No. 23-

IN THE

Supreme Court of the United States

STACY WILLIAMS, ON BEHALF
OF HER MINOR GRANDSON, J.J.,

Petitioner,

v.

ANDREW WILLIAMS, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The legal doctrine of "state-created danger" has its origin in *DeShaney v. Winnebago County Department of Soc. Services*. 489 U.S. 189, 197 (1989).

Since *DeShaney*, ten federal circuits—but not the Fifth Circuit—have recognized the doctrine of "state-created danger." *See Irish v. Fowler*, 979 F.3d 65, 73-75 (1st Cir. 2020) (adopting the doctrine and collecting cases from the Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits that reach the same result). Since 1996, the Fifth Circuit has been asked—almost annually—to recognize or reject "state-created-danger" as a valid legal doctrine; yet the court refuses to adopt or reject the doctrine. *Fisher v. Moore*, 73 F.4th 367, 375 (5th Cir. 2023) (Higginson, J., dissenting). ("Our indecision is a disservice . . . if this circuit is inclined to disagree with all others, then our delay is blocking percolation, which allows a period of exploratory consideration and experimentation by lower courts before the Supreme Court ends the process with a nationally binding rule.'"). (internal quotations removed).

The question presented is:

Whether the Court should end the Fifth Circuit's decades-long refusal to rule on the viability of the "state-created-danger" doctrine by recognizing the doctrine and providing parameters for it.

PARTIES TO THE PROCEEDINGS

Petitioner is Stacy Williams, on behalf of her minor grandson, J.J.

Respondents are Andrew Williams and Joe Spradlin.

RELATED PROCEEDINGS

United States District Court (S.D. Tex.):

Williams v. Williams and Spradlin, No. 4:23-CV-289. There is no Westlaw or LexisNexis citation to the district court's minute entry. Entered August 3, 2023.

United States Court of Appeals (5th Cir.):

Williams on behalf of J.J. v. Williams and Spradlin, No. 23-20375, 2024 WL 811526, at *1 (5th Cir. Feb. 27, 2024)

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

Page

Cited Authorities

Page

Cited Authorities

Page

Page

Cited Authorities

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The Fifth Circuit's opinion is not reported. Pet. App. 6a. The order from the Southern District of Texas is also unreported. Pet. App. 1a.

JURISDICTION

The court of appeals entered its opinion affirming the district court's judgment on February 27, 2024. Pet. App. 4a. On June 7, 2024, due to a federally-declared-natural disaster, Justice Alito granted Petitioner an extension of time to file this petition up to July 2, 2024.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS, AND RULES INVOLVED

The relevant constitutional and statutory provisions are:

- The Fourteenth Amendment to the Constitution of the United States. U.S. CONST. amend. XIV, § 1; and,
- 42 U.S.C. § 1983.

The Fourteenth Amendment to the Constitution of the United States provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

STATEMENT OF THE CASE

I. Factual Background

This case presents an important and recurring question the Fifth Circuit refuses to answer: Whether the Due Process Clause bars state officials from knowingly placing a specific person at an unjustifiably high risk of harm.

Appellants have asked the Fifth Circuit to answer this question, almost annually, since at least 1996, yet the Fifth Circuit refuses to adopt or reject the "state-created-danger" doctrine. *Fisher*, 73 F.4th at 375; *Fort v. Dallas Indep. Sch. Dist.*, 82 F.3d 414 (5th Cir. 1996) ("Without deciding whether the state-created-danger theory is constitutionally sound, we hold that the pleadings in this case do not meet the requirements for stating a claim under this theory.").

Thirty-five years ago, in *DeShaney v. Winnebago County Department of Soc. Services*, this Court, in an opinion by Chief Justice Rehnquist (joined by Justices White, Stevens, O'Connor, Scalia, and Kennedy), recognized a distinction between state *inaction* and the *creation of a danger* by the state. 489 U.S. at 201.

In *DeShaney*, the Court found the state did not *create* a danger when social workers did not petition a state court to remove a child from his abusive father because the state "played no part in [the] creation" of the danger the child faced (his abusive father). *Id.* ("While the state may have been aware of the dangers that Joshua faced . . . it played no part in their creation, nor did it do anything to render him any more vulnerable to them.").

