No. _______

In The
Supreme Court of the United States

AMY HADLEY,

Petitioner,

v.

THE CITY OF SOUTH BEND, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fifth Amendment's Takings Clause guarantees that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V.

Local police officers trying to catch a criminal deliberately inflicted major damage to an innocent homeowner's property when raiding her house. (The raid was an error; the criminal had no connection to the homeowner or her house.) The government has not compensated her, leaving her to bear thousands of dollars in costs herself.

The questions presented are:

1. Whether the Takings Clause has a police-power exception, making no compensation due when the government damages private property under its police power outside of eminent domain (as the Seventh, Tenth, and Federal Circuits hold)—or not (as the Fourth, Fifth, Sixth, and Eleventh Circuits hold).

2. Whether the government is exempt from liability under the Takings Clause when law enforcement officers intentionally destroy an innocent person's property while trying to apprehend a fugitive.

PARTIES TO THE PROCEEDING

Petitioner Amy Hadley is the plaintiff-appellant.

Respondents the City of South Bend, the South Bend Police Department, St. Joseph County, the St. Joseph Police Department, and the Board of Commissioners of St. Joseph County are the defendants-appellees.

RELATED PROCEEDINGS

Hadley v. *City of South Bend*, *et al.*, No. 24-2448 (CA7 Nov. 7, 2025) (denying rehearing en banc).

Hadley v. *City of South Bend*, *et al.*, No. 24-2448 (CA7 Oct. 7, 2025) (affirming grant of defendants' motions to dismiss).

Hadley v. *City of South Bend, et al.*, No. 3:24-cv-29, (N.D. Ind. July 22, 2024) (granting defendants' motions to dismiss).

Hadley v. *City of South Bend, et al.*, No. 71C01-2312-MI-867 (St. Joseph Cir. Ct. Jan. 10, 2024) (notice of filing of removal to N.D. Ind.).

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PETITION FOR A WRIT OF CERTIORARI

Amy Hadley petitions for a writ of certiorari to review the Seventh Circuit's judgment in this case.

OPINIONS BELOW

The Seventh Circuit's opinion (Pet.App.1a) is published at 154 F.4th 549. The district court's opinion (Pet.App.17a) is not reported and is available at 2024 WL 3495017.

JURISDICTION

The court of appeals' judgment was entered on October 7, 2025. Pet.App.1a. On November 7, 2025, the court denied Hadley's timely petition for rehearing en banc. Pet.App.27a. On January 9, 2026, Justice Barrett extended the time to petition for a writ of certiorari to April 6, 2026. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides: " * * * nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

The Fourteenth Amendment to the United States Constitution provides: " * * * nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

INTRODUCTION

The Fifth Amendment's Takings Clause was "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Tyler* v. *Hennepin County*, 598 U.S. 631, 647 (2023) (quoting *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960)).

Trying to catch a criminal, police officers in Indiana deliberately damaged the property of an innocent homeowner, Amy Hadley. The suspect was not there, had no connection to Hadley or her property, and was arrested elsewhere days later. The government has paid nothing for the damage. Hadley's insurance covered only part of the loss, leaving her to bear thousands of dollars of repair costs.

Hadley sued for just compensation under the Fifth Amendment. Her claims were dismissed because the Seventh Circuit applies the "police-power exception" to the Takings Clause. Under this exception, no compensation is due "when property is retained or damaged as the result of the government's exercise of its authority pursuant to some power other than the power of eminent domain." Pet.App.7a (quoting *Johnson* v. *Manitowoc County*, 635 F.3d 331, 336 (CA7 2011)).

The circuits' acknowledged division over whether this unwritten exception exists has recently drawn attention from this Court. See, *e.g.*, *Baker* v. *City of McKinney*, 145 S. Ct. 11, 11, 13 (2024) (Sotomayor, J., joined by Gorsuch, J., respecting denial of certiorari);

see also *Pena* v. *City of Los Angeles*, 158 F.4th 1033, 1037–40 (CA9 2025); *Slaybaugh* v. *Rutherford County*, 114 F.4th 593, 597 (CA6 2024); *Baker* v. *City of McKinney*, 84 F.4th 378, 383–84 (CA5 2023).

The Seventh Circuit's decision below entrenches its position that the Takings Clause has such a police-power exception, which bars Hadley's claims. The Tenth and Federal Circuits have applied this exception, too. See *AmeriSource Corp.* v. *United States*, 525 F.3d 1149, 1153–54 (CA Fed. 2008); *Lech* v. *Jackson*, 791 F. App'x 711, 715–17 (CA10 2019).

By contrast, the Fourth, Fifth, Sixth, and Eleventh circuits have rejected the police-power exception—three expressly and one implicitly. *Yawn* v. *Dorchester County*, 1 F.4th 191, 195 (CA4 2021); *Baker*, 84 F.4th at 383–84; *Slaybaugh*, 114 F.4th at 597; *Alford* v. *Walton County*, 159 F.4th 844, 856–60 (CA11 2025).

Among courts that reject the police-power exception, disagreement persists. The Fifth and Ninth Circuits recognize a "public necessity" exception (rejected by the Eleventh Circuit), *Baker*, 84 F.4th at 388; *Pena*, 158 F.4th at 1040; *Alford*, 159 F.4th at 856–60, while the Sixth Circuit has adopted a distinct "search and arrest" exception, *Slaybaugh*, 114 F.4th at 598–604; see also *Pena*, 158 F.4th at 1048–52 (Friedland, J., concurring in judgment) (favoring this exception over the "public necessity" exception).

Percolation has resulted not in convergence but in fragmentation: a patchwork of approaches, all departing in one way or another from this Court's ordinary takings principles.

The Court should grant certiorari and reverse—or at a minimum, vacate and remand for reconsideration with the police-power exception off the books.[1]

STATEMENT OF THE CASE

A. Factual background[2]

Petitioner Amy Hadley is a working mother who owns a house in South Bend, Indiana, where she lives with her children. On the afternoon of June 10, 2022, city and county police surrounded her home with a warrant to search it for a dangerous fugitive. Officers did not believe they faced a hostage situation. Nor were they in hot pursuit. Pet.App.36a–37a, 40a ¶¶ 23–25, 29, 39.

They were there because of an investigative error. An officer believed, based on an IP address, that the fugitive was posting on social media from inside Hadley's house. In fact, the fugitive had never been there and had no connection to Hadley, her children, or her property. Pet.App.32a, 36a, 42a ¶¶ 4, 25–27, 44.

Using a bullhorn, officers ordered occupants to exit the house. Hadley's fifteen-year-old son came out with his hands raised. Officers immediately recognized that he was not the fugitive and suspected him of no

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[1] The Institute for Justice files this petition concurrently with a petition in *Pena* v. *City of Los Angeles*, 158 F.4th 1033 (CA9 2025). The petitions in this case and *Pena* present closely related issues.

[2] Because this case is here on the respondents' motions to dismiss, we recite the facts in the light most favorable to the petitioner.

crime. No one else was inside the house except the family kitten. Pet.App.37a–38a, 40a ¶¶ 30–33, 39.

Hadley and her daughter soon arrived (after a neighbor alerted them to the police activity). They told officers that they had never seen or heard of the fugitive and that they knew—thanks to their home-security cameras—that no one remained inside the house. Pet.App.39a–40a ¶¶ 35–40.

For roughly 40 minutes after Hadley's son exited, officers continued shouting commands toward the house. The front door was open, as Hadley's son had left it. But no officers entered. Pet.App. 37a–40a ¶¶ 31–34, 40.

Instead, officers began destroying Hadley's property. They broke the security cameras and fired dozens of tear gas grenades through the windows, shattering glass and filling the home with toxic fumes. When the gas didn't smoke anyone out, officers entered wearing gas masks. Inside the home, they punched holes in walls, overturned furniture, ripped paneling and fixtures from the walls, and ransacked the house from attic to basement. Pet.App.40a–44a ¶¶ 40–44, 52, 55.

Hadley watched in shock, pleading that the officers had the wrong house. Indeed, the fugitive who had never been there was not found. He was arrested elsewhere four days later. Pet.App.40a, 42a–43a ¶¶ 38–40, 44–48.

The damage was extensive. Tear gas rendered nearly everything porous unusable, and the home was uninhabitable for days. Hadley, her children, and

their kitten slept in her car and other places until the fumes dissipated enough to reenter the house. Hadley then spent days trying to make the house secure, safe, and clean again. The damage totaled about $16,000. It was only partly covered by insurance, leaving Hadley to bear thousands of dollars in losses. Pet.App. 41a–45a ¶¶ 40–44, 54–58, 63.

Hadley sent written demands for just compensation to the City and County. Both refused. She has received nothing for the destruction of her property. Pet.App.44a–45a ¶¶ 57–62.

B. Procedural history

1. Hadley filed this case in Indiana state court, asserting federal takings claims under the Fifth and Fourteenth Amendments and state takings claims under the Indiana Constitution.

2. The County removed the case to federal court, where all the defendants moved to dismiss the claims under Rule 12(b)(6).

The district court dismissed the federal claims and remanded the state claims to the Indiana court.[3] Pet.App.17a. The district court reasoned that Hadley's federal claims fell within the Seventh Circuit's police-power exception to the Fifth Amendment: "the Takings Clause does not apply when property is retained or damaged as the result of the government's exercise of its authority pursuant to some power other

[3] The district court also dismissed all claims against the South Bend Police Department as a non-suable entity. Hadley did not contest the dismissal of that party.

than the power of eminent domain." Pet.App.23a (quoting *Johnson* v. *Manitowoc County*, 635 F.3d 331, 336 (CA7 2011)).

The district court rejected Hadley's argument that the police-power exception is bad law, viewing that argument as an invitation for the court to "sit[] above its pay grade." Pet.App.23a. The court concluded that Hadley's case is "much simpler" than if it arose in other circuits because district courts in the Seventh "must follow" Seventh Circuit precedent adopting the police-power exception, which foreclosed Hadley's federal claims. Pet.App.24a. The court remanded the state claims for Indiana courts to address in the first instance.[4] Pet.App.25a–26a.

3. Hadley appealed the dismissal of her federal claims. The Seventh Circuit affirmed, renewing its commitment to the police-power exception adopted in *Johnson* v. *Manitowoc County*, 635 F.3d 331 (CA7 2011). Pet.App.5a. Like the district court, the panel held that "*Johnson* controls and requires us to affirm." Pet.App.5a. The panel declined to reconsider the police-power exception at all, Pet.App.7a–8a, because Hadley's claims involve "the 'classic example' of police power: exercising law-enforcement authority." Pet.App.13a. For this reason, the panel emphasized, it did not fully consider Hadley's arguments about how the Takings Clause should apply absent the police-power exception. Pet.App.16a.

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[4] The state claims remain pending, though stayed, in the Indiana court where they originated.

4. The Seventh Circuit denied rehearing en banc. Pet.App.27a–28a.

REASONS FOR GRANTING THE PETITION

Both questions presented stem from the Seventh Circuit's police-power exception—and both warrant review.

I. This Court should resolve whether the Takings Clause has a police-power exception.

On the first question, the Seventh Circuit has answered:

Yes—the Takings Clause has a police-power exception, which bars Hadley's claims.

In reaffirming that rule below, the court entrenched a clean, acknowledged circuit split and left innocent homeowners in Indiana, Illinois, and Wisconsin subject to an admittedly "unfair" rule that other circuits have rejected as out-of-sync with the Takings Clause's text and history and this Court's precedent. *Johnson* v. *Manitowoc County*, 635 F.3d 331, 336 (CA7 2011). The Court should grant certiorari to resolve the conflict.

A. There is a square, acknowledged split.

The split is deep and plain. Several circuits—and two Justices of this Court—have recognized it. See, *e.g.*, *Baker* v. *City of McKinney*, 145 S. Ct. 11, 11 (2024) (Sotomayor, J., joined by Gorsuch, J., respecting denial of certiorari); *Pena* v. *City of Los Angeles*, 158 F.4th 1033, 1037–40 (CA9 2025); *Slaybaugh* v.

Rutherford County, 114 F.4th 593, 597 (CA6 2024); *Baker* v. *City of McKinney*, 84 F.4th 378, 383–84 (CA5 2023).

On one side, the Seventh, Tenth, and Federal Circuits apply the police-power exception. On the other side, the Fourth, Fifth, Sixth, and Eleventh Circuits have rejected it—three expressly and one implicitly.

1. The Seventh Circuit adopted the police-power exception in *Johnson* v. *Manitowoc County*, 635 F.3d 331 (CA7 2011), a case involving law-enforcement destruction of property while executing a warrant. *Id.* at 334. The plaintiff alleged (among other claims) a Fifth Amendment taking, which the *Johnson* panel rejected as a "non-starter." *Id.* at 336. Without any analysis, the panel imported the police-power exception from the Federal Circuit. Here is the entirety of the Seventh Circuit's reasoning in *Johnson*, citations and all:

> [T]he Takings Clause does not apply when property is retained or damaged as the result of the government's exercise of its authority pursuant to some power other than the power of eminent domain. See *AmeriSource Corp.* v. *United States*, 525 F.3d 1149, 1154 (Fed. Cir. 2008) (citing *Bennis* v. *Michigan*, 516 U.S. 442, 452 (1996)). Here, the actions were taken under the state's police power. The Takings Claim is a non-starter.

Johnson, 635 F.3d at 336.

The decision below reaffirms that rule. The panel held that "*Johnson* controls and requires us to affirm," Pet.App.5a, stressing that this case, like *Johnson*, involves a "'classic example' of police power: exercising law-enforcement authority." Pet.App.13a.

The Federal Circuit adopted the police-power exception in *AmeriSource Corp.* v. *United States*, 525 F.3d 1149 (CA Fed. 2008). There, the government had seized property for possible use in a criminal prosecution. The circuit court held that the government's retention of the property—even when that retention rendered the property worthless—was not a compensable taking. *Id.* at 1154. The court acknowledged that the result seemed "unfair," but it ruled that "so long as the government's exercise of authority was pursuant to some power other than eminent domain, then the plaintiff has failed to state a claim for compensation under the Fifth Amendment." *Id.*

The Tenth Circuit followed the Seventh and Federal Circuits' example. In *Lech* v. *Jackson*, 791 F. App'x 711 (CA10 2019), it applied the police-power exception to deny compensation after police destroyed a family's home while seeking a fugitive, treating the distinction between police power and eminent domain as dispositive. *Id.* at 713, 715–19 (citing *Johnson* and *AmeriSource*).

2. Other circuits reject this approach. The Eleventh Circuit has done so implicitly, and the Fourth, Fifth, and Sixth Circuits have done so expressly.

The Eleventh Circuit in *Alford* v. *Walton County*, 159 F.4th 844, 856–60 (CA11 2025), addressed a

COVID-related county ordinance and its enforcement by executive officers, which prohibited private beach owners from accessing their beach property. The court held that the government action (an exercise of police power outside of eminent domain) triggered the Takings Clause's just-compensation requirement. *Id.* at 860.

The Fourth Circuit in *Yawn* v. *Dorchester County*, 1 F.4th 191 (CA4 2021), squarely rejected the police-power exception. The district court had ruled that because the destruction of property (bees killed while trying to reduce the mosquito population) was an exercise of the government's "police power, and not its power of eminent domain, the Takings Clause is not implicated." *Id.* at 194. The Fourth Circuit rejected that reasoning outright, explaining: "That Government actions taken pursuant to the police power are not per se exempt from the Takings Clause is axiomatic in the Supreme Court's jurisprudence." *Id.* at 195. The court then affirmed judgment for the government by applying ordinary takings principles. *Id.* at 195–96.

The Fifth and Sixth Circuits have likewise rejected the police-power exception, doing so in the context of law-enforcement destruction. Both have criticized *Johnson* (Seventh Circuit), *AmeriSource* (Federal Circuit), and *Lech* (Tenth Circuit) as lacking support in "history, tradition, or historical precedent." *Baker* v. *City of McKinney*, 84 F.4th 378, 383–84 (CA5 2023); accord *Slaybaugh* v. *Rutherford County*, 114 F.4th 593, 597 (CA6 2024) (rejecting the police-power exception in part because "it is questionable whether such an approach comports with the text and history

of the Takings Clause or with precedent interpreting it").

B. The decision below is wrong.

The Seventh Circuit's police-power exception conflicts with the text and history of the Takings Clause and with this Court's precedent.

1. Text, history, and precedent foreclose categorical exceptions. This Court has repeatedly corrected lower courts' reliance on blanket exceptions to the Takings Clause—whether for temporary flooding, *Ark. Game & Fish Comm'n* v. *United States*, 568 U.S. 23, 30, 33–34 (2012), personal property, *Horne* v. *Dep't of Agric.*, 576 U.S. 350, 357–61 (2015), or legislation, *Sheetz* v. *County of El Dorado*, 601 U.S. 267, 270–71, 273, 276–79 (2024). The Court has explained that "[t]ime and again in Takings Clause cases, the Court has heard the prophecy that recognizing a just compensation claim would unduly impede the government's ability to act in the public interest" and has "rejected this argument when deployed to urge blanket exemptions from the Fifth Amendment's instruction." *Ark. Game & Fish*, 568 U.S. at 36–37.

The text contains zero exceptions. *Sheetz*, 601 U.S. at 276. Yet the Seventh Circuit has effectively added one: "nor shall private property be taken for public use <u>except when exercising police powers, including the 'classic' police power of law-enforcement authority</u>, without just compensation."

History likewise provides no support. The Takings Clause was, first and foremost, a response to wartime impressments, where military officials

would obtain warrants and physically take private property to counter enemy forces. See, *e.g.*, Laws of Virginia, *An Act for reducing the several acts for making provision against invasions and insurrections into one act*, 7 Hening Statutes at Large 110–11 (1757) (making it lawful "for any commissioned officer * * * by warrant under the hand and seal of any county lieutenant, colonel, lieutenant-colonel, or major, to impress and take up at the public charge necessary provisions of and from any person"); see St. George Tucker, 1 *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Law, of the Federal Government of the United States; and of the Commonwealth of Virginia* 305–06 (1803) (observing that the Takings Clause was motivated by "the arbitrary and oppressive mode of obtaining supplies for the army, and other public uses, by impressment, as was too frequently practi[c]ed during the revolutionary war, without any compensation whatever").

From the time of ratification, then, Fifth Amendment takings were not limited to eminent domain. See Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America*, 25 L. & Hist. Rev. 139, 150 (2007) (explaining that impressments were uses of the state's "military power" for "the commandeering of private property for public use in moments of military necessity"). Otherwise, the Takings Clause would have failed its core purpose.

Tradition points the same way as the text and history. For more than a century, this Court has held that exercises of the police power outside of eminent domain can require compensation. See, *e.g.*, *Pumpelly*

v. *Green Bay & Miss. Canal Co.*, 80 U.S. (13 Wall.) 166 (1872) (holding that flooding from a dam to control a navigable stream was a taking requiring just compensation); *United States* v. *Causby*, 328 U.S. 256 (1946) (holding that low-level flights that caused property damage constituted a taking requiring just compensation); *Armstrong* v. *United States*, 364 U.S. 40 (1960) (holding that the government's exercise of a contract option that made materialmen's liens unenforceable was a taking requiring compensation); *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (holding that a law requiring landlords to permit a cable television company to install its cable facilities upon the owner's property was a taking requiring just compensation).

More recent cases reinforce the point. Temporary government-induced flooding can amount to a compensable taking, see *Ark. Game & Fish*, 568 U.S. at 38, as can a mandate to raisin growers to relinquish a portion of their crop to the government to maintain an orderly raisin market, see *Horne*, 576 U.S. at 367. Likewise, a regulation giving union organizers a right of access to employers' property is a compensable taking. *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 152, 162 (2021). All these government actions were exercises of police power outside of eminent domain—and it made no difference whether they were "classic" examples of that power. Pet.App.13a. Ultimately, this Court's entire regulatory-takings jurisprudence rests on the notion that exercises of police powers apart from eminent domain will be recognized as a taking if they "go[] too far." *Lingle* v. *Chevron U.S.A. Inc.*, 544 U.S. 528, 537–38 (2005) (quoting *Pa. Coal Co.* v. *Mahon*, 260 U.S. 393, 415 (1922)).

2. The police-power exception thus stands on a faulty premise—that only eminent domain triggers the Takings Clause. The exception traces back to the Federal Circuit's opinion in *AmeriSource*, 525 F.3d at 1154, which relied on a misreading of this sentence in *Bennis* v. *Michigan*, 516 U.S. 442, 452 (1996): "The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain."

Properly understood, this sentence in *Bennis* stands for the unremarkable proposition that no compensation is due when the government acquires property in which the claimant lacks a valid property interest. For example, if a person abandons his property, losing title that way, the Takings Clause does not require compensation. See *Tyler* v. *Hennepin County*, 598 U.S. 631, 646–47 (2023). Nor is compensation due if a person owes more property taxes than her property is worth and the government acquires title to the property. See *id.* at 639. Likewise, when a person loses ownership through lawful forfeiture proceedings, the government owes him nothing. See *Bennis*, 516 U.S. at 452. *Bennis* did not establish a sweeping rule that the Takings Clause applies only to eminent domain, as the Federal Circuit took it to mean.

The Seventh Circuit has never justified the police-power exception on textual, historical, or precedential grounds. The court adopted the rule in *Johnson* without analysis, while observing that the result "seems quite unfair." 635 F.3d at 336. And while the panel here recognized that this Court has "rejected rigid

distinctions between 'eminent domain' and 'police power' actions," it still reaffirmed *Johnson*'s police-power rule because the "factual parallels" between this case and *Johnson* are "so striking"—even though the rule rests on the very distinction this Court has rejected. Pet.App.7a–8a.

That reasoning cannot sustain an atextual, ahistorical exception that this Court's cases foreclose. Yet the en banc court declined to step in and correct course. The Fourth, Fifth, Sixth, and Eleventh Circuits were right to reject the police-power exception. See *Yawn*, 1 F.4th at 195; *Baker*, 84 F.4th at 384; *Slaybaugh*, 114 F.4th at 597; *Alford*, 159 F.4th at 860.

Simply put, if law-enforcement destruction is non-compensable, it cannot be because the Takings Clause has an unwritten, freestanding police-power exception—yet that is precisely the rule the Seventh Circuit applies.

C. The issue is important.

This is a recurring federal question of national importance. See *Baker*, 145 S. Ct. at 11 (Sotomayor, J., joined by Gorsuch, J.) (calling the issue "important"). The Takings Clause was designed to "save[] individual property owners from bearing 'public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *Sheetz*, 601 U.S. at 273–74 (quoting *Armstrong*, 364 U.S. at 49). The police-power exception undermines this purpose by cabining the cost-shifting requirement to eminent domain—only one category of government action that deprives individuals of their property for a public use.

The problem is growing. As SWAT deployments and militarized policing have increased, so too have incidents in which law enforcement destroys unlucky homeowners' property. See generally Bonnie Kristian, *The Troubling Rise of SWAT Teams*, The Week (Jan. 19, 2015), https://perma.cc/J5DK-TCB7 (explaining that SWAT team use spiked from 3,000 strikes per year in 1980 to 80,000 as of 2015, with nearly 80 percent targeting private homes); Josh Sanburn, *This Is Why Your Local Police Department Might Have a Tank*, Time (June 24, 2014), https://perma.cc/3PDH-E23E (describing the increase in use of military equipment in domestic policing).

Even the Seventh and Federal Circuits acknowledge that the police-power exception produces "unfair" results. *Johnson*, 635 F.3d at 336; *AmeriSource*, 525 F.3d at 1154. Homeowners like Hadley are forced to bear costs that, "in all fairness and justice, should be borne by the public as a whole." *Sheetz*, 601 U.S. at 274 (quoting *Armstrong*, 364 U.S. at 49). As similar incidents become more common, the unfairness of the police-power exception will only expand.

D. This is an excellent vehicle.

1. Hadley consistently argued that the police-power exception is invalid and should not bar her claims. Both lower courts rejected that argument, with holdings that began and ended with the police-power exception of *Johnson*. Pet.App.5a, 16a, 23a–24a. The panel expressly declined to fully consider alternative takings analyses, explaining that it "appl[ied] *Johnson*'s rule to affirm." Pet.App.16a.

2. In circuits that have rejected—or have not adopted—the police-power exception, Hadley's claims would have received full consideration. That is true even in the Fifth and Ninth Circuits, which have adopted a "public necessity" exception. That exception applies only when destruction "was objectively necessary * * * in an active emergency to prevent imminent harm to persons." *Baker*, 84 F.4th at 388; accord *Pena*, 158 F.4th at 1040 (citing *Baker*). No such emergency existed here: the fugitive was not in Hadley's house, and the police did not believe anyone was being held hostage or was otherwise in immediate danger. They thought the fugitive was passing the time on social media. Far from necessary, the destruction proved entirely ineffective.

Hadley should at least have the chance to litigate her claims without them being dismissed as "nonstarter[s]" under *Johnson*'s police-power exception. Pet.App.23a (quoting *Johnson*, 635 F.3d at 336).

3. Only this Court can resolve the circuit split. The Seventh Circuit has now entrenched its adherence to the police-power exception, even after other circuits rejected it and Members of this Court noted the issue's importance. See *Baker*, 145 S. Ct. at 11–13 (Sotomayor, J., joined by Gorsuch, J., respecting denial of certiorari); *Slaybaugh*, 114 F.4th at 597; *Baker*, 84 F.4th at 383–84; *Yawn*, 1 F.4th at 195.

II. This Court should resolve whether the government is exempt from liability under the Takings Clause when law enforcement officers intentionally destroy an innocent person's property while trying to apprehend a fugitive.

On the second question presented, the Seventh Circuit has answered:

Yes—the government is exempt from liability because the police-power exception applies.

That answer deepens the circuits' fractured approaches to takings claims arising from law-enforcement destruction. The lower courts need guidance. No circuit has reconciled its approach with this Court's established takings principles.

To resolve the confusion, this Court need not break new ground. It can reaffirm that takings claims must be evaluated not by "resorting to blanket exclusionary rules" but by examining "the 'particular circumstances of each case,'" *Ark. Game & Fish*, 568 U.S. at 37, and applying the "ordinary takings rules" that this Court has already articulated, *Sheetz*, 601 U.S. at 276. See, *e.g.*, *Alford*, 159 F.4th at 854–60; *Yawn*, 1 F.4th at 195–96. Under those principles, intentional destruction of property for a public use is a *per se* taking requiring compensation, unless the government demonstrates a historically grounded excuse for nonpayment. See *infra* Part III.

A. The circuits are mired in doctrinal confusion.

Despite this Court's instruction, lower courts have again resorted to categorical rules exempting the government from the just-compensation requirement based on "a strong public desire to improve the public condition." *Pa. Coal Co.*, 260 U.S. at 416. First came exclusions for temporary flooding (*Arkansas Game & Fish*), then personal property (*Horne*), then legislation (*Sheetz*). Now courts exclude law-enforcement destruction, with a patchwork of untenable theories—because no categorical exception belongs.

To be sure, apprehending dangerous criminals is a legitimate and laudable government objective. But "no matter how weighty the asserted 'public interests' involved," *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1028 (1992), they do not "warrant achieving th[at] desire by a shorter cut than the constitutional way of paying" for property the government breaks (and thus takes). *Pa. Coal*, 260 U.S. at 416.

The Seventh, Tenth, and Federal Circuits use the police-power exception, which covers law-enforcement activity as a "classic example" of police power. Pet.App.13a; see *supra* Part I.A.

The Fifth Circuit in *Baker* v. *City of McKinney* rejected the police-power exception but devised in its place a "public necessity" exception—without briefing on whether history supports such a rule. 84 F.4th at 383–88. The court made "no attempt to define the bounds of this exception" while holding that it applies

when destruction "was objectively necessary * * * in an active emergency to prevent imminent harm to persons," including some hostage situations. *Id.* at 388. Judges Elrod and Oldham expressed doubt about "whether such a [necessity] privilege exists" and found the panel's reasoning "unsatisfactory—perhaps unsurprisingly because the panel reached its ostensibly originalist conclusion without the benefit of briefing on the historical evidence." *Baker* v. *City of McKinney*, 93 F.4th 251, 251 (CA5 2024) (Elrod, J., joined by Oldham, J., dissenting from denial of reh'g en banc).

The Ninth Circuit adopted the Fifth Circuit's "public necessity" exception in *Pena* v. *City of Los Angeles*, 158 F.4th at 1040. Judge Friedland concurred in the judgment only, criticizing the majority's adoption of the "public necessity" exception and believing the Sixth Circuit's "search and arrest" exception "would be a better-supported and more straightforward ground on which to dismiss the [takings] claim." *Id.* at 1048–52. The Eleventh Circuit, meanwhile, has rejected a necessity-based exception. See *Alford* v. *Walton County*, 159 F.4th 844 (CA11 2025) (addressing COVID-related ordinance and its enforcement, explaining "the normal requirements of the Takings Clause remain in force, even during emergencies").[5]

The Sixth Circuit, for its part, rejected the police-power exception but then fashioned a "search and arrest" exception of its own making in *Slaybaugh* v.

[5] While the Federal Circuit has adopted the police-power exception, it also endorsed a version of the "public necessity" exception in *TrinCo Inv. Co.* v. *United States*, 722 F.3d 1375, 1380 (CA Fed. 2013).

Rutherford County, 114 F.4th at 597–604. This exception requires plaintiffs to show that officers were not lawfully executing a search or arrest. *Id.* at 604.

The result is open disagreement among the circuits over the governing framework under the Takings Clause. The circuits have developed competing, atextual exceptions rather than applying this Court's settled takings principles.

B. The decision below is wrong, as are the approaches taken by other circuits.

The Seventh Circuit's police-power exception is flawed for the reasons explained above: it departs from the Takings Clause's text and history and this Court's precedent, as the Fourth, Fifth, and Sixth Circuits have observed. See *supra* Part I.A.–B.

The alternative exceptions adopted by the Fifth, Sixth, and Ninth Circuits fare no better.

1. Like the police-power exception, these approaches rewrite the Takings Clause:

Public necessity: "nor shall private property be taken for public use except in an active emergency to prevent imminent harm to persons, without just compensation."

Search and arrest: "nor shall private property be taken for public use except where police damage property while carrying out a lawful search or arrest, without just compensation."

No such exceptions appear in the Constitution.

2. Nor do these exceptions rest on a sound historical foundation.

a. Start with "public necessity." Historically, public necessity was an individual tort defense, not a limit on the government's obligation to pay for a taking. This Court observed long ago that while "private property may lawfully be taken possession of or destroyed" in emergencies, "[u]nquestionably * * * the government is bound to make full compensation to the owner." *Mitchell* v. *Harmony*, 54 U.S. (13 How.) 115, 134 (1852); see also *United States* v. *Russell*, 80 U.S. (13 Wall.) 623, 629 (1871) ("[P]rivate rights, under such extreme and imperious circumstances, must give way for the time to the public good, but the government must make full restitution for the sacrifice."); Br. of Prof. James W. Ely, Jr., *et al.*, *Baker* v. *City of McKinney*, No. 23-1363 (filed Aug. 1, 2024) (explaining how the public necessity exception lacks a historical basis).

The Fifth Circuit's improvised holding to the contrary was predictably improvident. As Judges Elrod and Oldham observed, "the panel engaged in the historical analysis of an issue of first impression without the benefit of the parties' views of what historical evidence might be relevant and how to interpret it." *Baker*, 93 F.4th at 251 n.1 (Elrod, J., joined by Oldham, J., dissenting from denial of reh'g en banc). Perhaps as a result, "none of the panel's citations establishes that a municipal government is absolved from the United States Constitution's just compensation requirement merely because the government destroyed property out of law enforcement necessity." *Id.* at 253. The Sixth Circuit has similarly observed

"historical evidence suggest[ing] that, in certain circumstances, persons could be compensated for the taking of property out of necessity." *Slaybaugh*, 114 F.4th at 603. Judge Friedland, too, has criticized the "public necessity" exception as lacking historical support. *Pena*, 158 F.4th at 1050–51 (concurring in judgment).

b. History provides no more support for the "search and arrest" exception. The Sixth Circuit panel in *Slaybaugh* tried to base this exception on "longstanding background restrictions on property rights," which include "traditional common law privileges to access private property." *Cedar Point*, 594 U.S. at 160. But the panel conflated a limited right of entry with the full bundle of property rights, ignoring the settled distinction between a right of access and the owner's other rights to possess, use, and dispose of property.

A brief look at *Cedar Point* shows the error. Both the Court's holding and its dicta concern only the right to exclude, not the entire bundle of rights. 594 U.S. 139. The case addressed a regulation granting union organizers a "right to take access" to private property, raising the question whether such access "constitutes a *per se* physical taking." *Id.* at 143–44. The Court held that it did because it appropriated "the owners' right to exclude." *Id.* at 149. While the Court noted that this right is not absolute—for example, it does not permit exclusion of officers conducting a lawful search—that observation speaks only to access, not to other property rights. *Id.* at 161.

Nothing in *Cedar Point* suggests that a limited privilege to enter extinguishes all other property

rights. Yet the "search and arrest" exception does just that. It stands on this reasoning: because homeowners lack a right to exclude officers executing a lawful search or arrest, they are not entitled to compensation for any resulting destruction. See *Slaybaugh*, 114 F.4th at 598–604. That conclusion does not follow. As this Court explained in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, temporary limits on the right to exclude may not be a taking, but physical occupation of property that "effectively destroys" the owner's rights "to possess, use and dispose of" the property is a taking. 458 U.S. at 435–36 & n.12.

To be sure, the common law recognized a narrow privilege to *enter* property and, when necessary, to break doors to gain access. But that privilege was tightly confined: it applied only when force was required, after officers knocked and were refused entry, or in hot pursuit. See Restatement (Second) of Torts § 213(1) (A.L.I. 1965); *Steagald* v. *United States*, 451 U.S. 204, 218 (1981). None of those conditions is present here—Hadley's front door was ajar, no one refused entry, and there was no hot pursuit.

Nor were the officers' actions directed at gaining entry. Their actions were designed to smoke someone out, not to break in. Any search-and-arrest privilege covering forced entry does not encompass the widespread destructive acts here—shattering windows, flooding the home with gas, and tearing apart the interior. The Sixth Circuit's "search and arrest" exception thus sweeps far beyond any historical analogue.

3. Finally, the "public necessity" and "search and arrest" exceptions conflict with this Court's takings precedent—in at least three ways.

First, both exceptions rest on the same mistaken premise: that a good enough reason relieves the government of its duty to pay for property it destroys. Not so. This Court has repeatedly instructed that the importance of the government's objective does not eliminate the obligation to pay for a taking. See, *e.g.*, *Ark. Game & Fish*, 568 U.S. at 36–37; *Pa. Coal*, 260 U.S. at 416; *Mitchell*, 54 U.S. (13 How.) at 134; *Russell*, 80 U.S. (13 Wall.) at 629. A taking without a valid reason is unlawful, but a valid reason does not make compensation optional. The Takings Clause "does not bar government from interfering with property rights, but rather requires compensation 'in the event of *otherwise proper interference* amounting to a taking.'" *Lingle*, 544 U.S. at 543 (quoting *First Eng. Evangelical Lutheran Church of Glendale* v. *Los Angeles County*, 482 U.S. 304, 315 (1987)) (emphasis added by the Court in *Lingle*).

Second, the exceptions improperly shift a burden from the government to plaintiffs. This Court in *Lucas* v. *South Carolina Coastal Council* confirmed that the government has a burden to "identify background principles of nuisance and property law" that render its conduct non-compensable. 505 U.S. 1003, 1031–32 (1992). And yet, as Judge Friedland observed, the "public necessity" exception puts the burden on plaintiffs to show historical examples of compensation in similar circumstances. *Pena*, 158 F.4th at 1051 (Friedland, J., concurring in judgment). Likewise, the "search and arrest" exception requires plaintiffs to

show a right to exclude officers executing a lawful search or arrest. *Slaybaugh*, 114 F.4th at 604 & n.3.

Third, the "search and arrest" exception misuses the Fourth Amendment to limit the scope of the Fifth. Under the exception, Fourth Amendment reasonableness defines the contours of a common-law privilege. See *Slaybaugh*, 114 F.4th at 599; *id.* at 604 ("[P]roperty owners are not entitled to compensation under the Takings Clause for * * * damage [by police officers conducting a search or arrest] as long as the officers' conduct is reasonable"). But this Court has made clear that the common law informs the Fourth Amendment—not the other way around—and that modern Fourth Amendment doctrine does not define common-law property rights. See, *e.g.*, *Torres* v. *Madrid*, 592 U.S. 306, 311–17 (2021); *Carpenter* v. *United States*, 585 U.S. 296, 304 (2018). The "search and arrest" exception flips that relationship, converting the modern conception of reasonableness into a categorical privilege that limits property rights.

That error leads directly to another. This Court has long held that lawful government action may require compensation. See *Lingle*, 544 U.S. at 543. Yet the "search and arrest" exception treats lawfulness as dispositive: if the search or arrest is lawful, there is no taking. *Slaybaugh*, 114 F.4th at 599, 604. At the same time, the exception denies compensation under the Fifth Amendment even when officers act unlawfully and thus no privilege applies. See *id.* at 601. That position is internally inconsistent. If the existence of a privilege forecloses a taking, then its absence should permit one. But the exception lets the government off the hook either way.

C. The issue is important.

This issue is important for the same reasons as QP1.

D. This is an excellent vehicle.

1. Answering the question presented determines whether reversal, or at least vacatur, is appropriate. If the Court agrees that the Seventh Circuit's reliance on the police-power exception (a blanket exclusionary rule) was improper, vacatur is appropriate. If the Court agrees that Hadley has alleged a *per se* taking and the government has not shown a historically grounded excuse for nonpayment, then reversal is appropriate, allowing Hadley's takings claims to proceed.

2. At this motion-to-dismiss stage, the material facts are straightforward and undisputed. The complaint's allegations present a paradigmatic physical taking: officers deliberately destroyed an innocent homeowner's property for a quintessentially public use—catching a criminal. No complicating factual disputes obscure the legal question presented.

3. The circuits' disagreement on this issue leads to inconsistent outcomes for similarly situated property owners. Hadley's case is a prime example. Her claims were barred under the police-power rule. But had her case arisen in the First, Second, Third, Fourth, Fifth, Ninth, or Eleventh Circuits, it likely would have survived the pleadings stage. As explained above, even the "public necessity" exception used by the Fifth and Ninth Circuits would not apply here. See *supra* