court's entry of final judgment on March 30, 2023, from which Respondent filed her notice of appeal within 30 days on April 28, 2023. 28 U.S.C. § 1291; FED. R. APP. P. 4(a)(1)(A). The appellate panel's decision was issued on September 25, 2024, from which Petitioner sought rehearing *en banc* that was denied on November 7, 2024. Petitioner timely applied on January 13, 2025, for an extension of time to petition for certiorari which Justice Barrett granted through April 4, 2025. (Case No. 24A693.) This Petition is timely filed within that extended period which, if granted, will vest this Court with jurisdiction to review the decision below. 28 U.S.C. § 1254(1); SUP. CT. R. 13(1), (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

The Complaint sought damages for alleged violations of the Due Process Clause of the Fourteenth Amendment

of the United States Constitution which provides in pertinent part that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law . . ." U.S. CONST. amend. XIV, § 1.

Procedurally, the Complaint invoked 42 U.S.C. § 1983, which provides in pertinent part that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

A. Introduction

This case arises from the tragic death of Amylyn Slaymaker whose marriage was marked by violence. On one such occasion, she found herself explaining to two police officers that her drunk, armed husband, RJ Slaymaker, was threatening to kill her and her family. (App., p. 65a.) RJ had a history of violent threats, and after some persuasion, the officers convinced him to go to the hospital for a voluntary mental health examination. (*Id.*, pp. 89a-91a.) Officer Te'Juan Johnson[1] spoke with Amylyn further, imploring her to get a divorce and a "no-contact order." (*Id.*, p. 80a.) The two discussed that Amylyn should

1. Officer Johnson passed away before the Complaint was filed such that his Estate is the party in this proceeding.

retrieve the guns from their home and spend the night at her mother's house. (*Id.*, p. 98a.) Before they parted, Amylyn asked Johnson if RJ would be held for 24 hours at the hospital. On two occasions, Johnson responded with one word: "yeah." (*Id.*, pp. 56a, 92a, 97a.)

In fact, RJ left the hospital after a few hours only to return home where he shot and killed Amylyn before taking his own life. (*Id.*, p. 62a.) In seeking damages for a Due Process violation, Respondent seeks to tether Amylyn's murder to Johnson's utterance of "yeah," when asked whether RJ would be held for 24 hours. The district court found that Johnson's utterance was not an assurance to safeguard Amylyn as Johnson "also told her repeatedly to gather her things and go to her parents' house for the night and to take action to separate herself from RJ in the future." (*Id.*, p. 111a.) On appeal, the three Seventh Circuit judges could not agree on the proper outcome or analysis:

> Judge Ripple opined that a jury could find both Johnson and his co-defendant were liable under the Fourteenth Amendment and that neither were entitled to qualified immunity. (App., pp. 3a, 26a.)
>
> Judge Brennan found that "the undisputed facts do not permit liability to attach" to either defendant, and that the "broad protections of qualified immunity" apply, nonetheless. (*Id.*, p. 39a.)
>
> Judge Scudder believed that Johnson (but *not* Officer Roederer) could be liable under the Due Process Clause and, further, that Johnson was not entitled to qualified immunity. (*Id.*, p. 56a.)

Thus, the district court's judgment was affirmed by counting votes: Judges Brennan and Scudder found in favor of Johnson's co-defendant while Judges Ripple and Scudder found in favor of Respondent.

The inability of the three appellate judges, who are constitutional scholars in their own rights, to agree on whether Johnson assumed a constitutional duty to protect Amylyn from harm reflects the uncertainty of the state-created danger theory found to exist by some courts in the wake of *DeShaney*, let alone *clearly* so for qualified immunity purposes.

The haphazard manner in which the appeal was decided in this case highlights the unsettled state of the law among the circuit courts when it comes to claims against governmental actors for failing to protect private citizens from harm. Even those circuits that recognize an exception for state-created danger concede that "it does not have a strong foundation." *Estate of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 491 (6th Cir. 2019). Moreover, there is a lack of uniformity among the courts that apply the exception; for example, Johnson's affirmative response to Amylyn's inquiry about her husband being held for 24 hours would likely *not* be actionable in the Tenth Circuit. *See Gray v. Univ. of Colorado Hosp. Auth.*, 672 F.3d 909, 925 (10th Cir. 2012) ("false assurances do not constitute an affirmative act rendering decedent vulnerable to danger within the meaning of the danger creation exception . . . ").

The existence of a state-created danger exception has not been addressed directly by this Court since *DeShaney* was decided over 35 years ago. The closest decision was 20

years ago in *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005), where this Court rejected the notion that a private citizen has a constitutional interest in having another person arrested. The case at bar, in contrast, presents the unique circumstance where the circuit court determined that a private citizen *does* have a constitutional right to be protected from harm based on perceived assurance that another person will be confined. Review by this Court is warranted to address basic issues of constitutional rights that arise from ordinary interactions of law enforcement with private citizens as distinguished from the common law of torts.

B. Recitation of Material Facts

Because this case arrives at this Court in the summary judgment context the facts are viewed in a light most favorable to Respondent as the non-movant. So viewed, the Seventh Circuit encapsulated the key events as follows:

> On the night of July 18, 2019 in Charlestown, Indiana, bystanders called 911 to report that a man, RJ Slaymaker (RJ), and a woman, Amylyn Slaymaker (Amylyn), were fighting in the middle of a residential street. Two police officers responded to the call and separated RJ and Amylyn. Amylyn told the officers that RJ (her husband) was drunk, had hit her, had guns on him and at their house, and was threatening to kill her and himself. RJ denied hitting her or making any threats. The officers called an ambulance for RJ so he could get help with mental health issues at a nearby hospital. After RJ left in the ambulance, the officers

> allegedly told Amylyn that RJ would be kept at the hospital under a 24-hour mental health hold.
>
> But if they did say that to Amylyn, it was not true: neither the officers nor anyone else placed RJ under a hold. Instead, the officers merely encouraged him to seek help voluntarily. RJ left the hospital shortly after arriving and returned to the house that he shared with Amylyn. There, he shot and killed Amylyn, then himself.

(App., p. 2a.)

As detailed by the district court, Officer Roederer handcuffed RJ while Amylyn advised Johnson that RJ had a gun and was "threatening to kill me and my family." (App., p. 65a.) Amylyn relayed to Johnson the violent nature of her marriage and RJ's ongoing threats of harm. (*Id.*, pp. 65a-79a.) Johnson suggested that Amylyn go to court to get a "no-contact order." (*Id.*, p. 80a.) As quoted by the district court:

> OFFICER JOHNSON: . . . We can't be here 24-7. Nobody can be present 24-7. But you got to take the first step. If you know this is not working out and it's getting to this point, you need to go to court, file for a divorce, get an EPO, a no-contact order, and leave this alone. Be through with it. So don't make excuses up, "Well, I care for him, this and that." It's not—it's to the point where if it's not going to work out, you're going to have to go your separate ways. If he wants to harm his self—if he doesn't

> want help, ma'am, you can't help him. It's up to him if he wants help.
>
> AMYLYN: I know.

(*Id.*, p. 81a.) When Amylyn showed the officers a picture of RJ holding a gun to his head Johnson talked to RJ about "going to the hospital to 'get checked out.'" (*Id.*, p. 89a.) After some convincing, RJ agreed and left the scene in an ambulance. (*Id.*, pp. 89a-91a.)

After RJ departed, Johnson confirmed with Amylyn that she would be staying with her parents that evening after retrieving the guns from her home. (*Id.*, p. 92a.) As quoted by the district court, the transcript of their conversation reveals the following communication:

> OFFICER JOHNSON: Are you going to go to your house? You're—you're going to be at your parents' house?
>
> AMYLYN: Well, you—you said it's a 24-hour thing, right? For an evaluation?
>
> OFFICER JOHNSON: Yeah, so what are [you] going to do? Are you going to go to your house?
>
> AMYLYN: (Inaudible)."

(*Id.*)

> OFFICER JOHNSON: Okay. So do you want to stay there [at your house]? Or do you want to—I mean, what—what's the plan? Like, what—

> AMYLYN: I'm going to have to stay with my parents, I guess.
>
> OFFICER JOHNSON: Okay. So are you going to go to your house?
>
> AMYLYN: Well, tonight, yeah.
>
> OFFICER JOHNSON: Are you going to—
>
> AMYLYN: You said it's a 24 hour?
>
> OFFICER JOHNSON: Yeah. So are you going to get the guns and everything when you go home?
>
> AMYLYN: Yeah, I'm going to take them with me to my parents'.

(*Id.*, p. 97a.)[2]

According to the hospital records RJ was admitted at 12:59 a.m. but he denied having a desire to hurt himself or his wife and that he did not remain for 24 hours but instead was discharged at 3:41 a.m. (*Id.*, pp. 99a-100a.) That evening, the sheriff's office responded to a 911 call for a welfare check and upon arrival found both Amylyn and RJ deceased in their home. (*Id.*, pp. 100a-101a.)

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2. Indiana law at the time allowed, but did not require, "[a] law enforcement officer, having reasonable grounds to believe that an individual has a mental illness, is either dangerous or gravely disabled, and is in immediate need of hospitalization and treatment" to "[a]pprehend and transport the individual to the nearest facility" where they could be held up to 24 hours. IND. CODE §§ 12-26-4-1 and 12-26-4-5 (repealed effective July 1, 2023).

C. The Legal Proceedings

This civil action was filed two years later, alleging Johnson placed "Amylyn in a heightened state of special danger that Amylyn would not otherwise have faced when he falsely told Amylyn that RJ would be in the hospital for 24 hours and it was safe to return home." (*Id.*, p. 103a.)[3] After a period of discovery, the district court entered summary judgment for both defendants, finding Respondent had not presented evidence to support a recovery under the state-created danger exception to *DeShaney*:

> [T]he evidence shows that Officer Roederer made no representations whatsoever to Amylyn regarding how long RJ would be in the hospital or whether it was safe for her to return home, and that Officer Johnson responded "yes" twice when Amylyn asked him if RJ would be in the hospital for 24 hours but also told her repeatedly to gather her things and go to her parents' house for the night and to take action to separate herself from RJ in the future.

(*Id.*, p. 111a.) The district court noted further that "RJ had been a danger to Amylyn for months before the incident and would likely have continued to be so even if he had been held for 24 hours at the hospital." (*Id.*, p. 118a.)[4]

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3. Respondent's remaining count for conspiracy to violate Amylyn's right to equal protection based on gender (App., pp. 11a-12a) was not part of the appeal to the Seventh Circuit and is not part of this Petition.

4. After her death, a letter was found that Amylyn had written to be given to law enforcement "if something happened to

Further, the district court found that "nothing that Officer Johnson did or said limited Amylyn's ability to protect herself." (*Id.*) Applying the qualified immunity analysis, the district court concluded that clearly established law did not put Johnson on notice that his actions violated Amylyn's constitutional rights. (*Id.*)

The Seventh Circuit panel was sharply divided, with each judge authoring his own opinion. Judge Ripple would have reversed the judgment for both officers, including qualified immunity. (App., pp. 3a, 26a.) Judge Ripple believed that state-created danger liability did not require the officers to cut off all avenues of self-aid and went even further to find that both defendants' actions were conscience-shocking because they had the opportunity to deliberate and a jury could find they were indifferent to the danger Amylyn faced. (*Id.*, pp. 14a, 21a-22a.)

For his part, Judge Brennan would have affirmed for both officers because they did not increase the harm that Amylyn already faced from RJ such that Johnson's "two brief replies ('yeah'/'yea') to Amylyn about the length of RJ's detention did not create any new dangers, increase the likelihood of danger, or otherwise propel Amylyn into danger." (*Id.*, p. 39a.)

Meanwhile, Judge Scudder would have affirmed for Officer Roederer but reversed for Johnson based on his belief that Johnson created a risk Amylyn would not have

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her." (App., 103a.) The letter documented RJ's abusive behavior including that "he had recently threatened to kill her, her children, and the family dog" and that "RJ threatened to shoot the police if they responded and she did not want anyone to get killed." (*Id.*)

faced "had she known RJ was free to leave the hospital at a time of his own choosing." (App., p. 56a.) Yet he reflected the uncertainty of Respondent's constitutional theory by concluding that "*[i]f* the state created danger doctrine reflects sound law, it fits this case to a T." (*Id*., p. 59a (emphasis added).)

Following entry of the Seventh Circuit's judgment, Petitioner's request for rehearing *en banc* was denied without comment. (App., pp. 127a-128a.) This Petition follows.

REASONS FOR ISSUING THE WRIT

Petitioner posits that review by this Court is warranted for three main reasons: (1) to determine whether state-created danger is a viable theory of liability under the Fourteenth Amendment; (2) if the theory is viable, to formulate the legal standard and its application to a misrepresentation that a threatening person will be confined; and (3) to evaluate qualified immunity under the circumstances presented.

On the first issue, this Court has not addressed whether the state-created danger theory upon which the Seventh Circuit's judgment rests is compatible with *DeShaney*'s holding that a duty to protect exists "when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself[.]" 489 U.S. at 200. The pronouncement reads as a limitation on the constitutional obligation to protect private citizens from harm, yet many courts have found an exception based on *DeShaney*'s observation that the state "played no part" in creating the harm in that case.

As *DeShaney* was decided over 30 years ago the time may be nigh to resolve this entrenched and lingering debate.

Even if the state-created danger exception is consistent with the Due Process Clause, there are sharp divisions within the circuits as to the scope and application of the exception, as reflected vividly in the divergent opinions of the three circuit judges in the decision in this case. Even the judges who found against Johnson referred to his responses to Amylyn's inquiries as misrepresentations as opposed to a knowingly false utterance or one calculated to cause to harm. If the theory is viable, review might be needed prevent the standard applied by the lower courts from slipping into one of ordinary negligence whenever a causative link is shown between conduct of a police officer and harm to a citizen. Whatever else the Due Process Clause means the Fourteenth Amendment is decidedly *not* a "font for tort law to be superimposed upon whatever systems may already be administered by the States." *Paul v. Davis*, 424 U.S. 693, 700 (1976). *See also Collins v. City of Harker Heights*, 503 U.S. 115, 128 (1992) ("we have previously rejected claims that the Due Process Clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law.")

With respect to qualified immunity, the existence of a debate within the circuits as to the legitimacy of state-created danger as a theory of constitutional liability demonstrates beyond doubt that the law in this area is anything *but* clear. Even Judge Scudder who found against Johnson in this case wrote that "if" the theory is "sound law" then it would apply in this case. (App., p. 59a.) Review of the denial of qualified immunity is thus

warranted to reinforce that "[a] right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right," *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (cleaned up), and that "[w]hen the courts are divided on an issue so central to the cause of action alleged, a reasonable official lacks the notice required before imposing liability." *Ziglar v. Abbasi*, 582 U.S. 120, 154 (2017). By any measure, therefore, the right that Respondent seeks to uphold in this case falls far short of that mark. The judgment should be reviewed on this independent ground as well.

A. *DeShaney* has Spawned Circuit Splits on State-Created Danger as a Theory of Liability

The facts in *DeShaney* were horrific as the case involved four-year-old Joshua who was severely beaten into a coma by his father which required him to be institutionalized for life. Previously, Joshua had been taken into temporary custody at a hospital due to evidence of suspected abuse. A team of professionals convened by Winnebago County recommended that Joshua be returned to his father's custody, which the court accepted. The beatings continued thereafter, however, with no intervention by the county despite knowledge of suspicious injuries.

Litigation ensued against Winnebago County and others for failing to protect Joshua in violation of his due process rights under the Fourteenth Amendment. After both the district court and the Seventh Circuit found for the defendants, the Supreme Court agreed to consider "when, if ever, the failure of a state or local governmental entity or its agents to provide an individual with adequate protective services constitutes a violation of the individual's due process rights." 489 U.S. at 194.

Ultimately, this Court affirmed the dismissal of the lawsuit, holding that "[i]n the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—which is the 'deprivation of liberty' triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means." *Id.* at 200. This Court then concluded that because "the State had no constitutional duty to protect Joshua against his father's violence, its failure to do so—though calamitous in hindsight—simply does not constitute a violation of the Due Process Clause." *Id.* at 202. As the Court explained:

> While the State may have been aware of the dangers that Joshua 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. That the State once took temporary custody of Joshua does not alter the analysis, for when it returned him to his father's custody, it placed him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individual's safety by having once offered him shelter. Under these circumstances, the State had no constitutional duty to protect Joshua.

Id. at 201.

Nothing in *DeShaney* holds that public officials can be liable *without* restraining one's liberty in such a way

that "renders him unable to care for himself . . . " *Id.* at 200. Such a reading would preclude an exception for state-created danger, yet *DeShaney*'s statement that the State did not create the danger that Joshua faced has spawned divisions among *and within* the circuits as to the viability of a state-created danger theory of liability and the applicable legal standards.

The Eleventh Circuit, for example, rejected the state-created danger theory of recovery in *Perez-Guerrero v. U.S. Attorney General*, 717 F.3d 1224 (11th Cir. 2013), stating that "only custodial relationships automatically give rise to a governmental duty, under substantive due process, to protect persons from harm by third parties." *Id*. at 1233 (*quoting Doe v. Braddy*, 673 F.3d 1313, 1318 (11th Cir. 2012)). And while the Fifth Circuit has acknowledged that "a number of our sister circuits have adopted a 'state-created danger' exception to the general rule," it upheld qualified immunity because "the Fifth Circuit has never recognized [this] 'state-created-danger' exception." *Fisher v. Moore*, 73 F.4th 367, 372 (5th Cir. 2023) (*quoting McKinney v. Irving Indep. Sch. Dist*., 309 F.3d 308, 313 (5th Cir. 2002) and *Keller v. Fleming*, 952 F.3d 216, 227 (5th Cir. 2020)).

In the circuits that embrace the theory, the standards applied to find liability under the Due Process Clause are far from uniform.

In the Sixth Circuit, for example, the standard requires proof of: "1) an affirmative act by the state which either created or increased the risk that the plaintiff would be exposed to an act of violence by a third party; 2) a special danger to the plaintiff wherein the state's actions

placed the plaintiff specifically at risk, as distinguished from a risk that affects the public at large; and 3) the state knew or should have known that its actions specifically endangered the plaintiff." *Cartwright v. City of Marine City*, 336 F.3d 487, 493 (6th Cir. 2003). The Seventh Circuit employs a different three-part test articulated as follows: "First, the state, by its affirmative acts, must create or increase a danger faced by an individual. Second, the failure on the part of the state to protect an individual from such a danger must be the proximate cause of the injury to the individual. Third, the state's failure to protect the individual must shock the conscience." *Weiland v. Loomis*, 938 F.3d 917, 920 (7th Cir. 2019) (citations omitted). *Weiland* itself noted that "[o]ther circuits have their own approaches" in formulating the legal standard. *Id.* at 921. And indeed, the Ninth Circuit has stated that "[a]lthough our case law on the exception is somewhat scattershot, two clear requirements have emerged [requiring] . . . affirmative conduct on the part of the state placing the [person] in danger" and . . . "where the state acts with deliberate indifference to a known or obvious danger." *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011) (cleaned up).

The above cases are cited as examples because judges in each of these circuits have questioned the exception's compatibility with constitutional norms. In the Sixth Circuit, for example, a judge who concurred in the panel's conclusion that the exception did not apply on the evidence presented wrote separately to opine that "[w]hether or not our test can be defended based on the one sentence in *DeShaney*, it surely runs counter to the opinion's general thrust—that the Due Process Clause is ill-suited for claims seeking state protection from private violence."

Romain, 935 F.3d at 493-94 (Murphy, J., concurring). Similarly, after finding the facts did not support the state-created danger theory in *Weiland, supra,* the Seventh Circuit panel noted the debate as to the compatibility of the theory with *DeShaney* but concluded that the issue "should be presented for consideration in some future case, when the outcome may turn on the difference." 938 F.3d at 921.

More recently, the Ninth Circuit wrestled with the legitimacy of the state-created danger exception in *Murguia v. Langdon,* 61 F.4th 1096 (9th Cir.) *reh'g denied* 73 F.4th 1103 (9th Cir. 2023), *cert. denied* 144 S. Ct. 553 (2024). As with many of these cases, *Murguia* had tragic facts where, despite interventions by state officials, a woman who was having a mental crisis drowned her infant twins. Applying the Ninth Circuit's standard, the majority found that two of the involved officials affirmatively placed the twins in danger, one officer by transporting the woman from a shelter to the motel where the crime occurred, and the other by not disclosing the woman's history of abusing children, under the circumstances, the allegations were deemed sufficient to state a claim for "deliberate indifference to a known or obvious danger." *Id.* at 1110-17.

In a sharp dissent, Judge Ikuta took issue with the Ninth Circuit's application of the state-created danger as expanding the Due Process protections into the realm of mere negligence. 61 F.4th at 1120-26. Judge Ikuta was then joined by three *other* judges in a dissent from the denial of rehearing *en banc* that was authored by Judge Bumatay who wrote:

> [C]ommonplace actions—like providing a ride, booking a motel room, or telling a lie—when done by a State actor, could become due process violations if the actions eventually lead to injuries caused by third parties. Instead, we should have recognized that the Due Process Clause requires a 'deprivation of liberty' because it was intended to prevent abuses of coercive state authority—not torts that happen to be committed by State actors. . . . But without a restraint of liberty, we remain in the realm of ordinary torts.

73 F.4th at 1104 (Bumatay, J. dissenting, joined by Callahan, J., Ikuta, J. and R. Nelson, J.). *See also Johnson v. City of Philadelphia*, 975 F.3d 394, 405 (3d Cir. 2020) (Porter, J., concurring) ("We have gone much further than the Supreme Court by 'fashioning' our own state-created danger doctrine and further still by 'stating that there could be liability in non-custodial situations for gross negligence.'").

The above examples show the circuits have wrestled with the concept of liability for dangers created by the state that are compatible with the Due Process Clause, with disparate standards and applications emerging. Review is needed to resolve the discord of decisions that are evident in the record developed in this case.

B. *Castle Rock* may be at Odds with State-Created Danger Liability For Assurances that a Third Party will be Confined

Although this Court has not confronted the existence of the state-created danger exception directly, it came closest in *Castle Rock* where police officers did not adhere to the requirement of a statute (incorporated into a restraining order) that required the plaintiff's husband to be arrested for kidnapping the couple's three children. The officers made no effort to locate or arrest the husband who drove to the police station and opened fire. 545 U.S. at 754. When the police shot back, they killed him and tragically, found the bodies of the three murdered children inside his vehicle. *Id.*

Suit was thereafter filed alleging the police had breached a duty to protect under the Fourteenth Amendment due to the terms of the restraining order. *Id.* The district court dismissed the Complaint finding a constitutional claim had not been asserted, after which a divided Tenth Circuit reversed in part finding the plaintiff had "a protected property interest in the enforcement of her restraining order." *Id.* at 748. This Court disagreed, finding the plaintiff did not have an enforceable right to have her husband arrested, and even if she did, "the benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under the Due Process Clause, neither in its procedural *nor in its 'substantive'* manifestations." *Id.* at 768 (emphasis added).

Castle Rock is seemingly at odds with the state-created danger exception that the Seventh Circuit

applied in this case. As in *Castle Rock*, Respondent herein contends that she relied to her detriment on a belief that her husband would be confined. Indeed, the Seventh Circuit itself acknowledged that discordance in *Sandage v. Board of Commissioners of Vanderburgh County*, 548 F.3d 595 (7th Cir. 2008) where, citing *Castle Rock*, it stated that "it is hard to see what difference there is between a statute that commands enforcement and the promise not to endanger. . . . In both cases there is a commitment to protect, and if the statutory commitment is not enforceable under the Fourteenth Amendment, it is difficult to see why a promise should be." *Id.* at 599.

The Fourth Circuit has gone a step further by finding that an affirmative representation that someone will be taken into custody does not implicate the Due Process Clause. A case virtually on point is *Pinder v. Johnson*, 54 F.3d 1169 (4th Cir. 1995), in which an individual who had been menacing the plaintiff was arrested by a police officer. Out of concern for herself and her children, the plaintiff asked the officer whether it would be safe for her to return to work that evening. The officer assured her it was as the individual "would be locked up overnight." *Id.* at 1172. In fact, he was released from custody that evening and proceeded to set fire to her home, causing her three sleeping children to die from smoke inhalation. The Fourth Circuit affirmed the dismissal of the Section 1983 claim, finding that because the officer did not restrain the plaintiff's "freedom to act on her own behalf, she "was due no affirmative constitutional duty of protection from the state . . . " *Id.* at 1175.

To similar effect is *Bright v. Westmoreland County*, 443 F.3d 276 (3d Cir. 2006), where a police officer

assured a father that "action would be taken" against an individual who had violated the terms of his probation by "attempting to carry on a relationship with" his minor daughter. *Id.* at 278. A few weeks later the person murdered another daughter to retaliate. *Id.* at 279. The Third Circuit affirmed the dismissal of the Complaint, reasoning that "the state cannot 'create danger' giving rise to substantive due process liability by failing to more expeditiously seek someone's detention, *by expressing an intention to seek such detention without doing so*, or by taking note of a probation violation without taking steps to promptly secure the revocation of the probationer's probation." *Id.* at 283-84 (emphasis added).

These courts reached the opposite conclusion from the Seventh Circuit in this case, which appears to be inconsistent with *Castle Rock*'s holding that the Due Process Clause does not obligate the police to take someone into custody. Review is thus warranted to explore whether (and if so, when) an assurance that someone will be confined can give rise to liability consistent with the limitations of the Due Process Clause.

C. Liability for Unintentional Misrepresentations and Unintended Harm may be at Odds with the Purpose of the Due Process Clause

"The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). At a minimum, therefore, civil liability requires acts rising to the level of "abusive government conduct that the Due Process Clause was designed to prevent." *Davidson v. Cannon*, 474 U.S. 344, 347-48 (1986) (finding the clause "is not implicated

by the lack of due care of an official causing unintended injury to life, liberty or property"); *see also County of Sacramento v. Lewis*, 523 U.S. 833, 854 (1998) ("[H]igh-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressible by an action under § 1983.").

As explained in *Daniels v. Williams*, "the Due Process Clause is simply not implicated by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property." 474 U.S. 327, 328 (1986) (emphasis in original). In this case, Respondent merely alleged in the Complaint that "[i]t was foreseeable that RJ would return to the home and harm Amylyn during the 24-hour period that Amylyn thought RJ would be hospitalized." (App., p. 103a.) Foreseeability is a *negligence* concept such that allowing liability under a "state-created danger" theory on the facts alleged in this case risks turning the Due Process Clause of the Fourteenth Amendment into a font of tort law that runs directly afoul of constitutional jurisprudence.

Nothing in the record suggests that Johnson knew that RJ would be held for only a few hours or that RJ would return while Amylyn was there. Even Judges Ripple and Scudder whose opinions carried the outcome against Johnson in this case referred to his statements as "misrepresentations." (App., pp. 18a, 26a, 56a.) If a state-created danger theory is viable in the first place, review would be warranted to determine whether a liability standard can be fashioned that does not veer into the realm of ordinary negligence.

D. Review is Warranted to Reiterate the Scope of Qualified Immunity

At its core, the function of qualified immunity is to "give[] government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). Its fundamental purpose is to strike a balance between vindicating constitutional rights and allowing government officials to effectively perform their duties without "fear of personal monetary liability and harassing litigation." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). The protection is of such importance that it provides immunity from suit and not just liability or damages. *Pearson v. Callahan*, 555 U.S. 223, 237 (2009).

To achieve this goal, the rule, broadly stated, is that "[q]ualified immunity attaches when an official's conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *White v. Pauly*, 580 U.S. 73, 78-79 (2017) (*quoting Mullenix v. Luna,* 577 U.S. 7, 11 (2015)). Stated otherwise, "[t]o be clearly established, a right must be sufficiently clear that every reasonable official would [have understood] that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (square brackets in the original) (internal quotation omitted).

Time and again the lower courts have struggled to follow this Court's directives in applying the qualified immunity standard. In *White v. Pauly*, for example, the Court found that it was "again necessary to reiterate the longstanding principle that 'clearly established law' should not be defined 'at a high level of generality.'" 580

U.S. at 79 (*quoting Ashcroft*, 563 U.S. at 742). Instead "the clearly established law must be 'particularized' to the facts of the case [as] [o]therwise, 'plaintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Id.* at 79 (*quoting Ashcroft*, 564 U.S. at 635, 639). "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft*, 563 U.S. at 741.

In the case at bar, the district court judge who was closest to receiving the evidence concluded that Johnson's utterance of "yeah" in response to Amylyn's inquiry about RJ being confined for 24 hours was insufficient to meet the parameters for the state-created danger exception as formulated by the Seventh Circuit. Faced with the identical question on appeal, three appellate court judges could not agree on the proper mode of analysis. Indeed, along with the district court, one of the appellate judges who reviewed the record in this case found no constitutional violation let alone one that was clearly established. If federal court judges steeped in the law could not agree on the application of the law, with two of them finding for Johnson, then *a fortiori* it would not have been "sufficiently clear that every reasonable official would have understood that what [Johnson was] doing violates that right." *See Reichle*, 566 U.S. at 664 (internal quotation omitted). As this Court has stated, "[w]hen the courts are divided on an issue so central to the cause of action alleged, a reasonable official lacks the notice required before imposing liability." *Ziglar v. Abbasi*, 582 U.S. 120, 154 (2017).

Even if the Court opts not to review the validity and scope of the state-created danger theory, therefore, the gross misapplication of the standard in this case presents an ideal opportunity—perhaps by summary disposition—to reiterate the proper application of qualified immunity as it has done in the past. *See, e.g.*, *City of Tahlequah v. Bond*, 595 U.S. 9 (2021); *Rivas-Villegas*, 595 U.S. 1; *White*, 580 U.S. 73; *Mullenix*, 577 U.S. 7; *Taylor v. Barkes*, 575 U.S. 822 (2015); *Carroll v. Carman*, 574 U.S. 13 (2014).

CONCLUSION

Over 30 years ago this Court instructed in *DeShaney* that the Due Process Clause functions as a *restraint* on government power and does not create an affirmative duty to safeguard private citizens from harm. Even though the county officials in *DeShaney* had returned young Joshua to his father's custody where he remained despite evidence of abuse, this Court found that the county "played no part" in creating the danger "nor did it do anything to render him any more vulnerable." 489 U.S. at 201. An entirely new theory of liability has sprung from these passing observations that may not just be incompatible with *DeShaney* (and subsequently *Castle Rock*) but lacking constitutional underpinnings altogether. Even beyond that, the circuit courts that have adopted a state-created danger theory of constitutional liability are anything but uniform in setting forth the legal standards.

The record in this case (where four federal judges analyzed the claim differently) presents an ideal opportunity for this Court to determine with finality whether the state-created danger theory is valid, and if so the appropriate standard. Although litigation in

the lower courts can be the laboratory for exploring the growth of the law, three decades is long enough of a time for this Court to resolve the scope of liability under the Fourteenth Amendment in this area. At a minimum, Petitioner suggests that a summary reversal of the denial of qualified immunity in this case would be warranted given the palpable absence of clearly established law.

WHEREFORE, the petition should be granted or alternatively the denial of qualified immunity should be summarily reversed.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DATED SEPTEMBER 25, 2024

UNITED STATES COURT OF APPEALS
IN THE FOR THE SEVENTH CIRCUIT

No. 23-1816

AMANDA RAKES, ADMINISTRATOR OF THE ESTATE OF AMYLYN SLAYMAKER AND NEXT FRIEND TO THE MINOR CHILDREN G.C. AND M.C.,

Plaintiff-Appellant,

v.

JONATHAN P. ROEDERER AND ESTATE OF TE'JUAN JOHNSON,

Defendants-Appellees.

January 18, 2024, Argued
September 25, 2024, Decided

Appeal from the United States District Court for the Southern District of Indiana, New Albany Division.
No. 4:21-cv-00114 — **Jane Magnus-Stinson**, Judge.

Before RIPPLE, BRENNAN, and SCUDDER, *Circuit Judges.*

Appendix A

PER CURIAM. On the night of July 18, 2019 in Charlestown, Indiana, bystanders called 911 to report that a man, RJ Slaymaker (RJ), and a woman, Amylyn Slaymaker (Amylyn), were fighting in the middle of a residential street. Two police officers responded to the call and separated RJ and Amylyn. Amylyn told the officers that RJ (her husband) was drunk, had hit her, had guns on him and at their house, and was threatening to kill her and himself. RJ denied hitting her or making any threats. The officers called an ambulance for RJ so he could get help with mental health issues at a nearby hospital. After RJ left in the ambulance, the officers allegedly told Amylyn that RJ would be kept at the hospital under a 24-hour mental health hold.

But if they did say that to Amylyn, it was not true: neither the officers nor anyone else placed RJ under a hold. Instead, the officers merely encouraged him to seek help voluntarily. RJ left the hospital shortly after arriving and returned to the house that he shared with Amylyn. There, he shot and killed Amylyn, then himself.

The administrator of Amylyn's estate subsequently brought this action against Officer Roederer and the estate of Officer Johnson (who died shortly before this litigation). She primarily relies on the state-created danger doctrine, under which state officials can in limited circumstances be held liable under section 1983 for recklessly placing plaintiffs at risk of harm from third parties. The district court concluded that the defendants were entitled to qualified immunity and granted summary judgment on that basis.

We now affirm the judgment of the district court insofar as it relates to Officer Roederer. He may recover his costs related to this appeal. We reverse the judgment of the district court and remand for further proceedings insofar as it relates to Officer Johnson. His estate may recover its costs on this appeal.

Each judge of the panel has filed a separate opinion setting forth his view on the appropriate disposition of this appeal. Judge Ripple would reverse the judgment of the district court with respect to both defendants and remand for further proceedings. Judge Scudder would reverse the judgment and remand for further proceedings with respect to the estate of Officer Johnson. He would affirm the judgment with respect to respect to Officer Roederer. Judge Brennan would affirm the judgment of the district court with respect to both defendants. The opinion of each judge is set forth below.

RIPPLE, *Circuit Judge*. At the time of their deaths, RJ and Amylyn Slaymaker had been married for about seven years. The allegations of abuse during that period are startling. He shot at her on multiple occasions, and he once set fire to their couches in an attempt to burn down their house. He also often "dared" her to engage in sexual acts with other men and threatened to hurt her if she did not complete the "dares." Examples of these threats included "I'll break your fucking jaw [if] you walk in my fucking house without completeing [*sic*] my dare"[1] and "Come home and not complete shit, you will be in

1. R.67-21 at 7.

the hospital."[2] Whenever Amylyn suggested divorce, RJ threatened suicide. If she called the police, RJ said he would commit "suicide by cop."[3]

On the night in question, RJ completely lost control. He had a few drinks, then a few more drinks. At around 11 p.m., he texted Amylyn to say that, because she had not completed one of his "dares," he was going to "gun [d]own" Eric, Amylyn's ex-husband and the father of her two children.[4] Eric was watching the children at his house that night. RJ taunted Amylyn: "Watch [m]e on gps. ... Heading to your kids house."[5] He told her to "[g]ive it 10 mins and call the cops."[6] It would be a "[r]eal suicide crime scene," he predicted.[7] Amylyn barely beat RJ to Eric's house, stopping him right in front of Eric's driveway. RJ said to her, "Do you want me to shoot you? And then the kids come out in the morning to see their mother dead?"[8] The two of them got into a physical altercation in the street.

One of Eric's neighbors saw them fighting and called 911. The neighbor told dispatchers that he and his wife

2. *Id.*

3. R.67-3 at 20:53-58; R.67-4 at 22.

4. R.82-4 at 1.

5. *Id.*

6. *Id.*

7. *Id.*

8. R.67-4 at 14.

saw a man hitting a woman on the street near his house and that the man may have had a gun. Charlestown Police Department Officers Te'Juan Johnson and Jonathan Roederer responded to the call. The officers drove to the scene separately, and video cameras mounted on the dashboards of their cars captured much of what followed. When the officers arrived, Amylyn told them that RJ was drunk and armed and that she was "scared for [her] life."[9] The officers handcuffed RJ, confiscated his gun, and separated the spouses.

The officers endeavored to find out what had happened. Officer Johnson spoke with Amylyn. She showed him the texts RJ had sent her and told him that, during the fight in the street, RJ had punched her and hit her with the front sight of his gun. She also told him about RJ's other threatening behavior and that he had two AR-15s at their house. Officer Roederer spoke with RJ and the neighbors. RJ denied hitting Amylyn and said he was having a hard time with PTSD he developed in military service. The neighbors admitted uncertainty about whether they had actually seen RJ hit her.

At one point, Amylyn asked Officer Johnson if the officers could remove RJ's AR-15s from her house. Officer Johnson relayed the request to Officer Roederer and suggested that Officer Roederer drive RJ back to the house and remove the AR-15s. Officer Roederer expressed hesitation:

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9. R.67-3 at 1:33-35; R.67-4 at 4-5.

OFFICER ROEDERER: You want me to get the guns from his house?

OFFICER JOHNSON: Yeah, the two AR-15s, yeah.

…

OFFICER ROEDERER: I mean, should I keep him in cuffs until I get the guns? I'm not -- I mean, I don't want to walk inside --[10]

In his deposition, Officer Roederer confirmed that his concern was one of "officer[] safety."[11] Officer Johnson seemed to appreciate this concern, and the two of them discussed other potential courses of action.

After some deliberation, the officers ruled out one such course of action: arresting RJ. Officer Johnson told Amylyn that they did not plan to arrest RJ, and he explained to Amylyn certain options she had, including going to the courthouse in the morning and asking the court to commit RJ to a hospital on account of his suicide risk. Amylyn then said to them: "I have proof that he tried to attempt suicide before. Will that help? ... [H]e sent me a picture of his gun against his head recently."[12] Amylyn

10. R.67-3 at 29:32-30:15; R.67-4 at 30-31.

11. R.82-3 at 66.

12. R.67-3 at 39:10-21; R.67-4 at 41.

showed the officers the picture, and Officer Johnson told her, "Wait right here for me."[13]

The officers walked over to RJ and suggested that he go to a nearby hospital to "get checked out."[14] They assured him that they would not go with him to the hospital and that they would not show anyone else the picture in which he was pointing a gun to his head. They also told him that if he did not agree to go to the hospital, they could compel him to stay there for a week. But if he went on his own accord, Officer Roederer said, "you don't have to stay in there."[15] Officer Johnson twice told RJ that he would prefer that RJ go voluntarily, because otherwise he would have to type up a report.[16] RJ reluctantly agreed. The officers called an ambulance, which arrived at around 12:40 a.m. Officer Johnson told the EMTs: "This is RJ. Man, he got into it with his wife. He was having a bad day. Problems -- you know, he wants to voluntarily get checked out."[17]

The officers then went back to speak with Amylyn. The conversation that followed is at the center of this case:

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13. R.67-3 at 44:25-27; R.67-4 at 47.

14. R.67-3 at 44:59-45:02; R.67-4 at 48.

15. R.67-3 at 48:10-13; R.67-4 at 53.

16. *See* R.67-4 at 48 ("I'd rather for you to do it voluntarily, or -- you know, so now I got to type a report."); *id.* at 51 ("If you're willing to go -- or if not, I go back to the station, type up papers, then I got to corroborate everything it says in there.").

17. R.67-3 at 1:02:39-47; R.67-4 at 73.

OFFICER JOHNSON:	Are you going to go to your house? You're -- you're going to be at your parents' house?
AMYLYN SLAYMAKER:	Well, you -- you said it's a 24-hour thing, right? For an evaluation?
OFFICER JOHNSON:	Yeah … .[18]

The conversation continued, eventually returning to the topic of where Amylyn planned to stay that night:

OFFICER JOHNSON:	Okay, so are you going to go to your house?
AMYLYN SLAYMAKER:	Well, tonight, yeah.
OFFICER JOHNSON:	Are you going to --
AMYLYN SLAYMAKER:	You said it's a 24 hour?
OFFICER JOHNSON:	Yeah. So are you going to get the guns and everything when you go home?
AMYLYN SLAYMAKER:	Yeah, I'm going to take them with me to my parents'.[19]

According to Ms. Rakes, these exchanges indicate that, at some time earlier that night, the officers told Amylyn that they would send RJ to the hospital with instructions for hospital staff to put him under a 24-hour mental health hold. The officers were permitted to put RJ under such

18. R.67-3 at 1:08:03-15; R.67-4 at 77-78.

19. R.67-3 at 1:29:24-33; R.67-4 at 97.

a hold by state law,[20] and they were required to do so by their department's policy.[21]

Everyone eventually left the scene, but not long afterwards, Officer Johnson got a call from Amylyn. She told him that she had found a scratch on her arm that was consistent with having been hit by RJ's gun in their fight earlier. Amylyn went to the police station and showed

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20. At the time, Indiana law permitted law enforcement to transport a person who has a mental illness, is dangerous, and "is in immediate need of hospitalization and treatment" to a nearby hospital, and to detain that person for up to 24 hours. *See* Ind. Code § 12-26-4-1 *et seq.* (repealed in 2023); *see also T.K. v. Dep't of Veterans Affairs*, 27 N.E.3d 271, 273 n.1 (Ind. 2015) (describing circumstances under which the state law then in effect permitted involuntary civil commitment).

21. Under the policy,

> A Department officer ..., who during the course of their duties as a law enforcement officer, has reasonable grounds to believe that an individual is mentally ill, dangerous to themselves or others, and/or in immediate need of hospitalization and treatment shall:
>
> 1. Exercise immediate twenty-four (24) hour detention for mental evaluation authority provided for in Indiana Code 12-26-4-1.
>
> 2. Summons an ambulance to transport the individual to the nearest medical facility with psychiatric intake personnel ... .
>
> 3. Complete a narrative style report or proper facility form(s) ... .

R.48-3.

Officer Johnson the scratch. Officer Johnson summarized the conversation that followed in a report he filed at least one day later (*i.e.*, after he learned about the murder-suicide). In that report (the veracity of which Ms. Rakes questions), Officer Johnson wrote that he told Amylyn to "make sure to get the other two AR-15s and stay at her mother['s] house."[22] He also wrote: "Amylyn asked several times how long will [RJ] be in the hospital. Officers told her we did not know."[23]

Meanwhile, RJ walked into the hospital at approximately 1 a.m., alone. He received a psychiatric evaluation and was discharged at 3:41 a.m. Sometime after that, he went home and shot Amylyn in the head with one of his AR-15s. He sent a message to his mother at 7:49 p.m. the following evening, stating that he had killed Amylyn because she had "[s]crewed [him] so bad."[24] RJ sent his mother another message at approximately 11:43 p.m. (by now, nearly 24 hours after RJ entered the hospital). The message stated: "I'm not going to prison. Amylyn is dead. And so am I."[25] RJ's mother called the police department to request a welfare check, which prompted officers to go to RJ and Amylyn's house at around midnight. The officers found both RJ and Amylyn dead. Amylyn's body was "cold to the touch."[26]

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22. R.67-9 at 15.

23. *Id.*

24. R.82-11 at 2.

25. R.67-11 at 6.

26. R.67-12 at 2.

Appendix A

Amanda Rakes, the administrator of Amylyn's estate, brought this action in the United States District Court for the Southern District of Indiana. Her complaint sets forth a substantive due process claim under 42 U.S.C. § 1983 and a gender-discrimination conspiracy claim under 42 U.S.C. § 1985. She named as defendants Officer Roederer and, because Officer Johnson died between the events in question and the filing of this suit, Officer Johnson's estate. The defendants moved for summary judgment on both claims.

The district court granted summary judgment to the defendants. The court noted that Ms. Rakes's substantive due process claim was based on the premise that the officers had told Amylyn "that RJ would be held for 24 hours at the hospital and that it therefore was safe for her to go home." *Rakes v. Roederer*, No. 4:21-cv-00114, 2023 U.S. Dist. LEXIS 54758, 2023 WL 2712370, at *16 (S.D. Ind. Mar. 30, 2023). It then held that Officer Roederer was entitled to qualified immunity because, in the district court's view, there was no evidence that he had made any assurances to Amylyn and there was generally a "lack of evidence of any personal involvement" on his part. 2023 U.S. Dist. LEXIS 54758, [WL] at *18 n.8.

The district court also held that Officer Johnson was entitled to qualified immunity. Here, the court focused on the time that Officer Johnson had spent trying to talk Amylyn into staying at her parents' house. It further deemed significant that "RJ had been a danger to Amylyn for months before the incident and would likely have continued to be so even if he had been held for 24 hours at the hospital." 2023 U.S. Dist. LEXIS 54758, [WL] at *18.

Finally, the district court separately rejected Ms. Rakes's gender-discrimination conspiracy claim. It entered summary judgment for the defendants on both claims.

Ms. Rakes appealed the district court's grant of summary judgment on her substantive due process claim.

We review de novo a district court's decision granting summary judgment. *Pierner-Lytge v. Hobbs*, 60 F.4th 1039, 1043 (7th Cir. 2023). Summary judgment is appropriate if "there is no genuine dispute of fact" and the moving party is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In applying this standard, we view the facts and draw all reasonable inferences in the light most favorable to the nonmoving party. *Pierner-Lytge*, 60 F.4th at 1043.

The main basis for the district court's grant of summary judgment was its conclusion that the defendants are entitled to qualified immunity. "Determining whether a defendant state officer is entitled to qualified immunity involves two inquiries: '(1) whether the facts, taken in the light most favorable to the plaintiff, make out a violation of a constitutional right, and (2) whether that constitutional right was clearly established at the time of the alleged violation.'" *Gibbs v. Lomas*, 755 F.3d 529, 537 (7th Cir. 2014) (quoting *Williams v. City of Chicago*, 733 F.3d 749, 758 (7th Cir. 2013)). "If either inquiry is answered in the negative, the defendant official is entitled to summary judgment." *Id.*

The Due Process Clause of the Fourteenth Amendment generally does not impose a duty upon the State to protect

individuals from harm by private actors. *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989), embodies that principle. *DeShaney* involved a due process claim brought on behalf of a young boy who was abused by his father. *Id.* at 191. County social workers became aware of suspicious injuries and other signs of abuse but took no action to remove the child from his father's custody. *Id.* After the latest and most severe beating left the boy permanently disabled, the father was arrested and convicted of child abuse. *Id.* at 193. The boy's mother then brought a section 1983 action against the county and the social workers. She claimed that they had violated her son's right to due process of law. *Id.* The Supreme Court articulated the general principle that "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *Id.* at 197. It accordingly rejected the mother's claim because "the State had no constitutional duty to protect [the boy] against the father's violence." *Id.* at 202.

Although state officials do not have a federal constitutional duty to protect individuals not in custody, they do have a duty not to "needlessly create risks of harm." *Paine v. Cason*, 678 F.3d 500, 510 (7th Cir. 2012). Indeed, the Court indicated as much in *DeShaney*, when it emphasized, no less than three times, that the defendants played no part in the creation of the danger the boy faced. 489 U.S. at 197, 201, 201-02. Accordingly, although mindful of *DeShaney*, we have recognized in several decisions that state officials can, in limited circumstances, be held liable under § 1983 for unjustifiably placing a person at

risk of harm from third parties. *See, e.g., Paine*, 678 F.3d at 510-11 (police could be liable under § 1983 for arresting woman in safe area and releasing her in area with an exceptionally high crime rate); *Reed v. Gardner*, 986 F.2d 1122, 1127 (7th Cir. 1993) (police could be liable under § 1983 for arresting car driver and leaving keys in hands of intoxicated passenger). We have termed such claims state-created danger claims and called the resulting doctrine the state-created danger doctrine. Most other circuits have recognized a version of this doctrine. *See Irish v. Fowler*, 979 F.3d 65, 67, 73 (1st Cir. 2020) (collecting cases from nine circuits and joining those circuits).

The state-created danger doctrine has important limits. First, the plaintiff must show that "the state affirmatively place[d] the individual in a position of danger the individual otherwise would not have faced." *Wallace v. Adkins*, 115 F.3d 427, 430 (7th Cir. 1997). Second, the plaintiff must show "that the state's failure to protect him from that danger was the proximate cause of his injury." *First Midwest Bank v. City of Chicago*, 988 F.3d 978, 988 (7th Cir. 2021). "Finally, because the right to protection against a state-created danger arises from the substantive component of the Due Process Clause, the state's failure to protect the plaintiff must shock the conscience." *Id.* at 989.

I pause here to clarify two points pertinent to the remainder of the discussion. First, a plaintiff bringing a state-created danger claim need not establish that the defendant official cut off other avenues of aid or rendered the victim unable to help himself. We rejected that requirement in *Monfils v. Taylor*, 165 F.3d 511 (7th

Cir. 1998). In that case, we rejected an argument that the state-created danger doctrine contained an "absolute requirement that all avenues of self-help be restricted." *Id.* at 517. We stated that "a state can be held to have violated due process by placing a person in a position of heightened danger without cutting off other avenues of aid." *Id.*

The defendants invite us to reverse course and to require a showing that the State has disabled or undermined self-help or sources of private assistance. But it is hard to see why this showing should be required. Even if the police (for example) have not cut off other avenues of aid, if "the police place a person in a situation in which he is endangered by other private persons[,] the police in effect are their accomplices—unwitting, but if reckless, culpable." *Slade v. Bd. of Sch. Dirs. of Milwaukee*, 702 F.3d 1027, 1030 (7th Cir. 2012). The defendants submit that *DeShaney* requires this showing. However, *DeShaney* made clear that it was not addressing a case in which the State had created the danger the boy faced. It should not be read, therefore, as imposing any particular requirements onto such claims. Most of the other circuits have not imposed this requirement for state-created danger claims. *See* Erwin Chemerinsky, *The State-Created Danger Doctrine*, 23 Touro L. Rev. 1, 15-18 (2014) (surveying circuit decisions). In short, the defendants have not provided a "compelling reason" for overruling circuit precedent. *Wilson v. Cook Cnty.*, 937 F.3d 1028, 1035 (7th Cir. 2019).

The second point warranting mention relates to Officer Roederer's involvement in the alleged constitutional

violation. "A governmental actor may be held personally liable only for constitutional violations in which [he] personally participated." *Harnishfeger v. United States*, 943 F.3d 1105, 1122 (7th Cir. 2019). We have previously addressed the application of this principle to the state-created danger context. In that context, if one officer could be held liable for placing an individual in a position of danger, and there is another officer who, with the requisite state of mind, "participa[ted] in the conduct giving rise to the peril," then the second officer can be liable along with the first one. *Richman v. Sheahan*, 512 F.3d 876, 885 (7th Cir. 2008); *see Paine*, 678 F.3d at 512 (officer could be liable under the state-created danger doctrine when other officers arrested woman in a safe area, the officer ignored phone calls from the woman's mother while the woman was in custody, and the officer failed to return the woman's cell phone to her before she was released by other officers in a dangerous area); *Richman*, 512 F.3d at 885 (explaining that, if two officers arrest a drunk driver and strand the passengers by taking the keys from the ignition and then driving off, both officers can be liable under the state-created danger doctrine, even if only one had removed the keys).

The district court concluded that Officer Roederer was entitled to summary judgment for the independent reason that there was a "lack of evidence of any personal involvement" on his part in the alleged constitutional violations. *Rakes*, 2023 U.S. Dist. LEXIS 54758, 2023 WL 2712370, at *18 n.8. The record does not support this characterization. Officer Roederer played an active role, which included persuading RJ to go to the hospital and

convincing Officer Johnson not to send him to pick up the guns from the house. He was also present for many of Officer Johnson's conversations with Amylyn, including the conversation in which Officer Johnson twice indicated that RJ's hospital stay would be a "24-hour thing." Even if Officer Roederer were not the one to tell Amylyn that RJ would be put under a 24-hour hold, or to confirm as much, a jury could find that he played a significant role in the alleged violation.

With these principles and clarifications in mind, I proceed to evaluate Ms. Rakes's state-created danger claim.

To prevail on her state-created danger claim, Ms. Rakes first must show that the officers "placed [Amylyn] in a position of danger that [s]he would not otherwise have faced." *Wallace*, 115 F.3d at 430. This means that she must stake her claim on "an *affirmative act* on the part of the state," *Stevens v. Umsted*, 131 F.3d 697, 705 (7th Cir. 1997), rather than on a mere failure to protect her from harm. *See Doe v. Vill. of Arlington Heights*, 782 F.3d 911, 918 (7th Cir. 2015) (officer who saw three men carrying intoxicated woman but did not intervene to stop the sexual assault that ensued could not be liable under § 1983); *Windle v. City of Marion*, 321 F.3d 658, 661-62 (7th Cir. 2003) (police officer who did nothing after learning that a teacher was molesting a minor student could not be liable under § 1983).

Ms. Rakes contends that the officers created a danger for Amylyn by falsely telling Amylyn that RJ would be

detained at the hospital for 24 hours. Although she has not presented evidence that directly establishes that either of the officers made such a statement, she submits that a jury could reasonably infer—from the department policy, Indiana law, and the exchanges about the "24-hour thing"—that one or both of the officers made such a statement or acquiesced in Amylyn's articulation of it. I agree that a jury could draw that inference.

A jury could conclude that the officers' alleged misrepresentations created a danger for Amylyn that she would not otherwise have faced. According to Ms. Rakes's account (which a jury would be entitled to credit), the officers told Amylyn that they had transferred RJ to the hospital with instructions to keep him detained for 24 hours. In this account, Officer Johnson twice confirmed this misleading statement with Officer Roederer standing by. The misleading statements created a risk that Amylyn would be at the home when RJ returned, angry at Amylyn and with access to his two AR-15s. This was not a risk Amylyn otherwise faced. RJ posed far less of a risk to her before their encounter with the officers, and he certainly would have posed far less of a risk to her if she had known that he was not in fact being detained. On this record, a jury would be entitled to conclude that, if she had known that RJ might return home that night, she would not have returned to her home but would have gone directly to her parents' house.[27]

27. Although Judge Brennan's opinion recites several times that the evidence must be interpreted in the light most favorable to the Estate, it does not apply that rule with any consistency.

Another consideration supports this conclusion. Given Officer Johnson's statements on the dash cam, a jury would be entitled to conclude that, having told her that RJ would not be returning to the home that evening, the officers tasked her with removing the AR-15s before RJ's return, a job that they preferred not to undertake themselves. The record is susceptible to the inference that the officers encouraged her to perform this task so that they would not have to be bothered or endangered. A jury would be entitled to conclude that she not only returned to her home under false assurances of her safety but also based on the officers' encouragement to secure the weaponry present there prior to RJ's return.

Judge Brennan's opinion argues that, given the troubled state of the Slaymaker marriage, the officers did not leave Amylyn any worse off than they had found her. Fairly read, the record supports, and a jury would be entitled to conclude, that Amylyn was hardly left in the situation that she had experienced throughout her troubled marriage to RJ. The record makes clear that a chronically bad marital situation had now escalated to a crisis level where the parties not only had irreconcilable differences but could not remain under the same roof without the possibility of deadly violence. More than anyone, the officers understood that the residual discord of the past had reached a new and dangerous level that implicated not only the couple but their children and others such as Amylyn's former husband. They urged her to seek the protection of the courts against further unwanted contact with RJ. They also urged her to abandon her efforts to seek help for RJ and to make her safety and

that of her children her primary objective. Amylyn, at least by the end of her time with the officers, understood that she faced a new and more dangerous situation. She made it clear that she would not return to the home if RJ might be there. She went back to the home to collect the AR-15s only on the misrepresentation of the officers that RJ would not be there.

Ms. Rakes next must show that the officers' conduct proximately caused Amylyn's death. Proximate cause in this context is "a fact specific inquiry, involving a consideration of time, geography, range of potential victims, and the nature of harm that occurred." *Buchanan-Moore v. Cnty. of Milwaukee*, 570 F.3d 824, 829 (7th Cir. 2009). In this case, the officers and Amylyn expressly discussed the danger that RJ posed to her that night, at the home the two of them shared, if RJ had access to his guns. Indeed, Officer Johnson expressly anticipated that, if RJ were allowed to go voluntarily to the hospital, "the next thing you know, you're back at the house, fighting, guns involved and stuff like that."[28] This case is nothing like cases in which courts have held that a lack of proximate cause defeated a state-created danger claim. *See, e.g., Martinez v. California*, 444 U.S. 277, 285, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980) (parole board members could not be liable under § 1983 when someone they paroled committed a random murder five months later, because the death was "too remote a consequence" of their parole decision); *Buchanan-Moore*, 570 F.3d at 828-29 (victim of random burglary at hands of mentally

28. R.67-3 at 1:00:22-28; R.67-4 at 71.

ill man prematurely released from jail did not have a valid § 1983 claim). A reasonable jury could certainly find that Ms. Rakes has established proximate cause for purposes of the state-created danger doctrine.

Ms. Rakes also must show that the officers' conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998). "[W]hen the circumstances permit public officials the opportunity for reasoned deliberation in their decisions," we will "find the official's conduct conscience shocking when it evinces a deliberate indifference to the rights of the individual." *King v. E. St. Louis*, 496 F.3d 812, 819 (7th Cir. 2007). "'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his actions." *Board of the County Comm'rs v. Brown*, 520 U.S. 397, 410, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997). The parties have assumed that deliberate indifference is the proper standard for this case; we will not challenge that assumption.

A jury could reasonably find that the officers were aware of the risk that, if RJ were not detained that night and Amylyn went back to her house, RJ would use his guns to hurt or kill her. The officers knew that RJ was drunk and unstable. Amylyn told them that he was hitting her and about the threats he was making, and she showed Officer Johnson the alarming texts that RJ sent her just beforehand. Further, Amylyn and the officers discussed at multiple junctures the issue of the AR-15s at Amylyn

and RJ's house. Officer Roederer even acknowledged the danger posed by RJ's access to those AR-15s when he said that he would not want to confiscate them himself if RJ were not detained. Amylyn's questions to the officers about the "24-hour thing" also support an inference that the officers were aware of the specific risk. She asked those questions in response to the question of whether she was going to her and RJ's house that night—indicating to the officers that her decision about where to go depended on whether RJ would be detained.

A jury could also reasonably find that the officers acted with deliberate indifference to the danger I have just described. Of all of the options the officers had, they seem to have chosen the one most dangerous to Amylyn: letting RJ go, but nonetheless leading Amylyn to believe that he had been detained. If that is what the officers did, a jury could conclude that they did so because it was safest and most convenient for them. Placating RJ and lying to Amylyn spared the officers from having to deal with the two of them anymore. It also spared the officers from needing to do the paperwork that presumably would have followed an arrest or civil commitment, which was something Officer Johnson twice told RJ he wanted to avoid. In addition, if they did mislead Amylyn, doing so helped them avoid the hassle and potential danger of removing the AR-15s from her and RJ's house. The record clearly allows a jury to conclude that Amylyn agreed to undertake that task without the officers' help only because they lulled her into believing that RJ would be detained while she completed the task. As Judge Brennan's opinion emphasizes, the officers were at the scene for more than ninety minutes. But the evidence also would allow a jury

to find that, during those ninety minutes, they deliberately manipulated the resolution of the encounter to relieve themselves of further work, even though that self-interest exposed Amylyn to a new and immediate danger. The evidence of deliberate indifference, considered in totality, is sufficient to present to a jury for evaluation.

The defendants maintain that, even if Ms. Rakes has established a triable state-created danger claim, they are nonetheless entitled to qualified immunity. "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *City of Escondido v. Emmons*, 586 U.S. 38, 42, 139 S. Ct. 500, 202 L. Ed. 2d 455 (2019) (quoting *Kisela v. Hughes*, 584 U.S. 100, 104, 138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018) (per curiam)). "A clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.'" *Mullenix v. Luna*, 577 U.S. 7, 11, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (per curiam) (quoting *Reichle v. Howards*, 566 U.S. 658, 664, 132 S. Ct. 2088, 182 L. Ed. 2d 985 (2012)).

A plaintiff can demonstrate that a right is clearly established in several ways, one of which is by identifying a "closely analogous case finding the alleged violation unlawful." *Stockton v. Milwaukee Cnty.*, 44 F.4th 605, 620 (7th Cir. 2022). The case must be "controlling," *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011) (quoting *Wilson v. Layne*, 526 U.S. 603, 617, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999)), which for our purposes means that it came from the Supreme Court or

this court. *Lovett v. Herbert*, 907 F.3d 986, 992 (7th Cir. 2018). The case need not be "directly on point," *Kisela*, 584 U.S. at 104 (quoting *White v. Pauly*, 580 U.S. 73, 79, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017) (per curiam)), and it need not have held that "the very action in question" was unlawful, *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987). But it "must have placed the statutory or constitutional question beyond debate," *Kisela*, 584 U.S. at 104 (quoting *White*, 580 U.S. at 79), and "in the light of pre-existing law the unlawfulness" of the official's conduct must be "apparent," *White*, 580 U.S. at 80 (quoting *Anderson*, 483 U.S. at 640).

Ms. Rakes primarily relies on *Monfils v. Taylor*, *supra*. In that case, an informant told the police about a theft at his workplace, in a call that the police recorded. 165 F.3d at 513. The informant called again later on, and he told the department's deputy chief that he feared that he would be killed or badly hurt if the recording of the call were released. *Id.* at 514-15. The informant asked the deputy chief multiple times whether the police planned to release the recording, and each time the deputy chief told him it would not be released. *Id.* But the department did release it, and the thief obtained it and killed the informant soon afterwards. *Id.* at 515.

We held that the deputy chief could be liable under § 1983 and that he was not entitled to qualified immunity. Critically, we did so, not because the deputy chief was somehow responsible for the recording's release, but because he falsely represented to the informant and others that the recording would not be released. We explained: "[The deputy chief] clearly created a danger

and, by assuring Hitt (the assistant district attorney) that he would make sure the tape was not released but not following through, he created a danger Monfils would not otherwise have faced." *Id.* at 518. For this reason, we concluded that the deputy chief "is not and never was entitled to qualified immunity." *Id.*

Monfils rendered it clearly established in this circuit that a police officer can be liable under the state-created danger doctrine if he recklessly and repeatedly lies to a person about the danger that person faces from an identified and violent third party. Respectfully, this core holding of *Monfils* remains good law, despite the defendants' and the statements in Judge Brennan's opinion to the contrary. To be sure, there is dicta in an earlier decision of ours suggesting that *Monfils* "may well have been superseded by" *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005). *Sandage v. Bd. of Comm'rs of Vanderburgh Cnty.*, 548 F.3d 595, 599 (7th Cir. 2008). That speculation was, and is, raw dicta and its cold reception by our colleagues in other circuits confirms its unreliability.[29]

29. *See Robinson v. Lioi*, 536 Fed. App'x 340, 345 & n.3 (4th Cir. 2013) (concluding that state-created danger claims were not "foreclosed by *Castle Rock*" because the Supreme Court did not have before it a substantive due process claim); *Caldwell v. City of Louisville*, 200 Fed. App'x 430, 435 (6th Cir. 2006) ("There is nothing in *Castle Rock* that compels a conclusion the Supreme Court intended to eliminate the state-created danger exception to the *DeShaney* rule. This is not surprising since the Court did not have occasion to address or consider the plaintiff's substantive due process claim as it was not before the Court.").

The officers' conduct in this case, viewed in the light most favorable to Ms. Rakes, falls squarely within that constitutional prohibition. Indeed, this case presents a more egregious situation than the one presented in *Monfils*. The officers, acutely aware of the danger that Amylyn would face if she were alone at her house with RJ, nevertheless told her to remove RJ's arsenal before his return. Yet, Officer Roederer himself admitted that he was not willing to remove RJ's AR-15s from the house unless RJ were detained. Taking the facts in the light most favorable to Ms. Rakes, the officers, although aware that RJ might return to the home at any time, falsely assured Amylyn that he would be absent for 24 hours and that, during that time, she should secure RJ's weapons, a task that they were unwilling to undertake because of its dangerousness. In other words, taking the facts in the light most favorable to the nonmoving party, a finder of fact would be entitled to conclude that the officers repeatedly lied to Amylyn about whether they had placed RJ under a mental health hold and told her to retrieve dangerous weapons while knowing that she might well confront RJ as she did so. Amylyn acted on these misrepresentations and, consequently, died at RJ's hand. On this record, the defendants are not entitled to qualified immunity.

A reasonable jury could find the defendants liable on Ms. Rakes's state-created danger claim, and the defendants are not entitled to qualified immunity. Accordingly, I would reverse the district court's judgment and remand the case for proceedings consistent with this opinion.

BRENNAN, *Circuit Judge*. Amylyn Slaymaker's murder at the hands of her husband, RJ Slaymaker, is tragic. Her death was the culmination of a long-term abusive relationship in which RJ subjected her to his wrath, threats, and physical violence. Charlestown, Indiana Police Department Officers Te'Juan Johnson and Jonathan Roederer responded to the last occasion of domestic violence before Amylyn's murder. The case against Officer Johnson is remanded for a jury to decide whether he should be held liable for Amylyn's death.

The legal doctrine underpinning the alleged liability—the state-created danger doctrine—has narrow requirements that, in my evaluation, the undisputed evidence here cannot meet. Even more, that evidence entitles the officers to qualified immunity because they did not violate Amylyn's clearly established constitutional rights. On these grounds, I would affirm the district court's decision to grant summary judgment to the officers.

I. Background

The per curiam opinion provides the relevant facts, but to me two points require greater emphasis. First, RJ victimized Amylyn with pervasive violence for months before the officers arrived that night. Second, the officers stayed with Amylyn for over ninety minutes, continuously reassessing the situation to seek a safe resolution for all the involved parties. I restate the facts pertinent to these points because, in my view, they differ somewhat from the recitation in Judge Ripple's opinion.

Amylyn was in constant danger for months before she was killed. As she explained to the officers, violence and domestic strife had recently defined her marriage with RJ. Over the last six to eight months they had been fighting daily. RJ had constantly abused Amylyn. He had even shot a firearm at her "a couple of times" and had been drinking heavily. Amylyn suggested that they separate, but RJ, continuing his pattern of cruelty, rebuffed those suggestions with threats of suicide.

Fearing for her life, just nine days before her murder, Amylyn wrote a letter to authorities in case "something happen[ed] to" her.[1] In the letter she documented RJ's abuse—he had previously tried to choke her to death and threatened to kill her and her children. She also explained that she shot RJ in the hand in self-defense. The next day she added to the letter, in which she wrote, "RJ did it again ... he threatened me. ... [H]e made me hold his hand [and] try to get me to help shoot him in the head.[2]

As for the officers' actions that night, from the time they arrived on the scene, they were constantly talking with Amylyn and RJ, collecting new information, and correcting their course of action. Their response was to one of the most fluid and dangerous scenarios for law enforcement: domestic violence.

When the officers arrived to investigate, they separated RJ from Amylyn because of the report of a

1. Dist. Ct. DE 67-17 at 1. The officers did not know about this letter.

2. *Id.* at 2.

firearm. Roederer detained and spoke with RJ, while Johnson spoke with Amylyn. Amylyn described what caused the reported fight: RJ had PTSD, was intoxicated, and had threatened to kill her and her children. She also told Johnson she had two guns in her purse. RJ told a different story. He reported that he was a veteran, Amylyn did not want him to leave the house because she did not want him to be charged with driving under the influence, their fight was not physical, and he did not pull his gun.

The officers met, discussed what they had been told, and then spoke with Amylyn. She disputed some of RJ's statements. She said RJ had pulled his gun, pistol-whipped her, and attempted to punch her in the face just five minutes before the officers arrived. She said she grabbed her guns because RJ threatened her children and ex-husband that night, even going so far as to send her photos of him driving toward her children's location. Amylyn also explained that RJ was irate because she did not do "sexual stuff" (what turned out to be arranged sexual interactions with strangers). Johnson did not see any bruises or marks on Amylyn at that time. He also encouraged Amylyn to leave RJ, go to court, file for a divorce, and seek an emergency protective order.

Johnson and Roederer decided they could not charge RJ with a crime (including driving under the influence or public intoxication) because of the inconsistencies in the Slaymakers' statements and the lack of visible, physical injury to Amylyn. But they agreed to take RJ's and Amylyn's guns for safekeeping.

Amylyn informed Johnson that there were more guns at her and RJ's residence, including two AR-15s, and she asked if Johnson could retrieve them. The two discussed the possibility of Amylyn staying at her parents' home for the night. But Amylyn was concerned that leaving RJ alone would result in him attempting to destroy their house. Meanwhile, Roederer told RJ that he would not be charged, he would need a ride home, and they were taking his handgun for safekeeping until he sobered up.

The officers were uncomfortable with the idea of taking RJ back to the home, picking up the AR-15s, and taking them back to the police station, in light of Amylyn's revelation that RJ previously "tried to burn the house down." The two agreed to take RJ to the police station, take Amylyn home to retrieve the guns, and then to take RJ home while Amylyn went to her parents.

Amylyn again raised her fear that RJ would burn down their house if left alone. Johnson tried to convince Amylyn not to return to the home she shared with RJ. Johnson reminded her, "a home can be replaced. Your life can't." He advised her to go to court, get a no-contact order, file for divorce, and split up from RJ. And Johnson went so far as to caution her that if their kids were present, child protective services would get involved and "[her] kids are going to be taken away."

After Amylyn mentioned that, to her knowledge, RJ had never had a mental health evaluation, Roederer explained the process for obtaining a mental inquest warrant. Johnson also asked Amylyn to share a photo she

mentioned of RJ holding a gun to his head. Roederer and Johnson then returned to RJ.

When the officers mentioned the photo and a voluntary admission for medical treatment to RJ, he became irate and worried about the loss of his gun rights. Eventually, Johnson convinced RJ to agree to talk to somebody confidentially. Johnson told RJ that he needed to "follow through" with their agreement, and that if things escalated again, he would have to turn over the photo. Johnson relayed the agreed upon message to Emergency Medical Services (EMS) that RJ was involved in a domestic dispute with his wife and wanted to voluntarily speak about his mental health issues. EMS then transported RJ to Clark Memorial Hospital at 12:43 A.M. RJ arrived at the emergency department roughly fifteen minutes later. He remained there until his discharge at 3:41 A.M.

After EMS took RJ from the scene, Johnson asked Amylyn if she was going to her parents' house. Amylyn responded, "Well, you — you said it's a 24-hour thing right? For an evaluation?" Johnson replied, "Yeah, so what are you going to do?" Johnson explained that they took RJ's gun and were going to leave Amylyn's guns with her. One final time, Johnson and Amylyn discussed her plan for the rest of the night:

> Johnson: [W]hat's the plan? Like, what --
>
> Amylyn: I'm going to have to stay with my parents, I guess.

> Johnson: Okay. So are you going to go to your house?
>
> Amylyn: Well, tonight, yeah.
>
> Johnson: Are you going to -
>
> Amylyn: You said it's a 24 hour?
>
> Johnson: Yeah. So are you going to get the guns and everything when you go home?
>
> Amylyn: Yeah, I'm going to take them with me to my parents'.

About half an hour later, Amylyn called Johnson to report she found a visible injury where RJ had hit her. Johnson told her to come to the police station, where he could take a picture of the injury. Consistent with his earlier directions, he again asked Amylyn to retrieve the AR-15s and stay at her mother's house. At the station Amylyn again asked how long RJ would be at the hospital. The officers present, including Johnson, informed her that they did not know, and Johnson again directed her to take the opportunity to gather her things and go to her parents' house. When asked if she was going to go to her parents' house, Amylyn reportedly stated "yes."

Amylyn never made it to her parents' house. Sometime after the hospital discharged RJ, he returned home, murdered Amylyn, and then killed himself.

Amylyn's Estate filed suit against the officers, bringing claims under 42 U.S.C. §§ 1983 and 1985. Relevant here, the Estate's § 1983 claim alleges the officers "affirmatively placed Amylyn in a heightened state of special danger that [she] would not otherwise have faced when they falsely told Amylyn that RJ would be in the hospital for 24 hours and it was safe to return home."

The officers moved for summary judgment. The district court granted the officers' motion and dismissed both claims. On the Estate's § 1983 claim, the court found qualified immunity shielded the officers from liability because "there was not clearly established law in effect ... that put Officers Roederer and Johnson on notice that their actions violated Amylyn's constitutional rights."

The Estate now appeals the dismissal of its § 1983 claim at summary judgment, offering two arguments. First, the Estate argues the facts satisfy the narrow criteria to succeed on a state-created danger claim under *DeShaney v. Winnebago*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989), and subsequent authorities. Second, the Estate asserts qualified immunity is not available because "it was clearly established that misleading victims about violent threats" violates the victims' due process rights.

II. State-Created Danger

I do not see the undisputed evidence giving rise to a viable *DeShaney* state-created danger claim.

Appendix A

The Fourteenth Amendment's Due Process Clause provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. This language "is phrased 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. That is, the Due Process Clause is meant "to protect the people from the State, not to ensure that the State protect[s] them from each other." *Id.* at 196. Generally, "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *Id.* at 197. This court does recognize two exceptions to this general rule: (1) the "special relationship" exception; and (2) the "state-created danger" exception. *See Doe v. Village of Arlington Heights*, 782 F.3d 911, 916 (7th Cir. 2015); *Monfils v. Taylor*, 165 F.3d 511, 516 (7th Cir. 1998).

The state-created danger exception "exists when the state affirmatively places a particular individual in a position of danger the individual would not have otherwise faced." *Doe*, 782 at 916 (cleaned up). But it is a "narrow one," and applies in "rare and often egregious" circumstances "where the state creates or increases a danger to an individual." *Id.* at 917.

Our court has recognized three principles to guide the inquiry. First, "the state, by its affirmative acts, must create or increase a danger faced by an individual." *King v. E. St. Louis Sch. Dist. 189*, 496 F.3d 812, 818 (7th Cir. 2007). "Second, the failure on the part of the state to protect an individual from such a danger must be

the proximate cause of the injury to the individual." *Id.* "Third, ... the state's failure to protect the individual must shock the conscience." *Id.* If no basis exists in the record to support any of these requirements, a plaintiff cannot make out a state-created danger claim as a matter of law.

Roederer and Johnson did not act affirmatively to create or increase danger to Amylyn, proximately cause Amylyn's death, or act in a manner that shocks the conscience.

A. Create or Increase Danger

The Estate argues that the officers "created a danger" for Amylyn by informing her that RJ would be detained for twenty-four hours and concealing information from EMS that would have resulted in a statutory mental evaluation.

The first principle of our circuit's state-created danger analysis is "the key one." *Sandage v. Bd. of Comm'rs of Vanderburgh Cnty.*, 548 F.3d 595, 599 (7th Cir. 2008). We must be wary of interpreting this principle "so broadly as to erase the essential distinction between endangering and failing to protect" to avoid circumventing *DeShaney*'s general rule. *Doe*, 782 F.3d at 917 (quoting *Sandage*, 548 F.3d at 599). "Increasing" danger means "the state did something that turned a potential danger into an actual one, rather than that it just stood by and did nothing to prevent private violence." *Sandage*, 548 F.3d at 600. That is, the state's affirmative, intervening act must move the victim from a position of safety to a position of danger. *Id.* at 598. Even if the action could be considered

"affirmative," "we must then ask what new danger would have otherwise befallen the victim." *Windle v. City of Marion*, 321 F.3d 658, 662 (7th Cir. 2003). The burden rests on the Estate to show that the officers "failed to protect [Amylyn] from a danger they *created or made worse*." *Id.* (emphasis in original). In many of our cases applying the state-created danger exception, this has been the line dividing successful and unsuccessful claims.

To synthesize, the first principle of the state-created danger exception can be viewed as a spectrum from safety to danger. The exception can provide for liability only if an officer's action moved the plaintiff up the scale toward danger. But liability cannot attach if the officer left the plaintiff as is, or (especially) if the officer moved the plaintiff toward safety. To me, five cases flesh out the exception. *See Reed v. Gardner*, 986 F.2d 1122 (7th Cir. 1993); *Monfils*, 165 F.3d 511; *Paine v. Cason*, 678 F.3d 500 (7th Cir. 2012); *Windle*, 321 F.3d 658; *Doe*, 782 F.3d 911.

Three of these cases show how law enforcement action crosses the line into liability—*Reed, Monfils*, and *Paine*. In *Reed*, this court held that police officers could face liability under the state-created danger exception where they arrested a sober driver and left an intoxicated passenger with the vehicle's keys, enabling the intoxicated passenger to drive from the scene, cause a collision, and injure the plaintiffs. 986 F.2d at 1127.

In *Monfils*, our court concluded that the actions of a law enforcement officer subjected him to § 1983 liability under a state-created danger theory. 165 F.3d at 518.

Monfils had informed the authorities that one of his coworkers was going to steal electrical cord from their workplace. *Id.* at 513. Aware of his coworker's desire to identify the informant, Monfils repeatedly—on four separate occasions over ten days—contacted the Green Bay Police Department or the district attorney's office urging them not to release a recording of his call to law enforcement. *Id.* at 513-15. Every time Monfils spoke with a law enforcement official after his initial call, he asked whether the recorded conversation of that call would be released. *Id.* On each occasion, law enforcement assured Monfils the tape would not be released. *Id.* Despite knowing that the tape's dissemination would subject Monfils to danger, the Deputy Chief of Detectives, James Taylor, did nothing to prevent divulgence to the public despite Monfils' multiple pleas over many days. *Id.* at 514-15. Monfils' coworker obtained a copy of the tape, recognized Monfils' voice, and, along with five others, murdered Monfils. *Id.* at 513, 515.

Paine involved the arrest of a woman by law enforcement in a safe area and her subsequent release in a dangerous area. 678 F.3d at 509. The woman—while in an acute manic phase—was arrested at Chicago's Midway Airport and released by police the next day near a public housing project with an "exceptionally high crime rate." *Id.* at 504. The police failed to return her cell phone, the woman did not know where she was, and she was unwell. *Id.* Five hours after her release, a man raped her at knifepoint in a nearby apartment. *Id.* at 505-06. Attempting to escape, the woman jumped out the apartment's window, fell seven stories, and suffered severe brain damage. *Id.* at 506.

In each of these cases, liability attached because the involved officers "changed a safe situation into a dangerous one," *Reed*, 986 F.2d at 1127, or "created a danger [the victim] would not have otherwise faced." *Monfils*, 165 F.3d at 518.

Windle and *Doe* are on the other side of the liability line. *Windle* evaluated whether a Marion, Indiana Police Department sergeant violated a minor's due process rights by failing to intervene to protect her from molestation perpetuated by a teacher. 321 F.3d at 660. The sergeant intercepted several cell phone conversations between the minor and the teacher, the content of which evidenced an ongoing sexual relationship. *Id.* However, the sergeant did not intervene for two months. *Id.* In *Doe*, this court affirmed a district court's dismissal of another state-created danger case. 782 F.3d at 913. An officer responded to a 9-1-1 call about a minor female drinking with a group of teenage boys outside an apartment complex. *Id.* She was intoxicated; one of the group was holding her up when the officer arrived. *Id.* The officer did not check identification (which meant he did not discover that one of the boys was an adult on probation), called off another responding officer, and allowed the group to leave with the girl. *Id.* The group then carried the girl into the complex's laundry room, where the probationer sexually assaulted her. *Id.*

In these two cases, the state-created danger claim failed at the affirmative act prong because the officer's conduct did not "proactive[ly] creat[e] or exacerbat[e] [] danger," *Windle*, 321 F.3d at 662. Nor were the victims "safe, or even considerably safer," before the officers acted.

Doe, 782 F.3d at 918. Rather, the victims "[were] in actual danger already." *Id.*

These five cases accurately set forth the requirements for when and how an officer may act affirmatively to create or increase danger to a plaintiff. Before an officer acts, danger to the victim must be nonexistent or only potential. State-created danger liability attaches only where state actors turn a nonexistent or potential danger into an actual one or create some risk for the victim. Such was the case in *Reed, Monfils*, and *Paine*. Where no new danger befalls the victim, such as in *Windle* and *Doe*, state actors cannot be held liable.

This case is analogous to *Windle* and *Doe* and distinguishable from *Reed, Monfils*, and *Paine*. As in both *Windle* and *Doe*—and unlike in *Reed, Monfils*, and *Paine*—the officers' actions did not create a new danger to Amylyn or otherwise increase an existing danger. "To create" danger means to bring danger into existence. Likewise, "to increase" danger means to escalate the likelihood that danger will occur. In the context of private violence, the state must do something "that turn[s] a potential danger into an actual one" rather than merely standing by and doing nothing. *Sandage*, 548 F.3d at 600.

Johnson's two brief replies ("yeah"/"yea") to Amylyn's questions about the length of RJ's detention did not create any new dangers, increase the likelihood of danger, or otherwise propel Amylyn into danger. She was already in grave danger when the officers arrived to intervene between Amylyn and RJ. As Amylyn herself recorded

more than a week prior, RJ had consistently abused her over the previous six to eight months. The abuse escalated to the point where Amylyn shot RJ in self-defense. Further, the officers left Amylyn (or at least attempted to leave her) in a better position than she had been on that night. By taking RJ's gun and leaving Amylyn in possession of hers, they deprived RJ of a means to escalate his violent abuse and left Amylyn with recourse to self-defense.

For the same reasons, the officers' statements to EMS are not an affirmative act propelling Amylyn into danger. To the extent the Estate argues that the affirmative act was a failure to comply with department policies, "§ 1983 protects plaintiffs from constitutional violations, not violations of ... departmental regulations and police practices." *Thompson v. Chicago*, 472 F.3d 444, 454 (7th Cir. 2006). The officers' failure to follow Charlestown Police Department policy "or even a state law is completely immaterial as to the question of whether a violation of the federal constitution has been established." *Id.*

My colleagues conclude that Johnson created a danger to Amylyn that she would not have otherwise faced because the officer's statements escalated a risk that she would encounter an enraged RJ at their home with ready access to two AR-15s. This takes too narrow of a view of the undisputed facts and of the risk Amylyn had consistently faced for a long time. Johnson did not make new and immediately dangerous the already incendiary circumstances between RJ and Amylyn. The possibility of deadly violence between these spouses had existed for

many months. Choking, threats to kill, a request to help attempt suicide—Amylyn documented all this more than a week before the officers ever spoke with the couple. Before his discharge from the hospital and return home, RJ had already shot a firearm at Amylyn a couple of times, and she had returned fire in self-defense. In advance of these officers ever entering the picture, Amylyn had described in writing RJ's threats, abuse, use of firearms, and her fear for her life.

RJ created the danger, not the actions of the officers. By telling Amylyn that RJ would be held for 24 hours, the officers did not affirmatively act to create or increase any danger to Amylyn. The affirmative act requirement means that "state actors may not disclaim liability when they themselves throw others to the lions." *Pinder v. Johnson*, 54 F.3d 1169, 1177 (4th Cir. 1995) (citing *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 849 (7th Cir. 1990)) (rejecting mother's characterization of her claim that officer's false assurance—that it was safe to return to work—and failure to charge ex-boyfriend was an affirmative action resulting in her children's death). But that requirement does "not ... entitle persons who rely on promises of aid to some greater degree of protection from lions at large" to impose liability on state actors. *Id.* To decide otherwise subjects "every representation by the police and every failure to incarcerate" to liability. *Id.* at 1175. And it interprets the state-created danger exception "so broadly as to erase the essential distinction between endangering and failing to protect," which we should not do. *Sandage*, 548 F.3d at 599.

Without a basis to characterize the officers' statements to Amylyn as affirmative actions that created or increased the risk of danger, the inquiry could end here. *See King*, 496 F.3d at 818 (affirming district court's summary judgment ruling based solely on one prong of the state-created danger exception). To be complete, though, I next address the exception's second and third prongs.

B. Proximate Cause

The state's failure "to protect an individual from [] a danger must be the proximate cause of the injury to the individual" for *DeShaney* liability to attach under the state-created danger exception. *Id.* The individual must be a foreseeable victim of the government's acts. *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 828 (7th Cir. 2009). "To satisfy the proximate cause requirement, the state-created danger must entail a foreseeable type of risk to a foreseeable class of persons." *First Midwest Bank, Guardian v. City of Chicago*, 988 F.3d 978, 988-89 (7th Cir. 2021) (citing *Buchanan-Moore*, 570 F.3d at 828). "A generalized risk of indefinite duration and degree is insufficient." *Id* at 989.

Analogizing to *Reed* and distinguishing *Buchanan-Moore*, the Estate asserts it was foreseeable that RJ would kill Amylyn as a result of the officers' actions. In *Reed*, proximate cause existed because "[t]he dangers presented by drunk drivers are familiar and specific; in addition, the immediate threat of harm has a limited range and duration." 986 F.2d at 1127. In *Buchanan-Moore*, this court held that the plaintiff failed to allege facts making out proximate cause where law enforcement arrested and

then released a mentally unstable individual who went on to murder a resident of the north Milwaukee suburbs. 570 F.3d at 826. Because the complaint alleged no facts that the County knew of a special danger to the resident, rather than the public at large, and because the unstable individual's "mental illness and propensity for criminal acts existed without temporal boundaries," the plaintiff's claim failed. *Id.* at 828-29.

Like the dangers of drunk driving apparent in *Reed*, but unlike the danger posed by the unstable individual in *Buchanan-Moore*, the Estate posits "domestic violence involves a type of risk that is familiar, specific, and limited in time and scope to a foreseeable class of persons." This argument is incorrect twice over. First, though RJ's abuse was certainly specific and limited to a foreseeable class of persons—Amylyn—RJ's conduct was not so limited in time and scope as the Estate characterizes it. The undisputed facts illustrate at least six to eight months of verbal and physical abuse accentuated by RJ's mercurial temper and unpredictable actions. RJ posed a generalized risk to Amylyn's life of indefinite duration and degree. As Amylyn explained in her letter, RJ's abusive conduct was ongoing for many months, with no discernible end in sight, so long as Amylyn remained with RJ. And as Amylyn herself explained to Roederer and Johnson, RJ heightened his physical and emotional abuse whenever Amylyn raised the prospect of splitting up.[3] RJ, the abuser, was exercising power and control over

3. The United States Department of Justice defines domestic violence as "a pattern of abusive behavior ... that is used by one partner to gain or maintain power and control over another

Amylyn, and had done so for many months. The officers' representations to Amylyn or EMS were not the cause of Amylyn's death—RJ was.

Second, RJ's conduct posed a danger more comparable to that of the unstable individual in *Buchanan-Moore*. Again, RJ had been perpetuating the abuse—violence; forcing Amylyn into unwanted sexual situations with strangers; threatening to kill her, her ex-husband, and her children; and property destruction—for many months. Like the unstable individual in *Buchanan-Moore*, RJ's abusive conduct had no temporal boundaries. Therefore, the Estate cannot establish the proximate causation requirement.

C. Shock the Conscience

"Conduct ... which shocks the conscience is that conduct which may be deemed arbitrary in the constitutional sense." *King*, 496 F.3d at 818 (quotation marks omitted). Though the inquiry is "necessarily fact-bound," the "emphasis on whether conduct shocks the conscience points

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intimate partner." https://www.justice.gov/ovw/domestic-violence (last viewed September 25, 2024). Domestic violence is not limited to physical abuse. The underlying problem is the abuser's need to exercise power and control. "Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or would someone." *Id.*

toward the tort law's spectrum of liability." *Id.* at 818-19. "Only conduct falling toward the more culpable end of the spectrum" shocks the conscience. *Id.* at 819. This court has noted—though not specifically in the state-created danger context—that such conduct generally "involves the use of intentional force against an individual's person or the threat of such force." *Robbin v. City of Berwyn*, 108 F.4th 586, 591, (7th Cir. 2024) (collecting cases).

This court has held that "when the circumstances permit public officials the opportunity for reasoned deliberation in their decisions, we shall find the official's conduct conscience shocking when it evinces a deliberate indifference to the rights of the individual." *King*, 496 F.3d at 819. Where officials must make hurried judgments, "render[ing] reasoned deliberation impractical," conduct shocks the conscience only where it "approach[es] malicious or intentional infliction of injury." *Id.* Crucially, "the conduct must be more culpable than mere negligence, which is 'categorically beneath the threshold of constitutional due process.'" *Id.* (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 849, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998); *see Est. of Her v. Hoeppner*, 939 F.3d 872, 877 (7th Cir. 2019) (same); *see also Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986) (describing the due process guarantee as historically applying only to "deliberate" actions and decisions of government officials).

The Estate argues that "[t]he combination of the passage of time, the repeated and knowing lies, and the continued disregard for Amylyn's safety amounts to deliberate indifference." But the facts, viewed in the light

most favorable to the Estate, do not support that assertion. Over the course of more than 90 minutes, the officers:

- separated and questioned Amylyn and RJ;
- interviewed the 9-1-1 callers;
- confiscated RJ's gun but permitted Amylyn to keep her firearms;
- advised Amylyn to retrieve the remaining firearms from her house and to spend the night at her parents' residence;
- counseled her to do what was right to protect herself and her children; and
- encouraged her to obtain an emergency protective order, twice suggested that she seek a divorce, and advised her of the process to obtain a mental inquest warrant.

These facts do not show the officers as deliberately indifferent toward Amylyn's personal safety and security. Their consistent reassessment of the information they collected undercuts a suggestion of deliberate indifference. For example, once Johnson informed Roederer that RJ had previously tried to burn the house down and the officers discussed RJ's mental state, they decided they would not take RJ back to the house where the AR-15s were located.

Johnson's affirmative responses to Amylyn's question about the length of RJ's detention were at most negligent, based on his understanding that Amylyn would go to her parents' house that night. But negligent conduct does not suffice to meet the high bar of action that shocks the conscience. *King*, 496 F.3d at 819.

* * *

If the Estate cannot satisfy just one of the three elements underlying the state-created danger exception, the officers cannot be held liable. Because they did not act to create or increase danger, proximately cause death, or act in a manner that shocks the conscience, the district court's grant of summary judgment should be affirmed.

III. Qualified Immunity

Even if the Estate could succeed on the *DeShaney* question, the officers are entitled to qualified immunity because they did not violate a clearly established right. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)). "Qualified immunity balances ... the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Id.*

Two questions guide the qualified immunity analysis: "first, whether the facts presented, taken in the light most favorable to the plaintiff, describe a violation of a constitutional right; and second whether the federal right at issue was clearly established at the time of the alleged violation." *Smith v. Finkley*, 10 F.4th 725, 737 (7th Cir. 2021). Even assuming the officers' actions violated Amylyn's constitutional rights, the federal right at issue was not clearly established at the time of the alleged violation.

It is the Estate's burden to demonstrate the existence of a clearly established right at the time of the alleged violation. *See Green v. Newport*, 868 F.3d 629, 633 (7th Cir. 2017). "A constitutional right is clearly established if the right in question is sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Finkley*, 10 F.4th at 742 (quotation marks omitted). "The clearly established right must be defined with specificity," *id.* (citing *City of Escondido v. Emmons*, 586 U.S. 38, 42, 139 S. Ct. 500, 202 L. Ed. 2d 455 (2019)) (cleaned up), a requirement the Supreme Court has made clear "[o]ver and over." *Weiland v. Loomis*, 938 F.3d 917, 919 (7th Cir. 2019) (collecting cases).

To determine whether the right is defined with the requisite specificity, "we analyze whether precedent squarely governs the facts at issue, mindful that we cannot define clearly established law at too high a level of generality." *Finkley*, 10 F.4th at 742 (cleaned up). "[A] defendant cannot be said to have violated a clearly established right unless the right's contours were

sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Plumhoff v. Rickard*, 572 U.S. 765, 778-79, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014). "In other words, existing precedent must have placed the statutory or constitutional question confronted by the official beyond debate." *Id.* (quotations omitted); *see also Doe*, 782 F.3d at 915 ("[T]he plaintiff must demonstrate either that a court had upheld the purported right in a case factually similar to the one under review, or that the alleged misconduct constituted an obvious violation of a constitutional right."). That is, the cited precedent "must share specific details with the facts of the case at hand." *Doxtator v. O'Brien*, 39 F.4th 852, 863 (7th Cir. 2022) (citing *White v. Pauly*, 580 U.S. 73, 79, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017) (per curiam)).

To the Estate, the officers violated a clearly established right, contending "[t]here is authority within this circuit and others that false promises of security are deliberately indifferent." The Estate cites *Paine*; *Robinson v. Township of Redford*, 48 F. App'x 925 (6th Cir. 2002); *Kennedy v. City of Ridgefield*, 439 F.3d 1055 (9th Cir. 2006); and *Irish v. Fowler*, 979 F.3d 65 (1st Cir. 2020). But these authorities do not support a conclusion that the officers violated Amylyn's clearly established rights.[4]

4. *Robinson* and *Irish* may be disposed of immediately. *Robinson* is an unpublished Sixth Circuit opinion reversing a district court's grant of a motion to dismiss a state-created danger claim. 48 F. App'x at 925. That court later affirmed the district court's grant of summary judgment to the defendant law enforcement officers, in part because they were not on notice that their conduct

My colleagues read *Monfils* as "render[ing] it clearly established in this circuit that a police officer can be liable under the state-created danger doctrine if he recklessly and repeatedly lies to a person about the danger that person faces from an identified and violent third party." I do not read *Monfils* to provide such clarity.

First, *Monfils* is not "particularized to the facts of [this] case." *Pauly*, 580 U.S. at 79. Before the release of the tape, Monfils' identity as the informant was anonymous to his murderous coworkers. The release of the tape recording unmasked Monfils. Here, however, the officers' actions did not strip Amylyn of anonymity. She was known to RJ and the subject of his violence well before the officers intervened.

Monfils is described as a case about reckless and repeated lies. But here, Johnson's statements to Amylyn about the length of RJ's absence were negligent at most, not reckless. His statements also were not "repeated" like the promise not to release the tape in *Monfils* was repeated. *See* 678 F.3d at 513-15 (four separate promises over ten days). Johnson gave two one-word responses within a lengthy discussion, during which the officers encouraged Amylyn to go to her parents' house that night. And both representations were made during a roughly

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violated a clearly established right. *Robinson v. Twp. of Redford*, No. 04-1117, 2005 U.S. App. LEXIS 15003, slip op. at 10-11 (6th Cir. July 20, 2005). And the First Circuit's *Irish* opinion postdates the events of this case, so it cannot aid the clearly established inquiry. *See Brosseau v. Haugen*, 543 U.S. 194, 200 n.4, 125 S. Ct. 596, 160 L. Ed. 2d 583 (2004).

ninety-minute interaction among the officers, Amylyn, and RJ.

Second, *Monfils* rests on uncertain ground. This court has noted that *Monfils* "may well have been superseded by" the Supreme Court's decision in *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 125 S. Ct. 2796, 162 L. Ed. 2d 658. *Sandage*, 548 F.3d at 599.

In *Sandage*, a man named Moore murdered plaintiffs' decedents while on work release as part of a four-year robbery sentence. *Id.* at 596. Twice previously, one of the decedents contacted police to report that Moore was harassing her. *Id.* The plaintiffs sued county officials "claim[ing] that the [sheriff's] department's failure to act on the complaint of harassment by revoking Moore's work-release privilege and reimprisoning him deprived their decedents of their lives without due process of law." *Id.*

As part of its analysis, this court looked to *Castle Rock*. That case involved "police refus[ing] to enforce a domestic-abuse restraining order, despite repeated demands by the woman against whose husband the order was directed, and he murdered the couple's three children." *Id.* at 597. Answering the "technical question" of "whether the State of Colorado had created a property right in the enforcement of restraining orders," *id.*, the Supreme Court held that the answer was no. *Castle Rock*, 545 U.S. at 768. Additionally, the Court noted that "the benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under the Due Process Clause, neither in its procedural nor in its 'substantive' manifestations." *Id.*

As this court saw, the plaintiffs' claim in *Sandage* was "similar" to that raised in *Castle Rock*: "that the county was constitutionally required to revoke Moore's work release and return him to custody." 548 F.3d at 597. It would have been the same case as *Castle Rock*, "if Moore had not been serving a sentence but had threatened [the decedent] and she had complained to the sheriff's department, the department had referred the matter to the county prosecutor, and he had decided in a misguided exercise of his prosecutorial discretion not to order Moore arrested and charged." *Id.*

Our court also distinguished *Monfils*. Unlike that case, where "police created the mortal danger to Monfils" by releasing the tape recording, in *Sandage* "the danger was created by Moore, and by Moore alone." *Id.* at 599. Based on that reasoning, the court affirmed the district court's dismissal of plaintiff's suit for failure to state a claim. *Id.* at 600. Critically, in its conclusion the court noted "after *Castle Rock* a broken promise—the essential act of which both the plaintiff in that case and the present plaintiffs complain (though there was more in *Monfils*—the handing over the tape to the murderer)—may very well not be enough." *Id.* That should be true here. The essential act identified by the Estate and the panel majority is a false promise of security. After *Castle Rock*, such an act likely does not dispel the protections of qualified immunity.[5]

5. For similar reasons, *Kennedy* does not help the Estate. There, a police officer assured the plaintiff that she would be given prior notice of police contact with the family of the boy who had been accused of molesting the plaintiff's daughter. *Kennedy*, 439 F.3d at 1058. After law enforcement officers spoke with the boy's

Next, the Estate urges that *Paine* and this case are the same because the officer's misrepresentations to Amylyn made her "more vulnerable than she otherwise would have been." *Paine* "clearly established that state actors who, without justification, increase a person's risk of harm violate the Constitution." 678 F.3d at 510. But as discussed above, *Paine* is not sufficiently analogous to this case. The officers here did not make Amylyn more vulnerable to any danger posed by RJ. Amylyn was in grave danger before and after the officers' intervention.

The Estate's reliance on *Paine* is also misplaced because it flies at too high a level of generality, of which the Supreme Court has repeatedly warned. *Mullenix v. Luna*, 577 U.S. 7, 12, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 742, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011)); *see also City of Tahlequah v. Bond*, 595 U.S. 9, 11, 142 S. Ct. 9, 211 L. Ed. 2d 170 (2021) (per curiam); *Kisela v. Hughes*, 584 U.S. 100, 104, 138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018) (per curiam). *Paine* does not establish a rule that would have informed the officers that their affirmative response to

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family about the allegations, they made the additional assurance to the plaintiff that police would patrol their neigh-borhood. *Id.* The boy broke into the home and shot the victim and her husband. *Id.* The Ninth Circuit affirmed the district court's recognition that the officer in that case was not entitled to qualified immunity. But it did so in mitigating fashion: "we do not rest our judgment that [the officer] affirmatively created a danger on [the] assurance [that the police would patrol the neighborhood] alone." *Id.* at 1063. Though "an additional and aggravating factor," the assurance alone was not enough to constitute a due process violation. *Id.*

Amylyn's questions about RJ's hospitalization violated her constitutional rights. Cases where qualified immunity has shielded more problematic law enforcement conduct support this conclusion. *See, e.g., Doe*, 782 F.3d at 915, 918 (holding it not clearly established that calling off another police officer, or falsely reporting to dispatch that the scene was clear, resulted in a violation of a constitutional right of a victim of private violence).

The cases the Estate cites do not place the constitutional question beyond debate. If a constitutional right of Amylyn's was violated, it was not clearly established when the officers responded to this domestic violence episode. As a result, qualified immunity shields the officers from § 1983 liability.

IV. Conclusion

I end where I began: Amylyn was tragically murdered by her husband RJ. The rule is that the state has no duty to protect citizens from private violence. The state-created danger doctrine is a narrow exception to that rule. This decision sends the case against Officer Johnson to a jury when the undisputed facts do not permit liability to attach under the strict limits of this doctrine. And it does so notwithstanding the broad protections of qualified immunity.

SCUDDER, *Circuit Judge*. This case is difficult on many levels and, in the end, I find myself split on the conclusions reached by my colleagues. I agree with Judge Ripple that the claim against Officer Te'Juan Johnson's estate should proceed to trial. On the other hand, I agree with Judge Brennan and the district court that qualified immunity defeats the claim against Officer Jonathan Roederer. Above all else, this case presents a tragic example of the risks posed by domestic violence and the consequences of law enforcement's failure to appreciate those risks. No matter how many times I review the record, the same conclusion rushes to mind: police departments ought to prioritize training on responses to domestic violence.

I

Whether the Fourteenth Amendment's Due Process Clause precludes state actors from creating danger to a person remains unanswered by the Supreme Court. We know for certain state actors do not shoulder an affirmative duty to protect individuals from dangers posed by third parties. That is the holding of *DeShaney v. Winnebago*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989). But what the Justices have yet to answer is whether the Due Process Clause, while disallowing duty-to-protect claims, allows a claim in facts and circumstances where state actors create the danger that proximately causes harm to an individual. Circuit courts have struggled with the question in *DeShaney*'s wake. See, *e.g., Est. of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 493-96 (6th Cir. 2019) (Murphy, J., concurring) (identifying unresolved questions about the validity of the state-created danger doctrine).

Our court is among those that have recognized a claim for state-created dangers. See, *e.g., Reed v. Gardner*, 986 F.2d 1122, 1127 (7th Cir. 1993); *Monfils v. Taylor*, 165 F.3d 511, 518 (7th Cir. 1998); *Paine v. Cason*, 678 F.3d 500, 509-11 (7th Cir. 2012). Duty bound to follow that precedent, I see it applying in different ways to the two officers in question.

When viewing the facts, as we must, in the light most favorable to Amylyn Slaymaker, a jury could find that Officer Te'Juan Johnson affirmatively placed her in more danger than she faced before law enforcement intervened. Officer Johnson reached an agreement with Amylyn's husband, RJ: if RJ voluntarily went to the hospital, Officer Johnson would not have him committed involuntarily. But when Amylyn asked whether her husband had been placed under a 24-hour mental health hold, Officer Johnson twice answered in the affirmative. Knowing that Amylyn planned to go home, Officer Johnson's misrepresentations—the false sense of safety he conveyed—created a risk that Amylyn would be at the house and caught off-guard when RJ returned and had access to his AR-15s. This is not a risk Amylyn would have faced had she known RJ was free to leave the hospital at a time of his own choosing.

To violate clearly established law—the second prong of the qualified immunity analysis—"existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011). I agree with Judge Ripple that our decision in *Monfils* supplies the

relevant precedent here. *Monfils* clearly established that a police officer can be liable under the state-created danger doctrine if he makes false promises about the danger a person faces from an identified and violent third party. See 165 F.3d at 518. Like the officer's false assurances to Thomas Monfils, Officer Johnson's false assurances rendered Amylyn more vulnerable to a danger than she otherwise would have been had he told her the truth. With these findings available to a jury, Officer Johnson is not entitled to qualified immunity and the suit against his estate should proceed.

But not so for Officer Roederer. The record shows that his actions did not add to the risk of harm already created by Officer Johnson. Officer Roederer made no representations to Amylyn regarding how long her husband would be in the hospital or whether it was safe for her to return home. Yes, Officer Roederer was present for Officer Johnson's conversations with both Amylyn and RJ. But his failure to correct any representations Officer Johnson made to Amylyn is insufficient because "mere inactivity by police does not give rise to a constitutional claim." *Rossi v. City of Chicago*, 790 F.3d 729, 735 (7th Cir. 2015). And Officer Roederer's statements to RJ merely repeated back the arrangement Officer Johnson had previously contrived about going to the hospital voluntarily.

The evidence of Officer Roederer's personal involvement falls short of allowing a jury to find that he created a danger to Amylyn. Even if his acts or omissions contributed to her tragic death, no jury could reasonably

conclude that he put Amylyn in a position of danger she would not have otherwise faced or that his actions violated a clearly established right. Indeed, on issues of qualified immunity, close calls go to the defendant. See *Kikimura v. Turner*, 28 F.3d 592, 597 (7th Cir. 1994) (underscoring that "the point of qualified immunity...is that government officials are not, as a rule, liable for damages in close cases"). So I agree with Judge Brennan that qualified immunity shields Officer Roederer from liability.

II

This case should sound the equivalent of a five-alarm fire for police departments to the risks of domestic violence. In my view, Officer Johnson's response to what he encountered during the early morning hours of July 19, 2019 remains shocking in the extreme. When you read the facts, you can see the tragic ending coming from a mile away with about 100% certainty.

No doubt domestic violence incidents are among the most challenging circumstances that police officers encounter. And federal judges are in no position to advise police departments on how best to respond to 911 reports of domestic violence. But respond they must. And this case shows just how a police officer can take an already dangerous situation and make it worse—fatally so. The district court got it right when observing that a case like this should cause police departments to reevaluate their training related to domestic violence encounters. Under no circumstance should a law enforcement officer act in

a way that escalates the danger faced by someone in the vulnerable and trapped position that Amylyn Slaymaker found herself. See Br. of Amicus Curiae Everytown for Gun Safety and the Indiana Coalition Against Domestic Violence in Support of Pl.-Appellant, ECF No. 15 (collecting social science research on the risk factors of domestic violence).

Judge Brennan's opinion emphasizes that Amylyn was in grave danger before the officers intervened. I could not agree more. Amylyn endured ongoing, violent abuse at the hands of her husband for many months. Nobody could plausibly say that RJ did not pose a serious threat to Amylyn's life on July 19. While accurate, that observation is incomplete and in no way resolves the question before us.

It was Officer Johnson's response that escalated the risk to Amylyn's life. He agreed to allow RJ to voluntarily go to the hospital while affirmatively misleading Amylyn about that fact. A jury could easily find that Officer Johnson's duplicity left her vulnerable to new risk—more immediate and acute risk. These circumstances existed because of Officer Johnson's actions: yes, Amylyn was in an abusive marriage, but she had no idea that Officer Johnson had cut a deal with RJ that would allow him to return home in less than 24 hours, find her there alone, and murder her with one of the guns known to be in the house.

If the state created danger doctrine reflects sound law, it fits this case to a T: a jury could find that Officer

Johnson responded to the undeniably difficult situation he encountered on July 19 by putting Amylyn at a very high risk of losing her life. The case against Officer Johnson's estate should go to trial.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, NEW ALBANY DIVISION, FILED MARCH 30, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

No. 4:21-cv-00114-JMS-KMB

AMANDA RAKES, ADMINISTRATOR OF THE ESTATE OF AMYLYN SLAYMAKER AND NEXT FRIEND TO THE MINOR CHILDREN G.C. AND M.C.,

Plaintiff,

vs.

JONATHAN PAUL ROEDERER AND THE ESTATE OF TE'JUAN JOHNSON,

Defendants.

Hon. Jane Magnus-Stinson,
United States District Judge.

March 30, 2023, Decided
March 30, 2023, Filed

ORDER

Appendix B

Late in the evening on July 18, 2019, Charlestown Police Officers Jonathan Paul Roederer and Te'Juan Johnson responded to a 911 call regarding two people fighting. When they arrived, they observed RJ Slaymaker standing at the driver's side door of a car driven by his wife, Amylyn Slaymaker. After questioning RJ and Amylyn, RJ agreed to go to the emergency room for a voluntary mental health evaluation and Amylyn returned to the home that they shared. Tragically, RJ returned to their home later that evening and fatally shot Amylyn and then fatally shot himself. Amanda Rakes initiated this litigation as the Administrator of Amylyn's Estate and the next friend to Amylyn's two minor children, asserting a federal constitutional claim based on the actions of Officers Roederer and Johnson when they responded to the 911 call. Officer Roederer and the Estate of Officer Johnson[1] have now filed a Motion for Summary Judgment, which is ripe for the Court's decision. [Filing No. 67.]

I.

Standard of Review

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and, instead, the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). On summary judgment, a party must show

1. Officer Johnson passed away after the events underlying this litigation. Although his Estate is the Defendant in this matter, the Court refers to Officers Johnson and Roederer collectively as "Defendants" in this Order.

the Court what evidence it has that would convince a trier of fact to accept its version of the events. *Johnson v. Cambridge Indus.*, 325 F.3d 892, 901 (7th Cir. 2003). "'Summary judgment is not a time to be coy.'" *King v. Ford Motor Co.*, 872 F.3d 833, 840 (7th Cir. 2017) (quoting *Sommerfield v. City of Chicago*, 863 F.3d 645, 649 (7th Cir. 2017)). Rather, at the summary judgment stage, "[t]he parties are required to put their evidentiary cards on the table." *Sommerfield*, 863 F.3d at 649.

The moving party is entitled to summary judgment if no reasonable fact-finder could return a verdict for the non-moving party. *Nelson v. Miller*, 570 F.3d 868, 875 (7th Cir. 2009). The Court views the record in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor. *Darst v. Interstate Brands Corp.*, 512 F.3d 903, 907 (7th Cir. 2008). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *O'Leary v. Accretive Health, Inc.*, 657 F.3d 625, 630 (7th Cir. 2011).

Each fact asserted in support of or in opposition to a motion for summary judgment must be supported by "a citation to a discovery response, a deposition, an affidavit, or other admissible evidence." S.D. Ind. L.R. 56-1(e). And each "citation must refer to a page or paragraph number or otherwise similarly specify where the relevant information can be found in the supporting evidence." *Id.* The Court need only consider the cited materials and need not "scour the record" for evidence that is potentially relevant. *Grant v. Trustees of Ind. Univ.*, 870 F.3d 562, 572-73 (7th Cir.

2017) (quotations omitted); *see also* Fed. R. Civ. P. 56(c)(3); S.D. Ind. L.R. 56-1(h). Where a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact, the Court may consider the fact undisputed for purposes of the summary judgment motion. Fed. R. Civ. P. 56(e)(2).

In deciding a motion for summary judgment, the Court need only consider disputed facts that are material to the decision. A disputed fact is material if it might affect the outcome of the suit under the governing law. *Hampton v. Ford Motor Co.*, 561 F.3d 709, 713 (7th Cir. 2009). In other words, while there may be facts that are in dispute, summary judgment is appropriate if those facts are not outcome determinative. *Harper v. Vigilant Ins. Co.*, 433 F.3d 521, 525 (7th Cir. 2005). Fact disputes that are irrelevant to the legal question will not be considered. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

II.

Statement of Facts

The following factual background is set forth pursuant to the standard detailed above. The facts stated are not necessarily objectively true, but as the summary judgment standard requires, the undisputed facts and the disputed evidence are presented in the light most favorable to "the party against whom the motion under consideration is made." *Premcor USA, Inc. v. Am. Home Assurance Co.*, 400 F.3d 523, 526-27 (7th Cir. 2005).

Appendix B

A. The 911 Call

On July 18, 2019 at 11:30 p.m., a man called 911 and told dispatchers that he saw a man hitting a woman in the street near his house and that, "[a]ccording to my wife, it looks like he had a gun, so tell them to be careful." [Filing No. 82-1 at 4-5; Filing No. 83-1 at 0:30-0:33; Filing No. 83-1 at 1:47; Filing No. 83-1 at 02:00-02:03.]

B. Officers Roederer and Johnson Arrive on the Scene

Officers Roederer and Johnson responded to 6514 Sunset Loop in Charlestown, Indiana after dispatch advised that two subjects were fighting in the street and the male subject possibly had a gun. [Filing No. 67-1 at 3.] When Officer Roederer arrived, he observed the male subject, later identified as RJ, at the driver's side door of a vehicle driven by a female subject, later identified as Amylyn. [Filing No. 67-1 at 3; Filing No. 67-22 at 6.] Amylyn immediately told Officer Johnson that RJ had a gun and said, "I'm scared for my life.... He's so sad. He has PTSD and he — he's drunk and he's threatening to kill me and my family. My kids live right over there." [Filing No. 67-4 at 4-5.][2] RJ was handcuffed and Officer Roederer spoke to him separately while Officer Johnson spoke to Amylyn. [Filing No. 67-4 at 4; *see also* Roederer Dash Cam Video; Johnson Dash Cam Video.]

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2. Defendants submitted dash cam video from both Officer Roederer's and Officer Johnson's vehicles, which the Court cites to as "Roederer Dash Cam Video," [Filing No. 67-2], and "Johnson Dash Cam Video," [Filing No. 67-3]. The Court also cites to the transcript of Officer Johnson's dash cam video, [Filing No. 67-4].

C. Officer Roederer Questions RJ Regarding the Encounter with Amylyn

RJ informed Officer Roederer that he was a veteran who had a hard time dealing with things and that he had a firearm on his right side in his waistband, which Officer Roederer removed. [Filing No. 67-1 at 3; Filing No. 67-22 at 6; Roederer Dash Cam Video at 00:50-00:51; Roederer Dash Cam Video at 01:10; Roederer Dash Cam Video at 01:36-01:40.] RJ stated that he and Amylyn had a domestic dispute and he tried to leave their house but Amylyn would not let him because she did not want him to get another DUI. [Filing No. 67-1 at 3; Roederer Dash Cam Video at 01:18-01:35.] RJ advised Officer Roederer that Amylyn had followed him and was trying to keep him from driving. [Roederer Dash Cam at 01:46-01:59.] RJ stated that the dispute was not physical and denied pulling out a gun. [Filing No. 67-1 at 3; Filing No. 67-22 at 6; Roederer Dash Cam at 02:14-02:19; Roederer Dash Cam at 02:27-02:32.]

D. Officer Johnson Questions Amylyn Regarding the Encounter with RJ

Meanwhile, Amylyn advised Officer Johnson that she had two guns in her purse, one of which was loaded. [Filing No. 67-4 at 6-7.] Amylyn explained that RJ bought her the .380 and that it "stays with me all the time," but had recently jammed so she had "grabbed the gun from the side of the bed." [Filing No. 67-4 at 16.] Amylyn asked Officer Johnson several times if she could have her cell phone so she could show Officer Johnson threatening text

messages from RJ, but Officer Johnson told her to wait. [Filing No. 67-4 at 6-7; Filing No. 67-4 at 9.]

Officer Johnson briefly conferred with Officer Roederer regarding what RJ and Amylyn had told each of them, and Officer Johnson then continued questioning Amylyn. [Filing No. 67-4 at 10-12.] The following exchange between Officer Johnson and Amylyn then took place:

> OFFICER JOHNSON: Amy, come here. So did — did you guys — did he hit you or anything?
>
> AMYLYN: Yeah, he — he hit me in —
>
> OFFICER JOHNSON: Where'd he hit you at?
>
> AMYLYN: — the side of my — like through here with the gun, and then he punched me in — in my face, and I think he mostly got my arm.
>
> OFFICER JOHNSON: Where'd he punch you in your face at?
>
> AMYLYN: Like, just over here, but I — I went to block it and it's — like, it feels toward here, so I'm thinking he mostly got my arm.
>
> OFFICER JOHNSON: Turn your head. When did he hit you?
>
> AMYLYN: Maybe five minutes before you guys came up.

OFFICER JOHNSON: Did you hit him or anything?

AMYLYN: No.

OFFICER JOHNSON: Did he ever pull a gun out on you or anything?

AMYLYN: Yeah, he — he hit me with the gun first.

OFFICER JOHNSON: So why did — when you — did you leave your house?

AMYLYN: Yes.

OFFICER JOHNSON: Okay. Why did you grab your guns?

AMYLYN: Because he had threatened to kill my kids' dad and my kids. So —

OFFICER JOHNSON: Okay. But he's — he was leaving, right?

AMYLYN: Okay. So — can I show you my texts? It —

OFFICER JOHNSON: Yeah. Well, let's —

AMYLYN: — makes sense —

OFFICER JOHNSON: Well, tell me first and we'll look at your phone in a minute.

AMYLYN: He — he — he's got a rental property on Highway 3, okay? So he had a few drinks at the house and then he went over to the rental property.

OFFICER JOHNSON: Okay.

AMYLYN: Apparently drank some more and he said if I don't do something for him —

OFFICER JOHNSON: What's —

AMYLYN: — he's going to shoot —

OFFICER JOHNSON: What's the something?

AMYLYN: It's sexual stuff.

OFFICER JOHNSON: Okay. I mean, we're adults here. I got to ask — we got to ask these questions, okay?

AMYLYN: I know. I know. He's going to kill Eric, which is my kids' dad. And — and — and he starts sending me pictures of him heading over here. So I go from the house — I —

OFFICER JOHNSON: Where do you live at? Back here?

AMYLYN: Okay. I don't live back here. I live in Memphis[, Indiana].

OFFICER JOHNSON: I thought you said your family lives back —

AMYLYN: My — my kids' dad. That's my husband. My kids' dad lives back there with my kids, who are at his house right now, because it's his week.

OFFICER JOHNSON: So you dropped the kids off —

AMYLYN: They've been over here —

OFFICER JOHNSON: So why are you —

AMYLYN: — since Sunday.

OFFICER JOHNSON: So why are you over here?

AMYLYN: Because he's threatening to shoot my f***ing kids and their dad.

OFFICER JOHNSON: Okay.... Well, ma'am, I'm asking this question, because I'm trying to understand how come you're here. So you came over here to check on the kids and your ex-husband?

> AMYLYN: To try to help deter him from doing anything.
>
> OFFICER JOHNSON: Okay.
>
> AMYLYN: There was another part that happened earlier. So he FaceTimed me earlier, pretending like he shot his self. The — the — he laid the phone facedown it looked dark. And so I went to where he was.... By the time I got there, he had left. So I went back home and then that's when the texts started coming about shooting Eric. And so I came over here to try to deter him. Originally I had pulled in behind him at the house and then he went down the road more. And then that's where we got into the physical altercation. And then I had backed up back to Eric's house and he had drove in beside me in that turn. He was saying, "Do you — do you want me to shoot you? And then the kids can come out in the morning and see their mother dead."

[Filing No. 67-4 at 12-15.]

Amylyn also showed Officer Johnson the following text exchange she had with RJ earlier that evening:

> RJ: Yep. F*** it. I've been looking for a reason [to] off myself. You gave it to me. F*** it.

AMYLYN: I can't help it kicked me out.[3]

RJ: Yep. Always something. Bye.

AMYLYN: Are you ok

RJ: 20 mins and this time it will be for real. Found me the perfect spot. How the f*** is it I can talk to cats all day and then you take over and can't find anyone. I will do gun Down Erick and.... F*** it. Turn that sh*t over to the cops. Guess you called my bluff snitch. Give it 10 mins and call the cops. Real suicide crime scene. F*** it. Amazing I can talk to someone all day and you take over and NOTHING but Excuses. I'm hea[d]ing to your kids[']' house. Watch Me on gps. Heading to your kids[']' house I mean I'm [s]ick of your f***ing games. [Always] something. Oh you think this is a joke.

AMYLYN: No I don't.

RJ: [Sent pictures of the road while driving to Amylyn's ex-husband's house]. You have till 4.

[Filing No. 82-4.] Amylyn also told Officer Johnson that she was concerned for Defendants' safety as RJ had threatened to commit "suicide by cop" if Amylyn ever called the police. [Filing No. 67-4 at 22.]

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3. Amylyn was referring to an app that RJ used to set up sexual encounters for Amylyn with strangers. [*See* Filing No. 67-4 at 83-84.] As discussed below, Amylyn told Officer Johnson more details regarding this after RJ left the scene.

E. Officer Roederer Questions the 911 Caller

While Officer Johnson was questioning Amylyn, Officer Roederer left the scene to question the 911 caller and his wife, who had seen RJ and Amylyn arguing from inside their house. [Roederer Dash Cam at 16:59.] The male caller advised Officer Roederer that when they first noticed the Slaymakers, RJ's car was blocking Amylyn's car and that, "[a]t first we just thought they were just kinda loud, but then we saw him reach into his waist band and start hitting, and then she started screaming." [Roederer Dash Cam at 17:45-17-58.] He stated that he did not see if RJ had a gun in his hand. [Roederer Dash Cam at 18:10-18:13.] The caller's wife told Officer Roederer that it looked like RJ hit Amylyn through the window of the car, that she heard Amylyn scream, and that she "saw him put what looked to be a gun in his waistband and then get back in the car." [Roederer Dash Cam at 20:00-20:23.] She stated further that although she had not seen RJ actually hit Amylyn, "[i]t looked like he had her arm above the window, because then that's when I saw the gun in his hand, or what looked to be. And then as he came around he put it back in his waistband." [Roederer Dash Cam at 0:21:16-0:21:24.]

F. Officers Roederer and Johnson Confer Again

Officer Roederer then returned to the scene and had the following exchange with Officer Johnson:

> OFFICER ROEDERER: Well, he [the male 911 caller] basically said they were parked right in front of their house and they heard them

screaming. They said they looked like he was punching something, but they couldn't — never saw him actually hit her. They said, "Yeah, we saw his arms going up, but didn't see him hit her." So I asked the guy, I said, "Well, so what about the guns?" He said, "Well, I don't know for sure if it was a gun. I saw" — then he said, "I saw — I saw him, like, reach for his waistband and I kind of figured it was a gun." And then the wife came out and said that she thought she saw a gun. She's like, "I don't know for sure it was a gun." So —

OFFICER JOHNSON: The text messages, he never threatened to kill her. Because on the text messages, you know, he threatened — or he just told — basically, you know, mad at the — her ex-husband. I didn't see no marks or bruises on her.

OFFICER ROEDERER: No, I didn't see any —

OFFICER JOHNSON: If he punched her —

OFFICER ROEDERER: If he just punched her five minutes ago... — especially with a gun — ...she's going to have a bruise.

OFFICER JOHNSON: A mark here and then a mark on her face. Did he pull — he said he pulled a gun out on her, yeah?

OFFICER ROEDERER: He said he did not.

OFFICER JOHNSON: He didn't?

OFFICER ROEDERER: So then I went ahead — I was asking if she pushed him and so I was like, "Yeah, I better read him his rights." Because obviously we've got — ... an issue with a gun, so I went ahead and read them. He was like, "All right. I'm going to talk — you know, I'll talk to my lawyer about it." So he quit talking.

OFFICER JOHNSON: And then they — they've both got guns.

OFFICER ROEDERER: I'm like, "Don't worry about it." And then he quit talking.

OFFICER JOHNSON: And then they — they both got guns. She's got a loaded gun in her purse.

OFFICER ROEDERER: Yeah, I know. So I mean, at most, we can get him for [public intoxication], I guess. I would — ... get him for [driving under the influence], but I mean —

OFFICER JOHNSON: Yeah, but if he's trying to get away —

OFFICER ROEDERER: Yeah, I know. He's trying to get away from the situation.

OFFICER JOHNSON: Right.

OFFICER ROEDERER: That's what he was telling me. He said, "I'm just trying to get out of here and she's following me. That's why I stopped and was telling her to quit following me."... That's why he stopped right there... — and walked back and told her to quit following him.

OFFICER JOHNSON: That's — and that's what I'm telling her. I'm like, "Why is his car there and why is your car here?" I — I don't think we got nothing. I don't think we got nothing. I told her, that's what I said. I said, "Ma'am." I said, "I don't think we have enough to do anything."

OFFICER ROEDERER: Yeah. I mean, we have no — ... We see no marks.... The witness statements weren't completely —

OFFICER JOHNSON: I'm like, "If you're scared, why are you coming back up here? Why do you not just leave and go the other way or stay down there and wait for the police to come?" And why did she not call the police?

OFFICER ROEDERER: And if — and if she saw him sitting right there and she knows he's crazy and got a gun, why don't you drive off? You've got plenty of room right there. I mean —

> OFFICER JOHNSON: I don't think we got enough, bro. I'm going to talk to her.

[Filing No. 67-4 at 23-26.]

Officers Roederer and Johnson then discussed confiscating the Slaymakers' guns for "safekeeping," so that both RJ and Amylyn could "cool down." [Filing No. 67-4 at 27.]

G. Officer Johnson and Amylyn Continue Talking About RJ

Officer Johnson then told Amylyn that because the 911 callers did not see what had happened, they were not going to arrest RJ but would take custody of the Slaymakers' guns for the night. [Filing No. 67-4 at 27-28.] Amylyn asked Officer Johnson if they could also take custody of two AR-15 assault rifles that they had in their home. [Filing No. 67-4 at 28-29.] Amylyn and Officer Johnson discussed where Amylyn and RJ would go for the night:

> OFFICER JOHNSON: Is there a place where you can go for the night?
>
> AMYLYN: Maybe my parents'.
>
> OFFICER JOHNSON: Can you go there?
>
> AMYLYN: But I don't trust to leave him at the house alone. Years ago, he threatened — he literally tried.... He set fire to the couches —.

Appendix B

[Filing No. 67-4 at 28-29.] Officers Roederer and Johnson discussed the possibility of Officer Roederer giving RJ a ride to the Slaymakers' house in Memphis while Amylyn went to her parents' house for the night, and Officer Johnson and Amylyn then had the following exchange:

> OFFICER JOHNSON: Hey, ma'am, he has nobody that he can — he has no family?
>
> AMYLYN: Not around here.
>
> OFFICER JOHNSON: And where's your mom and dad live at?
>
> AMYLYN: In New Albany.
>
> OFFICER JOHNSON: You think he'd go to New Albany and do —
>
> AMYLYN: Huh?
>
> OFFICER JOHNSON: They live in New Albany?
>
> AMYLYN: Yeah.
>
> * * *
>
> OFFICER JOHNSON: Yes, ma'am. I'm going to — we're going to go get the guns and he's going to stay at the house.

AMYLYN: He's going to stay — well, I don't — he's choked me.

OFFICER JOHNSON: Okay. But you're going to your parents' house.

AMYLYN: Well, what if he burns the house down?

* * *

OFFICER JOHNSON: Listen to me — ma'am, worry about you. Don't worry about him. That's what — we're dealing with you, okay?

AMYLYN: Okay —

OFFICER JOHNSON: Listen, we're dealing with you though, ma'am.

AMYLYN: I know, but —

OFFICER JOHNSON: You need — we — you've got —

AMYLYN: — you know, my kids come to my house. What am I supposed to do if my house gets burned down? What am I supposed to do?

OFFICER JOHNSON: Okay. Do you feel comfortable — so do you want to be at your house by yourself or do you want to go

somewhere else? Okay. Then that's what we need to do, okay? Right — listen, right now, we have nothing to — to arrest him on, okay? You know, you're telling me a story and I'm looking out for your interest of where you feel safe. So you can be at your house where there's other people — you can always build your house up if something happens to your house. You can always fix your house. Then if he burns your house down, then he'll go to jail for arson. So that can be replaced. A home can be replaced. Your life can't.

AMYLYN: So what am I supposed to do tomorrow and the next day?

OFFICER JOHNSON: You know there's a problem. Then you need to —

AMYLYN: I know there's a problem

OFFICER JOHNSON: Then you need to go to court, get an EPO, a no-contact order. You guys need to split up, okay? That's what you need to do as an adult. You have kids, okay? So you guys need to act as an adult. If you know this is a history, where he's burning the couch up, if he's threatened you, if you think he's going to harm you, why put your kids in harm's way?

AMYLYN: But —

OFFICER JOHNSON: No, there's no excuses —

AMYLYN: Who's going to protect them —

OFFICER JOHNSON: Ma'am, what do you mean who's going to protect them? You are.

AMYLYN: Whenever they're over here.

OFFICER JOHNSON: They got a dad over here. Call the police. We can't be here 24-7. Nobody can be present 24-7. But you got to take the first step. If you know this is not working out and it's getting to this point, you need to go to court, file for a divorce, get an EPO, a no-contact order, and leave this alone. Be through with it. So don't make excuses up, "Well, I care for him, this and that." It's not — it's to the point where if it's not going to work out, you're going to have to go your separate ways. If he wants to harm his self — if he doesn't want help, ma'am, you can't help him. It's up to him if he wants help.

AMYLYN: I know.

OFFICER JOHNSON: But if your kids were here and if you guys got in a fight, this would have been a totally different situation. [Child Protective Services] gets involved, your kids are going to be taken away. There's a lot of

things that could happen. You — first of all, you have a loaded gun, he has a gun. I mean, this is crazy. I shouldn't have to be telling you this. This stuff is common sense.

AMYLYN: I know, but —

OFFICER JOHNSON: You know, how old are you?

AMYLYN: 38 — or 39.

OFFICER JOHNSON: Okay. So you're almost 40 years old, right?

AMYLYN: Yeah.

OFFICER JOHNSON: So this is common sense.

AMYLYN: It is, but when you have somebody threatening you, like —

OFFICER JOHNSON: Ma'am, if he was —

AMYLYN: — you feel helpless and you don't know what to do.

OFFICER JOHNSON: You could have backed up and called the police. If somebody was threatening me, I'm going to get away from the situation and I'm going to call the cops.

AMYLYN: If I call the police, he'll threaten to do it even more. It —

OFFICER JOHNSON: Okay. Then — then what do you — ma'am, then what do you — then what do you want to do? No, it isn't a normal situation. I'm not going to be in an abusive — abusive relationship. I'm going to get out of that situation.

* * *

AMYLYN: Where you're going to go?.... Because I have to go get my dog and I have to get....

OFFICER JOHNSON: Okay. He's not going to the house right now. He's going to go to the police station. I'm going to follow you to your house. I'm going to get the other two guns, wait until you get your stuff. And then when you leave, he's going to go back to the house.

AMYLYN: Okay.

OFFICER JOHNSON: And so at that point, you know, it's going to be up to you. You — here's the steps you got to — this conversation is being recorded, okay? It's going to be up to you to go up to the courthouse tomorrow, okay? And get a — to either get a no-contact order, an EPO, or get a divorce, okay? So this whole conversation

that we're having, it's recorded. So there's no misunderstanding, no miscommunication. You know, you have to do that. Him and I, we don't know — he's telling a story, you're telling a story. We was not here. We talked to the other parties that was involved. Their story is not clear. So that's why we don't feel comfortable with...arresting anybody tonight.

AMYLYN: Okay.

OFFICER JOHNSON: Okay? You know, it's not that we don't believe you or we don't believe him. It's just that we don't see the evidence there.

AMYLYN: I understand.

OFFICER JOHNSON: Okay? But you should not be in an abusive relationship if he's putting his hands on you and if he's abusing you. There's places you can go. Granted, you know, it's a piece of paper, an EPO. If he wants to harm you, you know, that's not going to keep him away from you.

AMYLYN: I know.

OFFICER JOHNSON: So when he speaks with him, he's going to talk with him and let him know. He shouldn't be putting his hands on you, okay? You know, unfortunately, you know, we can't stop this man if this man wants to end

his life. I mean, there's nothing that we can do. We can talk to him until we're blue in the face. He told [Officer Roederer] that he was not suicidal..... But you have to worry about yourself and your kids, okay?

AMYLYN: Okay.

OFFICER ROEDERER: You know what an [mental inquest warrant] is in the hospital? If you go down to the courthouse and tell them what's going on, and — has he ever been in, like, the hospital for, like, a mental evaluation or anything like that?

AMYLYN: Not that I know of.

OFFICER ROEDERER: So you go down to the courthouse and talk to them about what's going on, and then they can even get, you know, paperwork — because we'll do a little narrative and everything of what happened tonight and your statement, his statement, and that'll be in there and you can take it down to the courthouse and say, "This guy is suicidal. He's threatening his life, your life, and everything else." And they'll look into getting an MIW warrant, a mental inquest warrant. So they will, if they provide it, they'll come get him —

AMYLYN: I have proof that he tried to attempt suicide before. Will that help? I have a — he

had sent me a picture of his gun against his head recently.

OFFICER JOHNSON: Yeah, I mean, it sounds like it would help. So why are you waiting — I mean, we can't do it today. It's after —

AMYLYN: I honestly, I don't know what to do. I don't know how to help him. I don't — ... It — it's really —

OFFICER JOHNSON: But listen —

OFFICER ROEDERER: Well, I'm trying — I'm trying to tell you —

OFFICER JOHNSON: Ma'am, listen —

OFFICER ROEDERER: I'm trying to tell you and you just interrupted my whole thing.

AMYLYN: Well, I meant, like —

OFFICER ROEDERER: So do you want help or not? Like —

AMYLYN: — when you-all.... Because I mean, tomorrow it's going to be something different.

OFFICER JOHNSON: But ma'am, listen. What he's — Amylyn?

AMYLYN: Uh-huh.

OFFICER JOHNSON: Listen to what he's trying to explain to you, ma'am.

OFFICER ROEDERER: So you go and get a mental inquest warrant. They will come pick up, take him to the hospital, make him stay for a whole week. They're going to evaluate and test him to see if he's mentally stable, okay? And then they go from there, okay? They can get him on medication, they can get him help or whatever he needs. But that's how — that's how you got to do it, okay?

OFFICER JOHNSON: And I know you don't — I know you don't want to take his guns away, because that's going to take his guns away.

AMYLYN: I know.

OFFICER JOHNSON: His Second Amendment Right, I know — but you got to worry about you. Everything we're telling you, it's like you don't want to do it. Like, you're kind of hesitant about doing it.

AMYLYN: I am hesitant to do it because he served our country. You know, it's like — .... For him, it's a slap in the face. It really is.

OFFICER JOHNSON: Why are you —

OFFICER ROEDERER: But then you need to get him help.

AMYLYN: I understand that, but —

OFFICER ROEDERER: If this is what he keeps doing, then he's — then he could kill himself. Then how would you feel if you didn't get him help? If — if you knew what was going on and you didn't do anything about it and he did something, how would you feel? Think about that.

AMYLYN: I mean, I'd feel bad either way.

OFFICER ROEDERER: Well, you're not — you don't care what we're talking about.

OFFICER JOHNSON: Right. I mean — right. And we're not — we're not laughing at you. It's just, like, we're trying to help you and it's like —

* * *

OFFICER ROEDERER: But once he gets help, he will realize that you did the best thing for him — ... because he's still alive. He didn't do anything —

OFFICER JOHNSON: We're trying to make you — we're trying to make you understand reason. You know —

> AMYLYN: I understand that, but I'm — I'm just — honestly, I'm just sad.
>
> OFFICER JOHNSON: Okay. We don't want anything to happen to you all because you feel that he did something great for our country. It's great that he did that. He fought for our country. But is that more important than your life, your kids — seeing your kids grow up...? I mean, to me, that'd be more important than worrying about his issues. You now, I'd be like, "Man, you need to get help."

[Filing No. 67-4 at 31-45.]

H. RJ Agrees To Go To the Hospital

Amylyn then showed Officers Johnson and Roederer a picture from her phone of RJ holding a gun to his head. [Filing No. 67-4 at 46-47.] After seeing the picture, Officer Johnson talked to RJ about going to the hospital to "get checked out," and RJ expressed concern that his guns would be taken away. [Filing No. 67-4 at 48-52.] He told the Officers that he fought for his Second Amendment right and "will be damned that I'll give that f***ing right up, that I fought for, that 14 of my f***ing brothers died for, and you're holding a f***ing phone that shows evidence of me having a bad day. You know how many times I have a bad day? All the time. You know how many times I do that? Very rarely. But you know what happens? You submit that in your report and all they see is one time. And guess what. Red Flag Law takes that away from me. I would

rather die right now fighting you motherf***ers, with my hands behind my back, than give that right up." [Filing No. 67-4 at 59.]

Officer Roederer told RJ, "if we make you go [to the hospital], they make you stay there for a whole week.... If we don't, you don't have to stay in there. They don't keep you for a whole week, okay? So it's — it's easiest just to voluntarily —." [Filing No. 67-4 at 53.] RJ agreed to go to the hospital voluntarily if Officers Johnson and Roederer did not show medical personnel the picture of him holding a gun to his head and the Officers agreed. [Filing No. 67-4 at 52-53.] RJ and the Officers had the following exchange:

> RJ: Okay. Well, I'll tell — I'll — okay, so one on one, if I was to go tonight, EMS shows up, I go down to the hospital, I get evaluated —
>
> OFFICER JOHNSON: I'm going to tell EMS — this is what I'm going to tell EMS, that you guys got in an argument, you have some problems, that you want to talk to somebody, because you said you want to voluntarily go. And that's confidential what you want to talk to them about.
>
> RJ: Okay.
>
> OFFICER JOHNSON: Okay?
>
> RJ: Can you shake my hand on that?

> OFFICER JOHNSON: Because I want you to get help.
>
> RJ: You know what? I can respect that, 100 percent.
>
> OFFICER JOHNSON: Okay.

[Filing No. 67-4 at 62-63.] Officer Roederer told RJ, "Yeah, man, we don't — we don't, like, want to take people to jail, especially in your situation. We understand and we appreciate that you gave your life for everything that we have, and we understand that. We're here for you. We're — like I said, we — we could have you for a felony DUI — ...public intoxication and everything else, but we're not — we don't want to take you to jail if we don't have to." [Filing No. 67-4 at 72.]

When an ambulance arrived, Officer Johnson had the following exchange with EMS personnel:

> OFFICER JOHNSON: This is RJ
>
> EMS PERSONNEL: Okay.
>
> OFFICER JOHNSON: Man, he got into it with his wife. He was having a bad day.
>
> EMS PERSONNEL: Okay.
>
> OFFICER JOHNSON: Problems — you know, he wants to voluntarily get checked out.

Appendix B

* * *

EMS PERSONNEL: Okay.

OFFICER JOHNSON: And then just go with them [to] talk to somebody down there.

EMS PERSONNEL: All right. Let's go.

[Filing No. 67-4 at 74-75.]

I. Officer Johnson and Amylyn Discuss Where She Will Go For the Night

After RJ left in the ambulance, Officer Johnson and Amylyn had the following discussion regarding where she was going to go for the night:

OFFICER JOHNSON: Are you going to go to your house? You're — you're going to be at your parents' house?

AMYLYN: Well, you — you said it's a 24-hour thing, right? For an evaluation?

OFFICER JOHNSON: Yeah, so what are [you] going to do? Are you going to go to your house?.... So here's what I'm — here's what I'm going to do. I'm going to leave the — I'm going to leave your gun, okay? We have his gun. (Inaudible) going to your house because I don't think you're suicidal.

AMYLYN: I'm not, no.

OFFICER JOHNSON: Okay. I'm going to give you back your firearm, okay? Did he ever say he pulled out the firearm?

OFFICER ROEDERER: No, he didn't.

OFFICER JOHNSON: Okay.... Yeah, So here's your — your bag and your license and stuff.

AMYLYN: I — and I — I understand why he feels that way, but I want to help him and — and I've been trying to talk him into — he went to his first AA meeting Monday. And I — I'm trying to do all I can within reason, but I — I don't want to go to these extents. I — I want him to, you know — not be in the criminal system. But — ...everything to just pass over and —.

OFFICER JOHNSON: But ma'am, but it's hard to reason with somebody who's so adamant about their Second Amendment Rights.

AMYLYN: I know.

[Filing No. 67-4 at 77-79.]

Amylyn then told Officer Johnson that RJ had been insisting that she engage in sex acts with other men for the past three years and that earlier that evening RJ was "bitching and complaining" regarding an encounter

that he wanted Amylyn to follow through with, but that she did not carry out. [Filing No. 67-4 at 81-86.] Officer Johnson again told Amylyn that she needed to leave RJ. [*See, e.g.*, Filing No. 67-4 at 86 ("OFFICER JOHNSON: Here's the thing — all right, Amy, here's the thing, okay? If somebody's shooting at you, okay, it's time to go.").] They again discussed where Amylyn would go for the night:

> OFFICER JOHNSON: But the steps — but you're still going to be involved in that situation. You need — if you leave and go to your mom's house, get away from that situation.
>
> AMYLYN: But then he's going to threaten Eric and the kids or threaten to come to my parents'.... I just feel like I — I'm — I'm feeling a little stuck, and — and I know that's probably hard for you to understand —
>
> OFFICER JOHNSON: It's not — I do — I do understand.
>
> AMYLYN: — because you haven't been in that situation.
>
> OFFICER JOHNSON: But I do — I do understand. And you know what? I have not been in that situation, but I understand as a female, even for you, it probably is hard for you, because you are probably stuck. And, you know, but there is places out there that can help you in your situation though.

AMYLYN: Yeah but, you know, it's not just me. It's me here, the kids here, my parents there.... I mean, the other day, he even threatened to shoot the dog..... And it's, like, I don't feel like I can protect everybody. So if I try to protect myself, I feel like I'm potentially putting the kids in harm's way or my parents in harm's way.

OFFICER JOHNSON: I mean, so do you want to get help?

AMYLYN: I — I do need help, yes. And that's why I — I provided you all that information tonight. I know — part of me — ...just wants to say one day, it's just going to all change and everything's going to get better. But I'm to the point now, I know it's not and I don't know what else to — to do to try to get him help.

OFFICER JOHNSON: Well, we're talking about you. Have you ever thought about, like, you know —

AMYLYN: I know, but he needs help, too.... Because I feel if he doesn't get help, I'm going to — I'm going to be in danger.

OFFICER JOHNSON: That's why we're — that's why he's at the hospital trying to get help, okay? But it also starts with you, okay? You know, you can't have your kids in that situation, okay?...You can't have yourself in a

> bad situation. So to get help is — there's places out there, you know, for women and children centered, that can help, you know, your situation and your case. But it has to be something that you want to do and not, you know, feel obligated that you want to help him. I mean, so there's places out there. So basically he got upset because, you know, you got kicked out of this app and you couldn't meet with this guy to have sex. So from there, he got mad and said that he's going to shoot Eric, okay. So then you came over here to where Eric was at.

[Filing No. 67-4 at 88-90.]

Amylyn told Officer Johnson more details regarding RJ wanting her to engage in sex acts with other men, confirmed that she did not want to do so, and stated, "like, that's why I feel stuck, because I — because if I don't do it, it's, 'I'm going to shoot you, I'm going to shoot me.' I'm — I mean, I — we've — recently, I think there's been two or three times when divorce has, like, been to the point where we had papers, we signed, and were trying to figure everything else out. And then he'll, you know, the next day rip them up and he's like, 'No, I'm not going to do that to you. I'm going to go get help.' And, you know, I've checked out this...place, but Monday was the first time he actually went to it.... He's been drinking real heavily since, like, November or December." [Filing No. 67-4 at 94.]

They again discussed where Amylyn would stay that evening:

> OFFICER JOHNSON: Okay. So do you want to stay there [at your house]? Or do you want to — I mean, what — what's the plan? Like, what —
>
> AMYLYN: I'm going to have to stay with my parents, I guess.
>
> OFFICER JOHNSON: Okay. So are you going to go to your house?
>
> AMYLYN: Well, tonight, yeah.
>
> OFFICER JOHNSON: Are you going to —
>
> AMYLYN: You said it's a 24 hour?
>
> OFFICER JOHNSON: Yeah. So are you going to get the guns and everything when you go home?
>
> AMYLYN: Yeah, I'm going to take them with me to my parents'.

[Filing No. 67-4 at 96-97.]

Officer Johnson then accompanied Amylyn to her ex-husband's house to let him know what had taken place, and then they left the scene separately. [Filing No. 67-4 at 98-101.]

J. Amylyn Contacts Officer Johnson and Goes to the Police Station

A few minutes after leaving the scene, Amylyn called Officer Johnson to tell him that she had found a scratch on her left arm. [Filing No. 82-8 at 20.] Officer Johnson asked her to come to the police station so that he could take a picture of the scratch and also told her that he "needed those text message[s] where [RJ] had been threatening her" by the next day, so that he could complete his report of the incident. [Filing No. 82-8 at 20.] Amylyn went to the police station and showed Officer Johnson the scratch on her left arm, and he took a picture. [Filing No. 82-8 at 20.]

As for where Amylyn was going to stay that evening, Officer Johnson wrote in his report of the incident that when Amylyn called to tell him about the scratch on her arm, he told her to "make sure to get the other two AR15s and stay at her mother['s] house," and that Amylyn responded, "okay." [Filing No. 82-8 at 20.] He also wrote the following regarding his conversation with Amylyn while she was at the police station:

> Amylyn then told me that she made her mind up and that she was going to get an EPO and file for divorce. Amylyn asked officers again how long will [RJ would] be in the hospital. Officers told Amylyn we did not know how long he will be in there. I told Amylyn do not worry about how long [RJ] is going to be in the hospital. I told Amylyn this is [a] chance to get her stuff together and to go her mother['s] house.

> Amylyn stated "okay", but it's hard I love him and he needs help. I told Amylyn to go to her mother's house. I told Amylyn she needed to follow through with this and think about her and her kids because something bad could happen. Amylyn [stated] "okay". I asked Amylyn again if she was going to her mother's house. Amylyn stated "yes".
>
> Note: Amylyn asked several times how long will [RJ would] be in the hospital. Officers told her we did not know. I told Amylyn if she needed anything to contact me. Amylyn stated "okay".

[Filing No. 82-8 at 20.][4]

K. RJ's Emergency Room Encounter

Meanwhile, RJ was admitted to the emergency room at Clark Memorial Hospital at 12:59 a.m. on July 19, 2019. [Filing No. 82-6 at 26.] The emergency room records state:

> Patient in argument with his wife earlier this evening heated argument in the streets neighbors called the police police came to the scene spoke with the patient...they found out he was a veteran and owns a handgun it was not used during the argument was not removed

4. Officer Johnson had not filed his report of the July 18, 2019 incident as of the time that RJ killed Amylyn, as discussed below. [Filing No. 83-2 at 0:32-0:38; Filing No. 83-2 at 02:10-02:20.]

> during the argument he did not threaten anyone with this he has no desire to hurt himself or his wife simple fact that he was a veteran of war owns a handgun the police wanted him to be evaluated before returning home.

[Filing No. 82-6 at 26.] RJ's blood alcohol content in the emergency room as 0.12. [Filing No. 82-6 at 28.] He was discharged at 3:41 a.m. on July 19. [Filing No. 82-6 at 26.]

L. Amylyn and RJ are Discovered Dead at Their House

On the evening of July 19, 2019 at approximately 9:36 p.m., RJ's mother called 911 to request a welfare check at the Slaymakers' house because RJ had sent her a message on Facebook at 7:49 that evening stating that he had killed Amylyn and was planning to kill himself. [Filing No. 67-10 at 1-2; Filing No. 67-10 at 8; Filing No. 67-14 at 6; Filing No. 67-14 at 28.] The text message stated:

> I killed amylyn and now myself. I am writing this as my last words. I am sorry. Please make sure I get a proper [burial]. Cause no one here will cause of what I did. I'm sorry. Wish I could change what I did. But I did it in the heat of the moment and can't go back and fix it.... Sorry to let you down.... I love her so much and she f***ed up. It killed me inside and I ended her.... I am broken and did something I am not proud [of]. She was my world. But screwed me. Screwed me so bad I had to resort to this.

[Filing No. 82-11.] At approximately 11:43 p.m. that evening, RJ's mother received another message from RJ in which he stated, "I'm not going to prison. Amylyn is dead. And so am I. Bye and I love you." [Filing No. 67-11 at 6.]

Clark County Sheriff's Officers responded to the Slaymakers' house and eventually entered the house through the garage at approximately 1:15 a.m. on July 20. [Filing No. 67-10 at 1-2; Filing No. 67-12 at 1; Filing No. 67-14 at 8-9.] Clark County Sheriff's Detective James Haehl discovered RJ seated in a chair inside the garage, deceased, with an injury to his head, a large amount of blood pooled on the floor, and a Glock .40 caliber pistol lying in RJ's lap. [Filing No. 67-12 at 1.] Detective Haehl then went into the house and saw a mattress in the living room with a blanket on it and Amylyn's body lying on her right side clutching what appeared to be a cell phone. [Filing No. 67-12 at 1.] He observed what appeared to be a gunshot wound to the left side of her head. [Filing No. 67-12 at 1.] Detective Haehl also observed an AR-15 style rifle lying on a couch near Amylyn, along with four other firearms in the house. [Filing No. 67-12 at 2.]

M. Prior Threats By RJ

RJ had physically threatened Amylyn on several occasions prior to the July 18, 2019 incident, including the following:

- March 3, 2019: Amylyn shot RJ in self-defense at their house. RJ acknowledged in a voicemail

message he left for Amylyn that Amylyn was scared for her life and warned her that, based on his military training, if he really wanted to do something to her, he would do it while she was sleeping and not when he could have gotten shot or hurt.

- July 4, 2019: RJ sent Amylyn text messages stating:
  - "But you walk in this door after f***ing me over I'll f***ing shoot you...";
  - "Either do what I asked or don't come home. I'll break your f***ing jaw you walk in my f***ing house without completing my dare";
  - "And you can show this to the cops snitch. Come home and not complete sh*t, you will be in the hospital";
  - "F*** the cops, f*** the feds, I'll f*** you up if you come home and leave me hanging."
- July 13, 2019: Amylyn sent RJ a text message stating, "Sex stuff is not why I want to leave you. You keep pulling a gun on me is. I'm done being threatened. Do you have a different fix for that?"

[Filing No. 67-17 at 1; Filing No. 67-18 at 2; Filing No. 67-19 at 2; Filing No. 67-20; Filing No. 67-21 at 7-8.]

After her death, police found a letter Amylyn had written on July 10, 2019 stating that if something happened to her, the letter should be given to authorities. [*See* Filing No. 67-17.] In the letter, she wrote that RJ had been abusive and threatening for the past six to eight months and had recently threatened to kill her, her children, and the family dog. [Filing No. 67-17 at 1.] She wrote that she was trying to get RJ help for his PTSD and drinking, but that she could not talk to anyone about it out of fear that RJ would find out. [Filing No. 67-17 at 1.] She wrote that she wanted to call the police, but that RJ threatened to shoot the police if they responded and she did not want anyone to get killed. [Filing No. 67-17 at 1.]

N. The Lawsuit

Ms. Rakes initiated this lawsuit on July 15, 2021, as the Administrator of Amylyn's estate and as next friend to Amylyn's minor children. [Filing No. 1.] She asserts claims against Defendants: (1) under 42 U.S.C. §1983 for violation of Amylyn's Fourteenth Amendment rights by "affirmatively plac[ing] Amylyn in a heightened state of special danger that Amylyn would not otherwise have faced when they falsely told Amylyn that RJ would be in the hospital for 24 hours and it was safe to return home," because "[i]t was foreseeable that RJ would return to the home and harm Amylyn during the 24-hour period that Amylyn thought RJ would be hospitalized"; and (2) under 42 U.S.C. § 1985 for conspiring to deprive Amylyn of her constitutional right to equal protection because Amylyn "was a member of a protected class" and Defendants' actions "were motivated by discriminatory animus toward

Amylyn's gender." [Filing No. 1 at 6-7.]

On October 18, 2022, the Court denied a Motion for Judgment on the Pleadings filed by Defendants. [Filing No. 63.] Defendants have now moved for summary judgment on all of Ms. Rakes' claims. [Filing No. 67.]

III.

Discussion

A. Section 1983 Fourteenth Amendment Due Process Claim

In support of their Motion for Summary Judgment, Defendants argue that they did not violate Amylyn's constitutional rights. [Filing No. 70 at 33.] Specifically, they assert that Ms. Rakes claims that they had a constitutional duty to protect Amylyn against another private citizen's acts of violence, but that the United States Supreme Court rejected that theory in *DeShaney v. Winnebago Cnty. Dept. of Social Servs.*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989). Defendants contend that Ms. Rakes does not argue that the first exception to *DeShaney*, which applies when the state has taken a person into its custody involuntarily, applies here and that Amylyn was never handcuffed or detained in any event. [Filing No. 70 at 15-16.] As to the second exception to *DeShaney* — the state-created danger exception — Defendants argue that the exception is narrow and only applies where the plaintiff can show that "the state affirmatively placed [her] in a position of danger and that the state's failure to

protect [her] from that danger was the proximate cause of [her] injury." [Filing No. 70 at 17 (quotation and citation omitted).] Defendants assert that courts should "avoid mechanically applying a multi-part test" to the issue of whether the state-created danger exception to *DeShaney* applies and instead focus on "the State's affirmative act of restraining the individual's freedom to act on his own behalf — through incarceration, institutionalization, or other similar restraint of personal liberty." [Filing No. 70 at 19 (quotation and citation omitted).] Defendants argue that they did not create a danger to Amylyn, asserting that RJ had been abusing and threatening Amylyn for six to eight months prior to the July 18, 2019 encounter — including shooting at her, choking her, threatening her, and threatening to burn their house down — and that Amylyn had continued to live with RJ. [Filing No. 70 at 21.] As to Ms. Rakes' contention that Defendants affirmatively placed Amylyn in a heightened state of danger by falsely telling her that RJ would be in the hospital for 24 hours and that it was safe to go home, Defendants argue that "false assurances of protection are not affirmative acts that can trigger the state-created danger exception." [Filing No. 70 at 22.] They also argue that Ms. Rakes' position is factually flawed because Officer Roederer never said anything to Amylyn regarding how long RJ would be in the hospital and whether it was safe for her to go home, and although Officer Johnson answered "yes" when Amylyn asked if the hospitalization was "a 24-hour thing," he also instructed her multiple times to get the assault rifles and personal items from her house and go to her parents' house. [Filing No. 70 at 22-23.] They assert that they did not tell Amylyn it was safe to go home, that

even if they had, "there is no basis to conclude that things would have turned out differently," and that "the already-existing, violent nature of RJ" was what created the danger to Amylyn. [Filing No. 70 at 23.] Defendants note Ms. Rakes' concession that it is likely that RJ would have remained a threat to Amylyn more than 24 hours after the July 18 encounter. [Filing No. 70 at 23.] Defendants also argue that any failure to follow internal procedures cannot support a claim that Amylyn's Fourteenth Amendment rights were violated and that Ms. Rakes cannot show that Defendants "cut off Amylyn's avenues of aid." [Filing No. 70 at 24-25.] They assert that their conduct was not the proximate cause of Amylyn's death and was not conscience shocking. [Filing No. 70 at 26-30.] Finally, Defendants argue that they are entitled to qualified immunity because the law establishing a constitutional violation was not clearly established and "[n]o case law put [them] on notice that their July 18-19, 2019 conduct violated Amylyn's clearly established Fourteenth Amendment [r]ights." [Filing No. 70 at 34.] They assert that "the facts of the existing caselaw must closely correspond to the contested action before the defendant official is subject to liability," and that at the time of their contact with Amylyn, "no Supreme Court or Circuit Court precedent pronounced a due process obligation to protect a citizen from private acts of violence under analogous circumstances." [Filing No. 70 at 34-35.] Defendants point to *Weiland v. Loomis*, 938 F.3d 917 (7th Cir. 2019), for the proposition that courts "cannot treat the 'state-created danger exception' as a rule of primary conduct forbidding any acts by public officials that increase private dangers." [Filing No. 70 at 35 (quotation and citation omitted).]

In her response, Ms. Rakes argues that Defendants "took affirmative steps that put Amylyn in exceptional danger in the hours before her murder" when Officer Johnson "told her that RJ would be hospitalized for 24 hours at least twice," and Officer Roederer "stood by silently affirming the lie." [Filing No. 84 at 12.] Ms. Rakes asserts that Defendants "made arrangements to conceal RJ's conduct from medical providers and other law enforcement so that he could leave the hospital whenever he liked," and that they did not tell Amylyn that RJ would be returning home when she told them she was going to go home. [Filing No. 84 at 12.] Ms. Rakes contends that Defendants' conduct was the proximate cause of Amylyn's death because "the most dangerous time for a victim of domestic violence is when she decides to leave the relationship" and "Amylyn [was] part of a foreseeable class as a domestic violence victim [and] part of the incredibly limited class of people Defendants knew RJ was actively threatening: Amylyn, her parenting partner, and their children." [Filing No. 84 at 14.] She asserts that the fact that Defendants spent more than an hour talking with Amylyn coupled with "the repeated knowing lies [and] the continued disregard for Amylyn's safety" shocks the conscience. [Filing No. 84 at 15.] Finally, Ms. Rakes relies on three Seventh Circuit Court of Appeals cases which she claims clearly established "that state actors can violate a victim's constitutional rights by making false assurances about her safety" — *Monfils v. Taylor*, 165 F.3d 511 (7th Cir. 1998); *Paine v. Cason*, 678 F.3d 500 (7th Cir. 2012); and *Reed v. Gardner*, 986 F.2d 1122 (7th Cir. 1993). [Filing No. 84 at 18-20.] Ms. Rakes asserts that "Amylyn had a clearly established right not to be harmed by the actions of state

actors," and that "[Defendants] made false assurances to Amylyn that they had taken steps to put RJ on a 24-hour hospital stay [and] [h]ad they actually done so, Amylyn would have awoken on July 19, 2019 and escaped with the AR-15 and her dog to her parents' home in New Albany." [Filing No. 84 at 20.]

In their reply, Defendants argue that Ms. Rakes did not respond to their argument that they did nothing to cut off Amylyn's avenues of aid. [Filing No. 86 at 3.] Defendants reiterate that they removed RJ from Amylyn's presence, returned both of her guns to her, confiscated RJ's gun and cell phone, instructed Amylyn to gather weapons from her home and then go to her parents' house, offered her access to a women's shelter, and encouraged her to get a protective order and a divorce. [Filing No. 86 at 3-4.] Defendants assert that Ms. Rakes' characterization of their actions as four "affirmative acts" — (1) Officer Johnson telling Amylyn that RJ would be hospitalized for 24 hours at least twice while Officer Roederer stood by silently, (2) making arrangements to conceal RJ's conduct from medical providers and other law enforcement so that he could leave the hospital when he liked, (3) failing to tell Amylyn that RJ would also be returning home when she told Defendants she was going home, and (4) lying to her which caused her to be home with RJ "free to kill her" — are really one or two instances of failing to ensure that RJ stayed in the hospital for 24 hours and failing to alert medical providers to RJ's conduct and do not constitute affirmative acts for which liability may attach. [Filing No. 86 at 4-5.] Defendants reiterate their arguments that RJ was a danger to Amylyn long before the July

18 encounter and that their conduct was not conscience shocking. [Filing No. 86 at 8-11.] As to whether the law was clearly established, they assert that Ms. Rakes has defined Amylyn's Fourteenth Amendment right as the right to be free from "state actors...placing [her] in the path of dangerous criminal acts by third parties." [Filing No. 86 at 14 (quotation and citation omitted).] Defendants contend that "[t]his lofty definition is but one floor down from the words of the Fourteenth Amendment itself and two floors from the highest possible level of generality — the right to be free from a constitutional violation." [Filing No. 86 at 14.] They argue that discovery has shown that they never promised that RJ would be held for 24 hours, never told Amylyn that it was safe to go home, and actually encouraged her to go elsewhere. [Filing No. 86 at 15.] Defendants attempt to distinguish *Monfils, Paine*, and *Reed* and point to caselaw that they argue stands for the proposition that the state-created danger exception is no longer recognized by the Seventh Circuit. [Filing No. 86 at 14-16.]

"'[O]fficers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.'" *Pierner-Lytge v. Hobbs*, 60 F.4th 1039, 1044 (7th Cir. Feb. 23, 2023) (quoting *District of Columbia v. Wesby*, --- U.S. ----, 138 S. Ct. 577, 589, 199 L. Ed. 2d 453 (2018)). "If either inquiry is answered in the negative, the defendant official is entitled to summary judgment." *Gibbs v. Lomas*, 755 F.3d 529, 537 (7th Cir. 2014) (emphasis omitted). Courts may "exercise their sound discretion in deciding which of the two prongs

of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009).

The Court turns first to whether Amylyn's Fourteenth Amendment right, under the circumstances presented on July 18, 2019, was clearly established. As the Court noted in its October 18, 2022 Order denying Defendants' Motion for Judgment on the Pleadings, the Due Process Clause generally has not been interpreted to require state actors to protect individuals from injuries caused by private actors, *DeShaney*, 489 U.S. at 195, but a state-created danger exception to that general rule has been recognized where a state action "affirmatively creates a danger that injures the individual," *Jaimes v. Cook Cnty.*, 2022 U.S. App. LEXIS 19743, 2022 WL 2806462, at *3 (7th Cir. July 18, 2022). The state-created danger exception is only "found under 'rare and often egregious' circumstances." *Id.* (quoting *Doe v. Village of Arlington Heights*, 782 F.3d 911, 917 (7th Cir. 2015)); *see also First Midwest Bank Guardian of Estate of LaPorta v. City of Chicago*, 988 F.3d 978, 988 (7th Cir. 2021) ("The *DeShaney* exception for state-created dangers is narrow.").

Ms. Rakes' claim that Defendants violated Amylyn's constitutional rights is based on her argument that Defendants limited Amylyn's ability to protect herself by assuring her that RJ would be held for 24 hours at the hospital and that it was safe to go home, but doing

nothing to make sure that he was held for 24 hours.[5] But the evidence shows that Officer Roederer made no representations whatsoever to Amylyn regarding how long RJ would be in the hospital or whether it was safe for her to return home, and that Officer Johnson responded "yes" twice when Amylyn asked him if RJ would be in the hospital for 24 hours but also told her repeatedly to gather her things and go to her parents' house for the night and to take action to separate herself from RJ in the future.[6]

"To counter the defense of qualified immunity, a plaintiff must show that the constitutional right at

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5. Ms. Rakes also seems to hint that Defendants violated Amylyn's constitutional rights because they did not follow internal procedures by failing to file a report on the evening of July 18, 2019 and because they concealed the picture of RJ holding a gun to his head since they did not want to have to go through the steps required by Indiana statutes related to detaining individuals with mental health issues. [*See* Filing No. 84 at 7-9.] But the failure to follow internal procedures or to comply with state law does not amount to a constitutional violation. *See Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir. 2003) ("42 U.S.C. § 1983 protects plaintiffs from constitutional violations, not violations of state laws or... departmental regulations and police practices.").

6. A review of Officer Johnson's interactions with Amylyn reflects, at times, a less-than-sympathetic and dismissive attitude toward Amylyn and her continued involvement in the abusive relationship with RJ. The Court encourages the Charlestown Police Department to evaluate its training protocol related to responding to domestic violence situations and points it to training resources provided by the Indiana Coalition Against Domestic Violence at https://icadvinc.org/icadv-trainings/#1552499912276-ce9fc623-e358 as a starting point.

issue was clearly established at the time of the alleged violation." *Greene v. Teslik*, 2023 U.S. App. LEXIS 5082, 2023 WL 2320767, at *3 (7th Cir. Mar. 2, 2023) (quotation and citation omitted). In order for a right to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011). "The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Wesby*, 138 S. Ct. at 590. While a plaintiff "need not produce a case directly on point,...the 'legal principle [must] clearly prohibit the officer's conduct in the particular circumstances before him.'" *Pierner-Lytge*, 60 F.4th at 1044 (quoting *Wesby*, 138 S. Ct. at 590). The clearly established law "must share specific details with the facts of the case at hand." *Doxtator v. O'Brien*, 39 F.4th 852, 863 (7th Cir. 2022). A plaintiff cannot escape the application of qualified immunity by defining in a general manner the constitutional right that she claims was violated. *See City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503, 202 L. Ed. 2d 455 (2019). As the Seventh Circuit has explained, defeating qualified immunity "sounds like a high bar because it is — qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Lopez v. Sheriff of Cook Cnty.*, 993 F.3d 981, 988 (7th Cir. 2021) (quoting *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986)).

Ms. Rakes relies upon three cases — *Paine, Reed*, and *Monfils*[7] — in arguing that Amylyn's constitutional

7. The Court discussed these cases in detail in its October

rights were clearly established. In *Paine*, Christina Eilman was arrested outside Chicago's Midway Airport after acting erratically. 678 F.3d at 503. Ms. Eilman had bipolar disorder and was "in an acute manic phase," but did not disclose her mental-health background to the arresting officers. *Id.* at 504. Additionally, the officers did not believe Ms. Eilman's stepfather when he told them Ms. Eilman was bipolar, nor did they record this information in Ms. Eilman's file when her mother also advised them of Ms. Eilman's mental-health background. *Id.* at 504. The officers took Ms. Eilman to a station that had a holding facility for women and, although she continued to act erratically, she was released on her own recognizance the next evening. *Id.* When Ms. Eilman left the station (without her cell phone because officers had not returned it to her), she did not immediately leave the neighborhood, which had "an exceptionally high crime rate." *Id.* Additionally, Ms. Eilman "was lost, unable to appreciate her danger, and dressed in a manner that attracted attention," and was "white and well off while the local population [was] predominantly black and not affluent, causing her to stand out as a person unfamiliar with the environment and thus a potential target for crime." *Id.* Ms. Eilman eventually wound up at an apartment where she was raped at knifepoint and then jumped out of a seven-story window in an attempt to escape and suffered severe brain damage. *Id.* at 504-06. The Seventh Circuit found that the officers were not entitled to qualified immunity because "[i]t is clearly established that state actors who,

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18, 2022 Order denying Defendants' Motion for Judgment on the Pleadings, [Filing No. 63], and borrows from that Order in again setting forth the facts and rulings in those cases.

without justification, increase a person's risk of harm violate the Constitution," noting that "people propelled into danger by public employees have a good claim under the Constitution." *Id.* at 510.

In *Reed*, state troopers had arrested Cathy Irby, leaving the passenger in her car, Larry Rice, with Ms. Irby's car keys even though they should have known that Mr. Rice was intoxicated. 986 F.2d at 1124. Later that evening, Mr. Rice, while still intoxicated and while being pursued at a high speed by a Deputy Sheriff, collided with a car driven by Richard Reed. *Id.* at 1123. The collision killed Mr. Reed's wife and their unborn child, and injured the other occupants of Mr. Reed's car. *Id.* at 1123-24. The Seventh Circuit found that Mr. Reed's Fourteenth Amendment rights were violated because "[t]he officers... initiated the state action, by arresting [Ms.] Irby and removing her from the car. That state intervention created the dangerous condition, a drunk driver on the road." *Id.* at 1126. The Seventh Circuit noted that "removing one drunk driver and failing to prevent replacement by another drunk [driver] will not subject officers to section 1983 liability," but that "[i]t is the special circumstance plead in this case, that the defendants removed a driver, who it must be inferred was sober, and left behind a passenger, whom they knew to be drunk, with the car keys, that states a claim for deprivation of constitutional rights under [§ 1983]." *Id.* at 1127.

In *Monfils*, Thomas Monfils called police to inform them that a fellow employee, Keith Kutska, was planning to steal an electrical cord when he left work at the James

River Paper Mill in Green Bay, Wisconsin. 165 F.3d at 513. The police informed security at the Mill, security stopped Mr. Kutska on his way out the door, and Mr. Kutska was suspended for five days after refusing to submit to a search. *Id.* at 513. Mr. Kutska then set out to determine who had reported him to the police, and he eventually obtained a tape recording of Mr. Monfils' call from the police department even though a police officer had assured Mr. Monfils and the assistant district attorney that the tape would not be released. *Id.* at 513-15. Subsequently, Mr. Monfils was beaten and thrown into a pulp vat at the mill with a 50-pound weight tied around his neck, where he was discovered, deceased, two days later. *Id.* at 513. Mr. Kutska and six co-workers were found guilty of murdering Mr. Monfils. *Id.* The Seventh Circuit found that the officer who assured Mr. Monfils and the assistant district attorney that the tape would not be released but did nothing to make sure it was not released was not entitled to qualified immunity because "by assuring [Mr. Monfils and the assistant district attorney] that he would make sure the tape was not released but not following through, he created a danger [Mr.] Monfils would not otherwise have faced." *Id.* at 518.

As the Court found in its October 18, 2022 Order, *Paine, Reed*, and *Monfils* "stand for the proposition that a state actor may not, by his affirmative acts and through special circumstances, place an individual in more danger from the acts of a private citizen than they were in before the encounter with the state actor by limiting their ability to protect themself." [Filing No. 63 at 17.] The state-created danger exception to *DeShaney* is very

fact-specific, and the facts in *Paine, Reed*, and *Monfils* differ significantly from the facts in this case such that their holdings did not put Defendants on notice that their actions constituted a constitutional violation.

As to Officer Roederer, Ms. Rakes has not pointed to any evidence — and there does not appear to be any — that Officer Roederer made any representations to Amylyn regarding the length of RJ's hospital stay or whether Amylyn would be safe if she returned home that evening.[8] To the extent Ms. Rakes relies on Officer Roederer's inaction, and his failure to correct any statements by Officer Johnson, neither *Paine, Reed*, or *Monfils* stand for the proposition that this type of inaction constitutes a constitutional violation. Indeed, the Seventh Circuit has held that "mere inactivity by police does not give rise to a constitutional claim." *Rossi v. Chicago*, 790 F.3d 729, 735 (7th Cir. 2015).

Turning to Officer Johnson, Ms. Rakes focuses on two instances where Officer Johnson answered "yes" when Amylyn asked him if RJ would be held in the hospital for 24 hours. [*See* Filing No. 67-4 at 77-78 ("OFFICER JOHNSON: Are you going to go to your house? You're — you're going to be at your parents' house? AMYLYN: Well, you — you said it's a 24-hour thing, right? For an evaluation? OFFICER JOHNSON: Yeah, so what

8. This lack of evidence of any personal involvement on Officer Roederer's part is another ground for granting summary judgment on Amylyn's Fourteenth Amendment due process claim against him. *See Colbert v. City of Chicago*, 851 F.3d 649, 657 (7th Cir. 2017) ("[I]ndividual liability under § 1983...requires personal involvement in the alleged constitutional deprivation.").

are [you] going to do? Are you going to go to your house? AMYLYN: (Inaudible)."); Filing No. 67-4 at 97 ("OFFICER JOHNSON: Okay. So are you going to go to your house? AMYLYN: Well, tonight, yeah. OFFICER JOHNSON: Are you going to —. AMLYN: You said it's a 24 hour? OFFICER JOHNSON: Yeah.").] She also focuses on Officer Johnson's failure to tell EMS personnel about RJ's threats to commit suicide and to harm Amylyn.

Paine, Reed, and *Monfils* did not put Officer Johnson on notice that his actions violated Amylyn's constitutional rights. Amylyn was not "propelled into danger" by Officer Johnson, *see Paine*, 678 F.3d at 510, and Officer Johnson's actions did not create a dangerous condition, *see Reed*, 986 F.2d at 1126. The circumstances in *Monfils* are closest to the facts of this case but unlike the police officer in *Monfils*, Officer Johnson did not promise Amylyn that RJ would be held for 24 hours and that she would be safe at her house. *See Monfils*, 165 F.3d at 518. To the contrary, although the Court acknowledges that Officer Johnson did respond affirmatively twice when Amylyn asked him if RJ would be held for 24 hours, the totality of the evidence could not lead a reasonable factfinder to conclude that Officer Johnson took some affirmative action by promising Amylyn that she would be safe at her home for 24 hours and then failing to follow through on that promise. Rather, the evidence shows that Officer Johnson spent considerable time trying to talk Amylyn into getting her belongings from her house and going to her parents' house to stay for the night. [*See, e.g.*, Filing No. 67-4 at 29 (Officer Johnson telling Officer Roederer "I told her she needs to go to her parents' house"); Filing No. 67-4 at 34 (Officer Johnson telling Amylyn "But

you're going to your parents' house"); Filing No. 67-4 at 77 (Officer Johnson asking Amylyn "Are you going to go to your house? You're — you're going to be at your parents' house?").] He also discussed with her how to get a protective order and encouraged her to remove herself from the abusive relationship with RJ. [*See, e.g.*, Filing No. 67-4 at 39 (Officer Johnson telling Amylyn "But you should not be in an abusive relationship if he's putting his hands on you and if he's abusing you. There's places you can go.").] And unlike in *Monfils*, where the release of the tape created the danger by alerting Mr. Kutska that Mr. Monfils had reported him to the police, Officer Johnson's actions did not create a dangerous condition. RJ had been a danger to Amylyn for months before the incident and would likely have continued to be so even if he had been held for 24 hours at the hospital. Further, nothing that Officer Johnson did or said limited Amylyn's ability to protect herself. *See DeShaney*, 489 U.S. at 200.

Because there was not clearly established law in effect at the time of the July 18, 2019 incident that put Officers Roederer and Johnson on notice that their actions violated Amylyn's constitutional rights, they are entitled to qualified immunity and the Court **GRANTS** their Motion for Summary Judgment on Ms. Rakes' Fourteenth Amendment due process claim.

B. Section 1985 Conspiracy Claim

In support of their Motion for Summary Judgment, Defendants argue that even if the Court finds that there was an underlying constitutional violation, there

is no evidence of any agreement, concerted action, or discriminatory animus toward Amylyn because of her gender. [Filing No. 70 at 31-32.] They also assert that even if there was evidence of discriminatory animus, the intracorporate-conspiracy doctrine bars the conspiracy claim because "employees of the same company cannot be liable under a conspiracy theory if the employees act within the scope of their employment," and Officers Roederer and Johnson were both employees of the Charlestown Police Department. [Filing No. 70 at 32 (quotation and citation omitted).]

In response, Ms. Rakes argues that Defendants conspired with RJ and with each other "when they agreed to conceal the photo of RJ and other information about that evening in order to avoid complying with [Indiana law regarding detaining individuals with mental health issues]." [Filing No. 84 at 16.] She contends that the intracorporate-conspiracy doctrine does not apply because Defendants conspired with RJ and because Defendants "were not pursuing a lawful goal of the government." [Filing No. 84 at 17.] Ms. Rakes also argues that Defendants exhibited discriminatory animus toward Amylyn based on her gender by discrediting her reports of abuse, crediting RJ's claim that nothing physical had happened, "with[holding] help from Amylyn even though she repeatedly asked for it," "repeatedly challeng[ing] her fitness as a mother," telling Amylyn that she enjoyed the fact that RJ was forcing her to engage in sexual acts with other men and referring to her as a prostitute, not believing that she was a victim of sex trafficking, and not believing that RJ had a gun in his waistband when he was arguing with Amylyn in the street. [Filing No. 84 at 18.]

Defendants argue in their reply that the evidence does not support Ms. Rakes' claim that they conspired with RJ because after RJ left the scene, Officer Johnson asked Amylyn for the picture of RJ with a gun to his head and his text messages to Amylyn to support the fact that they had sent RJ to the hospital. [Filing No. 86 at 11.] They also note that Officer Johnson detailed RJ's conduct and the picture in his case report, as did Officer Roederer. [Filing No. 86 at 11-12.] Defendants contend that the exception to the intracorporate-conspiracy doctrine where there has been a series of discriminatory acts does not apply because Ms. Rakes' claim "is centered on one singular and isolated occurrence that involves only two officers," and that the exception for not pursuing a lawful goal of the government also does not apply as there is no evidence to support its application. [Filing No. 86 at 12-13.] Defendants also argue that "[t]here is simply nothing in the video evidence to suggest that Defendants agreed to conspire against Amylyn due to her gender." [Filing No. 86 at 13.]

42 U.S.C. § 1985(3) "provides a cause of action for persons who are victims of a conspiracy to deprive them of the equal protection of the laws or equal privileges and immunities under the laws." *Milchtein v. Milwaukee Cnty.*, 42 F.4th 814, 827 (7th Cir. 2022) (quotations and citations omitted). A plaintiff bringing a claim under § 1985(3) must prove: (1) the existence of a conspiracy; (2) that the conspiracy was "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws"; (3) "an act in

furtherance of the conspiracy"; and (4) an injury to the plaintiff's person or property or a deprivation of any right or privilege of a citizen of the United States. *Id.* (citing *United Bhd. of Carpenters v. Scott*, 463 U.S. 825, 828-29, 103 S. Ct. 3352, 77 L. Ed. 2d 1049 (1983)). Additionally, the plaintiff must prove that the conspiracy was motivated by a racial or other class-based invidiously discriminatory animus. *Milchtein*, 42 F.4th at 827.

1. Conspiracy Between Officer Roederer and Officer Johnson

As for Ms. Rakes' claim that Defendants conspired with each other, the intracorporate conspiracy doctrine precludes a conspiracy where the conspiracy is between members of the same entity, and the Seventh Circuit has held that the doctrine applies to both private and governmental entities. *See Wright v. Illinois Dep't of Children & Family Servs.*, 40 F.3d 1492, 1508-09 (7th Cir. 1994). An exception to the intracorporate conspiracy doctrine exists where "the conspiracy was part of some broader discriminatory pattern," *Hartman v. Bd. of Trustees of Cmty. Coll. Dist. No. 508, Cook Cnty., Ill.*, 4 F.3d 465, 470-71 (7th Cir. 1993), but Ms. Rakes has not presented any evidence that the alleged conspiracy between Officer Roederer and Officer Johnson fits within this exception. Rather, their allegedly discriminatory acts were limited to their dealings with Amylyn on the evening of July 18, 2019.

However, the intracorporate conspiracy doctrine "applies only when the agents of a corporation or

government entity act within the scope of their employment in joint pursuit of the entity's lawful business." *Gray v. City of Chicago*, 2022 U.S. Dist. LEXIS 56658, 2022 WL 910601, at *14 (N.D. Ill. Mar. 29, 2022) (quotation, citation, and emphasis omitted). The illegal conduct Ms. Rakes alleges here — discriminating against Amylyn due to her gender — would not be part of the Charlestown Police Department's lawful business, so the intracorporate conspiracy doctrine does not bar Ms. Rakes' conspiracy claim.

In any event, Ms. Rakes has not presented any evidence that a conspiracy between Officer Roederer and Officer Johnson to discriminate against Amylyn based on her gender existed. Ms. Rakes points to evidence that she claims indicates that Defendants believed RJ over Amylyn and did not take the situation seriously. [*See* Filing No. 84 at 18.] But Defendants concluded that they could not charge RJ with having a gun and hitting Amylyn because the 911 callers did not say definitively that they had seen a gun and because there were no visible marks on Amylyn indicating that she had been hit. And despite Ms. Rakes' characterization, the female 911 caller did not say definitively that RJ had a gun, but rather said he had what "looked to be a gun." [*See* Roederer Dash Cam at 20:00-20:23.] The fact that Defendants concluded that they did not have enough evidence to charge RJ is not evidence of a conspiracy to discriminate against Amylyn based on her gender.

Additionally, Ms. Rakes' characterization of other evidence of a conspiracy is not supported by her citations to the record. Specifically:

- Ms. Rakes contends that Defendants "withheld help from Amylyn even though she repeatedly asked for it" and "repeatedly challenged her fitness as a mother," citing to Officer Johnson's dash cam video at 34:34 and 38:35. [Filing No. 84 at 18.] Those excerpts reflect that Officer Johnson explained that they did not have a reason to arrest RJ but that Amylyn needed to take care of herself. When Amylyn asked what she was supposed to do tomorrow and the next day, Officer Johnson discussed how she could get a no-contact order and encouraged her to leave the abusive relationship with RJ. [Johnson Dashcam at 33:41-34:57.] The excerpts also reflect that Officer Johnson told Amylyn she should worry about herself and her children, and not RJ. [Johnson Dashcam at 38:32-38:36.] No reasonable jury could conclude from this evidence that Defendants withheld help from Amylyn or repeatedly challenged her fitness as a mother.

- Ms. Rakes asserts that Officer Johnson told Amylyn she "enjoyed doing it" when Amylyn told him that RJ was forcing her to engage in sexual acts with other men, and that he later referred to Amylyn as a prostitute, citing to Officer Johnson's dash cam video at 1:14:18 and to two calls with dispatch. But the dash cam video actually reflects that Amylyn apologized for telling Defendants about RJ sending her out to engage in sexual acts with other men and said it was very degrading to her, and Officer Johnson said "[i]f nobody's threatened you to do it and you want to do it because you enjoy doing

> it, there's nothing wrong with that." [Johnson Dashcam at 1:13:57-1:14:26.] This is different than Officer Johnson telling Amylyn that she enjoyed engaging in sexual acts with other men. As for the calls with dispatch, in one call the dispatcher told an unknown caller (presumably another officer or detective) that Officer Johnson called in to dispatch after the July 18, 2019 encounter and stated that "this girl was supposed to be a prostitute." [Filing No. 83-2 at 02:28-02:32.] In the other call, Officer Johnson told the dispatcher that Amylyn told him "that [RJ] was making her prostitute." [Filing No. 83-3 at 00:36-00:46.] No reasonable factfinder could interpret these statements to stand for the proposition that Officer Johnson was referring to Amylyn as a prostitute. And to the extent Officer Roederer did not believe that Amylyn was the victim of sex trafficking as Ms. Rakes claims, that does not show that he engaged in a conspiracy with Officer Johnson based on Amylyn's gender.

Further — and most significantly — even if the cited evidence supported Ms. Rakes' contentions that Defendants discredited Amylyn's claims, Ms. Rakes has not presented any evidence that Defendants' actions were motivated by Amylyn's gender. Ms. Rakes simply has not presented evidence from which a reasonable jury could conclude that Defendants conspired with each other to discriminate against Amylyn based on her gender.

2. Conspiracy Between Defendants and RJ

As for an alleged conspiracy between Defendants and RJ, Ms. Rakes argues that they all "agreed to conceal the photo of RJ [holding a gun to his head] and other information about that evening in order to avoid complying with [Indiana law regarding detaining individuals with mental health issues]," and "Defendants did not report RJ's conduct to anyone, told Amylyn they'd complied [with Indiana law], and RJ went to the hospital and lied about what had happened." [Filing No. 84 at 16.] But the evidence shows that Officer Johnson asked Amylyn for the picture of RJ with a gun to his head numerous times, [*see, e.g.*, Filing No. 67-4 at 46; Filing No. 67-4 at 76-77], and included that information in his report of the incident, [Filing No. 74-5 at 10-12]. And again, although Ms. Rakes has pointed to evidence which may permit a reasonable factfinder to conclude that Defendants concealed certain information from EMS personnel to avoid having to complete the more involved process required to detain an individual with mental health issues, she has not presented any evidence from which a reasonable factfinder could conclude that Defendants did not share the picture or information with EMS personnel due to Amylyn's gender.

In short, Ms. Rakes has not presented evidence from which a reasonable jury could conclude that Defendants conspired with each other or with RJ to discriminate against Amylyn based on her gender. The Court **GRANTS** Defendants' Motion for Summary Judgment on Ms. Rakes' conspiracy claim.

IV.

Conclusion

The facts of this case are tragic, and the Court sympathizes with Amylyn's family and friends and understands their desire to hold someone other than RJ accountable for Amylyn's death. The Court also understands their perception that Defendants lacked sympathy for Amylyn and the difficulties she was facing due to her abusive relationship with RJ. But the case law relied upon by Plaintiff does not clearly establish a violation of Amylyn's Fourteenth Amendment rights on the evening of July 18, 2019, and Defendants are entitled to qualified immunity for their actions. Further, Ms. Rakes has not presented evidence from which a reasonable jury could conclude that Defendants conspired to discriminate against Amylyn based on her gender. For the foregoing reasons, the Court **GRANTS** Defendants' Motion for Summary Judgment. [67.] Final judgment shall enter accordingly. Additionally, the pending Motion for Contempt filed by Ms. Rakes, [101], is **DENIED AS MOOT** and all deadlines in this case are **VACATED**.

Date: 3/30/2023

/s/ Jane Magnus-Stinson
Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED NOVEMBER 7, 2024

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

No. 23-1816

AMANDA RAKES, ADMINISTRATOR
OF THE ESTATE OF AMYLYN SLAYMAKER
AND NEXT FRIEND TO THE MINOR
CHILDREN G.C. AND M.C.,

Plaintiff-Appellant,

v.

JONATHAN P. ROEDERER AND
ESTATE OF TE'JUAN JOHNSON,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Indiana, New Albany Division.
No. 4:21-cv-00114, Jane Magnus Stinson, *Judge.*

Before

KENNETH F. RIPPLE, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*

Appendix C

November 7, 2024

ORDER

On consideration of the petition for rehearing en banc, filed by DefendantAppellee, Estate of Te'Juan Johnson, on October 23, 2024, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to DENY the petition for rehearing en banc.

Accordingly, the petition for rehearing en banc filed by Defendant-Appellee, Estate of Te'Juan Johnson, is DENIED.