Notwithstanding *DeShaney*'s recognition that state action that knowingly places a person at an unjustifiably high risk of harm violates the Due Process Clause, the Fifth Circuit refuses to accept or reject the question. *Fowler*, 979 F.3d at 73-75 (First Circuit opinion adopting doctrine and collecting cases from Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits that reach same result.).

At least ten circuits agree the Due Process Clause prohibits state officials from conduct that creates a new danger—the so-called "state-created-danger" doctrine. *Id*. Yet the Fifth Circuit refuses to adopt or reject the doctrine even when presented with apt cases. *Cancino v. Cameron Cnty., Tex*., 794 F. App'x 414, 416 (5th Cir. 2019) (" . . . we have never adopted [the doctrine of the "state-created danger"] *even where the question of the theory's viability has been squarely presented*.") (emphasis added).

Further percolation is futile. *Fisher*, 73 F.4th at 375 (Higginson, J., dissenting). ("Our indecision is a disservice . . . if this circuit is inclined to disagree with all others, then our delay is blocking percolation, ..."). As shown below, the Fifth Circuit has been presented with this question almost annually for more than a decade but the Court refuses to adopt or reject the doctrine. *Doe ex rel. Magee v. Covington Cty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 864 (5th Cir. 2012) (Court "never explicitly adopted the state-created-danger theory.").

In 2023, the Fifth Circuit denied en banc reconsideration on the issue even when, as Senior Judge Wiener explained, the case created "an excellent opportunity" to address the

"state-created-danger" doctrine. *Fisher*, 73 F.4th at 375 (Weiner, J., concurring) ("The extreme and uncontested facts of this case presented an excellent opportunity for us to join those other circuits. . . . The horrific facts of this case, as reported by Judge Willett in his opinion for this panel, presented an ideal vehicle for this circuit's consideration of joining the ten other circuits that have unanimously recognized the state-created-danger cause of action. . . . I saw this case as the perfect vehicle for our circuit to rehear this case en banc and join the other ten circuits that have now recognized the state-created-danger cause of action in § 1983 claims against state actors.").

While minor variation exists between the circuits in the application of the doctrine, all circuits would recognize that Respondents' actions (responding to the 9-1-1 call for a cardiac event, calling off other emergency medical technicians (EMTs), and refusing to provide medical care) violated J.J.'s liberty interest under the Due Process Clause. "The circuits that recognize the doctrine uniformly require that the defendant affirmatively acted to create or exacerbate a danger to a specific individual or class of people." *Fowler*, 979 F.3d at 73-74. "Each circuit requires that the defendant's acts be highly culpable and go beyond mere negligence": the defendant must knowingly place the injured person at an unjustifiably high risk of serious harm. *Id.* at 74 & n.4. And the circuits all require a "causal connection between the defendant's acts and the harm." *Id.* This case satisfies these shared, common-sense standards.

The Fifth Circuit's refusal to adopt or reject the "state-created-danger" doctrine is stark in a case like

J.J.'s. Here, J.J. suffered a cardiac emergency, received a response from EMTs, the EMTs "called off" other EMTs who were responding, and then when the EMTs arrived they refused to help J.J. After allowing J.J. to suffer for nearly twenty-five minutes, the EMTs took J.J. to the hospital, where hospital personnel saved J.J.'s life. J.J. suffered a series of permanent disabilities (such as a requirement to be fed out of a tube) due to Respondents' action.

Yet the Fifth Circuit refuses to adopt a position on whether the Due Process Clause applies in cases like this. *Shumpert v. City of Tupelo*, 905 F.3d 310, 324 (5th Cir. 2018), as revised (Sept. 25, 2018) ("Unlike our sister Circuits, we have repeatedly declined to decide whether [a state-created-danger] cause of action is viable in the Fifth Circuit.").

The Fifth Circuit's refusal to adopt a position on the doctrine conflicts with *DeShaney* and precedent from ten other circuits. *Fowler*, 979 F.3d at 73-75 (First Circuit opinion adopting doctrine and collecting cases from Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits that reach same result.).

The consequence of the Fifth Circuit's refusal to rule on the viability of the doctrine allows state officials in Texas, Louisiana, and Mississippi to knowingly place the more than forty million citizens in these three states in unjustifiably dangerous situations, thus curtailing the Constitution's protections in three of the fifty states.

This case offers an apt opportunity to establish the "state-created-danger" doctrine and define its core

application. The Court should grant this petition, end the Fifth Circuit's decades-long refusal to rule on the viability of the doctrine, recognize the doctrine, and define the parameters of the doctrine in this important and recurrent category of constitutional cases. The petition for certiorari should be granted.

* * *

1. The 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. While often associated with the fairness of procedures, the Clause of course also bars state officials from depriving individuals of life, liberty, or property without process.

a. The Court has worked to define the parameters of the Due Process Clause for more than a century. *See Monroe v. Pape*, 365 U.S. 167, 171-72 (1961) (citing *Home Tel. & Tel. Co. v. City of Los Angeles*, 227 U.S. 278, 287-96 (1913)). In such cases, this Court has been asked to decide how much involvement state officials must have in the deprivation of a person's life, liberty, or property for the state to be responsible for the deprivation. *Id.*; *DeShaney*, 489 U.S. at 197.

b. Even before *DeShaney*, lower courts have recognized that the principal question was one of proximate cause. *See Martinez v. California*. 444 U.S. 277 (1980). In *Martinez*, state officials released a parolee who subsequently killed a member of the community. *Id.* at 279. The victim's legal heir argued that, in releasing the parolee, the defendant state officials "subjected [the] decedent to a deprivation of her life without due process

of law." *Id.* at 283. This Court rejected the argument and held the "death [wa]s too remote a consequence of the parole officers' action to hold them responsible under the federal civil rights law." *Id.* at 285. After *Martinez*, "it [was] clear . . . that § 1983 [wa]s not limited to cases of direct harm inflicted by state officials." *Commonwealth Bank & Tr. Co., N.A. v. Russell*, 825 F.2d 12, 16 (3d Cir. 1987). Rather, constitutional liability turned on proximate causation. *See*, *e.g.*, *id.* ("We read *Martinez* as holding that the key element . . . was a causal nexus."); *Nishiyama v. Dickson Cnty.*, 814 F.2d 277, 280 (6th Cir. 1987) (en banc) (explaining factors that *Martinez* considered in evaluating "issue of proximate cause" for "liability of government officials . . . for a murder committed by" private actor); *Humann v. Wilson*, 696 F.2d 783, 784 (10th Cir. 1983) (per curiam) (upholding dismissal of § 1983 claim because deprivation of life was "too remote from state action" under *Martinez*).

Under the proximate-causation framework, state-created danger became one way to satisfy the requirement to establish constitutional liability. *See Est. of Gilmore v. Buckley*, 787 F.2d 714 (1st Cir. 1986); *Wells v. Walker*, 852 F.2d 368 (8th Cir. 1988). "'[S]tate created danger' liability," the Second Circuit later explained, "arises from the relationship between the state and the private assailant": when state officials create the danger, they "d[o] not bring the victim to the snakes; they let loose the snakes upon the victim." *Pena v. DePrisco*, 432 F.3d 98, 109 (2d Cir. 2005).

c. In its brief in *DeShaney*, the United States explained that many federal courts of appeals had recognized that a state action that creates an unjustified risk of serious harm to a specific individual violates the

Due Process Clause. *See DeShaney* U.S. Br. 15-16 & n.5. "The lesson that most of the courts of appeals have correctly drawn from the Constitution itself and from this Court's cases," the United States explained, "is that a tort, in order to rise to the level of a violation of the Due Process Clause, must at a minimum involve some action of the state that creates the victim's predicament, and not just inaction in the face of a predicament that is not of the state's making." *DeShaney* U.S. Br. 15. "Only if the state has placed the individual in a position of danger can it be said to have deprived him of life, liberty, or property." *Id*. The United States contended that all the relevant circuit cases were "at least arguably consistent with the rule that the state violates the Due Process Clause only by acting so as to deprive a person of liberty, and not merely by passively allowing a third party to deprive someone of liberty." *Id*. (citing *Doe v. New York City Dep't of Social Services*, 649 F.2d 134 (2d Cir. 1981) and *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987) (en banc)). "[N]umerous courts of appeals," the United States explained, "have endorsed the principle, stated repeatedly by the Seventh Circuit, that duties to protect a person arise under the Due Process Clause only when 'the state itself has put [that] person in danger.'" *Id*. at 16 & n.5 (quoting *Escamilla v. City of Santa Ana*, 796 F.2d 266, 269 (9th Cir. 1986); citing, *inter alia*, *Wideman v. Shallowford Cmty. Hosp., Inc*., 826 F.2d 1030, 1035, 1037 (11th Cir. 1987); *Washington v. District of Columbia*, 802 F.2d 1478, 1481-82 (D.C. Cir. 1986); *Est. of Gilmore v. Buckley*, 787 F.2d 714, 722 (1st Cir. 1986); *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982)).

d. In a footnote to its brief in *DeShaney*, the United States cited Seventh Circuit cases that recognized

the "state-created-danger" doctrine. *See id.* at 16 n.5. Seventh Circuit law was significant in *DeShaney* because *DeShaney* percolated out of the Seventh Circuit in a decision by Judge Posner. *See* 812 F.2d 298 (7th Cir. 1987). Judge Posner's opinion held: "The botched rescue must be distinguished from the case where the state places the victim in a situation of high risk, thus markedly increasing the probability of harm and by doing so becoming a cause of the harm." *Id.* "If the state, having arrested a child's parents, leaves the child alone in a situation where he is quite likely to come to grief because no one is watching over him, and he is injured, the state is a cause of the injury." *Id.*

e. In *DeShaney,* this Court affirmed Judge Posner and limited the holding to cases involving state action. 489 U.S. at 197-202. Thus, the inaction of not petitioning to remove a child from an abusive father did not implicate the Due Process Clause because, "[w]hile the State may have been aware of the dangers [the child] faced . . . , [the State] played no part in their creation, nor did it do anything to render [the child] any more vulnerable. . . ." *Id.* at 201. In the years since *DeShaney*, ten circuits—but not the Fifth Circuit—have recognized the doctrine of "state-created danger." *Fowler*, 979 F.3d at 73-75.

By contrast, the Fifth Circuit refuses to accept or reject the doctrine. *Watts v. Northside Indep. Sch. Dist.*, 37 F.4th 1094, 1096 (5th Cir. 2022) ("We have 'repeatedly declined to recognize the state-created-danger doctrine.'").

This Court has not provided direction on this question since *DeShaney*, and this case provides an apt set of facts to establish the doctrine and its parameters.

f. This Court recently denied a petition to hear a substantively identical request. *Fisher v. Moore*, 144 S. Ct. 569, 217 L. Ed. 2d 303 (2024). This case presents a clean case on which to address the "state-created-danger" doctrine because the court can do so without addressing qualified immunity. But even if this Court decides to address qualified immunity, then this case differs from *Fisher* in that, here, Petitioner relied on *Hope v. Pelzer* to show the law is clearly established.

g. The Fifth Circuit's refusal to provide an opinion on the doctrine is a recurring issue. Since 2021, including this case and *Fisher*, the Fifth Circuit has had at least six opportunities to address the issue but has declined every time.

- *Watts v. Northside Indep. Sch. Dist.*, 37 F.4th 1094, 1097 (5th Cir. 2022)
- *Yarbrough v. Sante Fe Indep. Sch. Dist.*, No. 21-40519, 2022 WL 885093, at *2 (5th Cir. Mar. 25, 2022)
- *Zinsou v. Fort Bend Cnty.*, No. 22-20423, 2023 WL 4559365, at *2 (5th Cir. July 17, 2023)
- *Walton v. City of Verona*, 82 F.4th 314, 320 (5th Cir. 2023)

The failure to resolve whether the doctrine is viable continues to resonate in district courts:

- *J.W. by & through Williams v. City of Jackson, Mississippi*, 663 F. Supp. 3d 624, 647 (S.D. Miss.

2023) ("And just last week, the Circuit Court again refused to recognize a state-created danger cause of action for a disabled student who was routinely sexually assaulted at school.")

- *Smith v. Comal Indep. Sch. Dist.*, No. SA22CV1051FBHJB, 2023 WL 5535656, at *5 (W.D. Tex. Aug. 4, 2023), report and recommendation adopted, No. SA-22-CV-1051-FB, 2023 WL 5540154 (W.D. Tex. Aug. 27, 2023) ("The Fifth Circuit has neither adopted nor rejected the state-created-danger theory of liability.")

- *Salinas v. City of Houston*, No. 4:22-CV-04120, 2023 WL 8283636, at *3 (S.D. Tex. Nov. 30, 2023) ("The problem is that this Circuit has never adopted the state-created-danger theory.").[1]

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1. *See also Sterling v. City of Jackson, Mississippi*, No. 3:22-CV-531-KHJ-MTP, 2024 WL 420884, at *10 (S.D. Miss. Feb. 5, 2024) (" . . . the state-created-danger theory has never been adopted by this circuit); *Chaney v. E. Cent. Indep. Sch. Dist.*, No. SA-21-CV-01082-FB, 2022 WL 1540592, at *10 (W.D. Tex. May 16, 2022), report and recommendation adopted, No. CV SA-21-CA-1082-FB, 2022 WL 22835373 (W.D. Tex. June 15, 2022); *Thompson as Next Friends of ACD v. Pass Christian Pub. Sch. Dist.*, No. 1:22CV125-LG-RPM, 2023 WL 2577232, at *3 (S.D. Miss. Mar. 20, 2023) ("Neither the Supreme Court nor the Fifth Circuit have adopted the 'state-created-danger' theory, but the Fifth Circuit has left open the possibility of doing so."); *Jackson v. City of Houston*, No. 4:23-CV-00052, 2023 WL 7093031, at *6 (S.D. Tex. Oct. 26, 2023) ("Second, the theory has never been adopted by this circuit."); *Jaramillo v. Tex.*, No. 6:21CV253, 2023 WL 5123456, at *8 (E.D. Tex. June 6, 2023), report and recommendation adopted sub nom. *Jaramillo v. Tex.*, TDCJ-CID, No. 6:21-CV-00253, 2023 WL 5098706 (E.D. Tex. Aug. 9, 2023) ("The Fifth Circuit has never

As Judge Higginson of the Fifth Circuit explained, "[The Fifth Circuit's continued] indecision is a disservice . . . if this circuit is inclined to disagree with all others [on whether to recognize the doctrine of state-crated danger], then our delay is blocking percolation, which 'allows a period of exploratory consideration and experimentation by lower courts before the Supreme Court ends the process with a nationally binding rule.'" *Fisher*, 73 F.4th at 375. (Higginson, J., dissenting).

Because the majority of the Fifth Circuit is satisfied not to adopt a position on the "state-created-danger" doctrine, Petitioner asks this Court to resolve the question, to recognize the doctrine, and to establish parameters.

2. The Fifth Circuit explained the facts of this case by quoting Petitioner's brief. *Williams on behalf of J.J. v. Williams*, No. 23-20375, 2024 WL 811526, at *1 (5th Cir. Feb. 27, 2024). The Court wrote:

> Here, Appellees (paramedics) came to Appellant's home after Appellant called 9-1-1 because [her grandson] J.J. was in cardiac

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sustained a Section 1983 claim predicated upon the state-created-danger theory."); *Walton v. City of Verona*, 82 F.4th 314, 319 (5th Cir. 2023); *Villalon v. City of McAllen*, No. 7:20-CV-0264, 2022 WL 1547759, at *9 (S.D. Tex. Apr. 7, 2022), report and recommendation adopted, No. 7:20-CV-0264, 2022 WL 1540425 (S.D. Tex. May 16, 2022); *Gonzales v. Sanchez*, No. SA-23-CV-00694-XR, 2024 WL 1283822, at *12 (W.D. Tex. Mar. 25, 2024); *Avila v. Harlingen Indep. Consol. Sch. Dist.*, No. 1:21-CV-111, 2021 WL 5921458, at *5 (S.D. Tex. Nov. 22, 2021), report and recommendation adopted sub nom. *Avila v. Harlingen Consol. Indep. Sch. Dist.*, No. 1:21-CV-111, 2021 WL 5919331 (S.D. Tex. Dec. 15, 2021).

> distress. J.J. was a survivor of "shaken baby syndrome" and he had cerebral palsy. When Appellees responded they "called off" other emergency units that were responding to the 9-1-1 call. Yet when Appellees arrived at J.J.'s home, they refused to provide essential medical services. Although J.J. was unresponsive, Appellees disregarded their departmental policies and did not provide the required medical aid (such as CPR). After twenty-four minutes (and a threat by Appellant to take J.J. to the hospital on her own) Appellees provided emergency care and then transported J.J. to the hospital. J.J. arrived at the hospital at 1:52 a.m. and hospital staff revived him at 2:04 a.m. J.J. must now be "fed through a tube."

Id.

3. Petitioner filed suit on January 26, 2023. Petitioner asserted her claim under the "state-created-danger" doctrine on the ground that Respondents committed to treat J.J., called off other EMTs, and did not then treat J.J.

On April 18, 2023, Respondents moved to dismiss J.J.'s claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The district court granted the motion with a docket entry that reads: "Minute Entry for proceedings held before Judge Keith P. Ellison. MOTION HEARING held on 8/3/2023 on Defendants Motion to Dismiss (ECF No. 17). The Court GRANTED WITHOUT PREJUDICE."

Petitioner appealed to the Fifth Circuit and conceded that the Fifth Circuit had never recognized the doctrine. *Williams*, 2024 WL 811526, at *1. The Fifth Circuit concluded:

> The appellant recognizes that she cannot prevail under this court's longstanding jurisprudence whereunder we do not recognize "state-created danger" as a theory of liability for a claimed constitutional violation. Appellant asks the court to use this case as a vehicle to adopt, for the first time, that theory.
>
> We decline the invitation. It is a stretch to say that state actors "created" the danger, given that the appellant's grandson was in medical distress, not caused by them, when they arrived. As alleged, any failure to act sounds more in medical malpractice or negligence than in deliberate indifference.
>
> It is possible that, at some point, this court will adopt the appellant's theory. Concluding that this is not the case for such a jurisprudential venture, we AFFIRM the judgment of dismissal.

Id.

Petitioner did not file for en banc reconsideration.

REASONS TO GRANT THE PETITION

I. The Fifth Circuit's decision not to recognize or reject the doctrine of "state-created danger" intrudes on the ability of the issue to percolate in the lower courts. Ten circuits recognize the theory. The Fifth Circuit has had ample opportunity to adopt a position but refuses to do so. This refusal leaves the forty million citizens of Texas, Louisiana, and Mississippi with no recourse other than to petition this Court to resolve the question by formally recognizing the doctrine of the "State-Created Danger."

This Court favors issues "percolating" in the lower courts. *Calvert v. Tex.*, 141 S. Ct. 1605, 1606, 209 L. Ed. 2d 748 (2021) (statement of Sotomayor, J., regarding denial of petition for writ of certiorari) ("The legal question Calvert presents is complex and would benefit from further percolation in the lower courts prior to this Court granting review."); *Labrador v. Poe by & through Poe*, 144 S. Ct. 921, 934 (2024) (Kavanaugh, J., concurring) ("Which can thereby predetermine the case's outcome in the proceedings in the lower courts and hamper percolation across other lower courts on the underlying merits question."); *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600, 206 L. Ed. 2d 115 (2020) (Gorsuch, J., concurring in the grant of stay) (nationwide relief preempts "the airing of competing views that aids this Court's own decisionmaking process"); *Trump v. Hawaii*, 585 U.S. 667, 713, 138 S. Ct. 2392, 2425, 201 L. Ed. 2d 775 (2018)138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring) (expressing concern that nationwide injunctions "prevent[ ] legal questions from percolating through the federal courts").

The Fifth Circuit has refused to accept or reject the doctrine almost every year since 2012.

- **2024**: *Williams on behalf of J.J. v. Williams*, No. 23-20375, 2024 WL 811526, at *1 (5th Cir. Feb. 27, 2024)

- **2023**: *Fisher v. Moore*, 73 F.4th 367, 369 (5th Cir. 2023) ("This circuit has never adopted a state-created danger exception to the sweeping 'no duty to protect' rule.")

- **2022**: *Watts v. Northside Indep. Sch. Dist.*, 37 F.4th 1094, 1096 (5th Cir. 2022) ("We have 'repeatedly declined to recognize the state-created-danger doctrine.'")

- **2021**: No opinion on state-created danger in the Fifth Circuit.

- **2020**: *Robinson v. Webster Cnty., Mississippi*, 825 F. App'x 192, 195 (5th Cir. 2020) ("Several other circuits have also adopted a second exception known as the 'state-created-danger' theory, applicable when the state affirmatively created or exacerbated a dangerous situation that led to a person's injury. *See Kovacic v. Villarreal*, 628 F.3d 209, 214 (5th Cir. 2010). But this Court has declined to join our sister circuits in recognizing that theory on several occasions.")

- **2019**: *Cancino v. Cameron Cnty., Tex.*, 794 F. App'x 414, 416 (5th Cir. 2019) ("Under the state-created-danger doctrine, which has

been accepted by some of our sister circuits, 'when state actors knowingly place a person in danger, the Due Process Clause renders them accountable for the foreseeable injuries resulting from their conduct.' However, our decisions 'have consistently confirmed that '[t]he Fifth Circuit has not adopted the "state-created-danger" theory of liability.' Although we have outlined the contours of the state-created-danger theory in numerous cases, *we have never adopted that theory even where the question of the theory's viability has been squarely presented*.") (emphasis added, footnotes removed)

- **2018**: *Shumpert v. City of Tupelo*, 905 F.3d 310, 324 (5th Cir. 2018), as revised (Sept. 25, 2018) ("Unlike our sister Circuits, we have repeatedly declined to decide whether [a state-created danger] cause of action is viable in the Fifth Circuit.")

- **2017**: *Paraza v. Sessions*, 680 F. App'x 345, 347 (5th Cir. 2017) ("We have 'never explicitly adopted the state-created-danger theory.'")

- **2015**: *Chavis v. Borden*, 621 F. App'x 283, 286 (5th Cir. 2015) ("Unlike our sister Circuits, we have repeatedly declined to decide whether [a state-created-danger] cause of action is viable in the Fifth Circuit.")

- **2012**: *Doe ex rel. Magee v. Covington Cty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 864 (5th Cir. 2012) (Court "never explicitly adopted the state-created danger theory.").

Many other such opinions exist, and the argument extends to at least 1996. *See Fort v. Dallas Indep. Sch. Dist.*, 82 F.3d 414 (5th Cir. 1996) ("Without deciding whether the state-created-danger theory is constitutionally sound, we hold that the pleadings in this case do not meet the requirements for stating a claim under this theory.").

Thus, whether this Court should recognize the doctrine of "state-created danger" requires no further "percolation." Ten circuits have recognized the doctrine, and the Fifth Circuit refuses to recognize or reject the doctrine. *Robinson v. Webster Cnty., Mississippi*, 825 F. App'x 192, 195 (5th Cir. 2020) ("Several other circuits have also adopted a second exception known as the 'state-created-danger' theory, applicable when the state affirmatively created or exacerbated a dangerous situation that led to a person's injury. *See Kovacic v. Villarreal*, 628 F.3d 209, 214 (5th Cir. 2010). But this Court has declined to join our sister circuits in recognizing that theory on several occasions.").

The question has "percolated" for thirty-five years and the Fifth Circuit has had excellent opportunities to address the issue. *Cancino*, 794 F. App'x at 416 ("Although we have outlined the contours of the state-created-danger theory in numerous cases, *we have never adopted that theory even where the question of the theory's viability has been squarely presented*."). (emphasis added, footnotes removed.). Yet the Fifth Circuit refuses to offer an opinion on the doctrine. *Williams on behalf of J.J. v. Williams*, No. 23-20375, 2024 WL 811526, at *1 (5th Cir. Feb. 27, 2024); *Fisher*, 73 F.4th at 369. ("This circuit has never adopted a state-created-danger exception to the sweeping 'no duty to protect' rule.").

The data establish that the Fifth Circuit refuses to rule on the viability of the "state-created-danger" doctrine. Until this Court intervenes, parties will continue to face different standards depending on the circuit. Review is warranted.

* * *

II. This is an apt case to decide and define the doctrine of "State-Created Danger."

Petitioner's claim is: 1) he suffered a cardiac emergency; 2) his grandmother called 9-1-1; 3) Respondents, EMTs and state officials, responded to the emergency call; 4) Respondents affirmatively told other EMTs not to respond to the 9-1-1 call because they would provide emergency medical treatment to J.J.; 5) Respondents did not provide treatment to J.J. for nearly twenty-five minutes; 6) J.J.'s grandmother eventually convinced Respondents to take J.J. to the hospital; 7) hospital personnel saved J.J.'s life; and, 8) as a result, J.J. suffered life-long disabilities such as a requirement that he be fed through a tube. *Williams*, 2024 WL 811526, at *1.

The Fifth Circuit, in refusing to adopt a position on the "state-created-danger" doctrine wrote: "it is a stretch to say that state actors 'created' the danger, given that the appellant's grandson was in medical distress, not caused by them, when they arrived. As alleged, any failure to act sounds more in medical malpractice or negligence than in deliberate indifference." *Id.*

Petitioner's claim, however, is that the doctrine applies because Respondents "called off " other EMTs and then

refused to provide medical care. Petitioner does not claim that the doctrine applies because he was in "medical distress."

The facts here fall soundly within the doctrine and the Fifth Circuit (and presumably Respondents) disagree. Accordingly, this case provides the Court a clean opportunity to both recognize the doctrine and to establish its parameters without having to address qualified immunity.

Accordingly, this is an apt case in which to consider the existence of and the parameters around the "state-created-danger" doctrine. Review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 2, 2024

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED FEBRUARY 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-20375
Summary Calendar

STACY WILLIAMS, ON BEHALF
OF HER MINOR GRANDSON, J.J.,

Plaintiff—Appellant,

versus

ANDREW WILLIAMS; JOE SPRADLIN,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-289

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Stacy Williams sued two paramedics under 42 U.S.C. § 1983 for an allegedly inadequate response to her

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* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

grandson's medical emergency, resulting in his death. The district court dismissed on the basis of qualified immunity. Finding no error, we affirm.

We recount the facts as stated in plaintiff's brief, assuming, for present purposes, that they are true:

> Here, Appellees (paramedics) came to Appellant's home after Appellant called 9-1-1 because [her grandson] J.J. was in cardiac distress. J.J. was a survivor of "shaken baby syndrome" and he had cerebral palsy. When Appellees responded they "called off" other emergency units that were responding to the 9-1-1 call. Yet when Appellees arrived at J.J.'s home, they refused to provide essential medical services. Although J.J. was unresponsive, Appellees disregarded their departmental policies and did not provide the required medical aid (such as CPR). After *twenty-four minutes* (and a threat by Appellant to take J.J. to the hospital on her own) Appellees provided emergency care and then transported J.J. to the hospital. J.J. arrived at the hospital at 1:52 a.m. and hospital staff revived him at 2:04 a.m. JJ. must now be "fed through a tube."

Appellant's Opening Brief at 18-19.

The appellant recognizes that she cannot prevail under this court's longstanding jurisprudence whereunder we do not recognize "state-created danger" as a theory of

liability for a claimed constitutional violation. Appellant asks the court to use this case as a vehicle to adopt, for the first time, that theory.

We decline the invitation. It is a stretch to say that state actors "created" the danger, given that the appellant's grandson was in medical distress, not caused by them, when they arrived. As alleged, any failure to act sounds more in medical malpractice or negligence than in deliberate indifference.

It is possible that, at some point, this court will adopt the appellant's theory. Concluding that this is not the case for such a jurisprudential venture, we AFFIRM the judgment of dismissal.

APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED FEBRUARY 27, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-20375

STACY WILLIAMS, ON BEHALF OF HER MINOR GRANDSON, J.J.,

Plaintiff—Appellant,

versus

ANDREW WILLIAMS; JOE SPRADLIN,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-289

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

Appendix B

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of the court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. *See* FED. R. APP. P. 41(b). The court may shorten or extend the time by order. *See* 5TH CIR. R. 41 I.O.P.

APPENDIX C — CIVIL DOCKET FOR CASE # 4:23-cv-00289, U.S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS (HOUSTON)

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (HOUSTON)
CIVIL DOCKET FOR CASE #: 4:23-CV-00289

Williams, o/b/o her minor grandson, J.J. v. Williams et al
Assigned to: Judge Keith P Ellison

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08/03/2023

Minute Entry for proceedings held before Judge Keith P Ellison. MOTION HEARING held on 8/3/2023 on Defendants Motion to Dismiss (ECF No. 17). The Court GRANTED WITHOUT PREJUDICE Defendants Motion to Dismiss. Appearances: Christy L Martin, Niles Stefan Illich.(Court Reporter: M. Malone)(Law Clerk: IS), filed.(arrivera, 4)
(Entered: 08/04/2023)

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APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED MARCH 19, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-20375

STACY WILLIAMS, ON BEHALF OF HER MINOR GRANDSON, J.J.,

Plaintiff-Appellant,

versus

ANDREW WILLIAMS; JOE SPRADLIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-289

ON PETITION FOR REHEARING EN BANC

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.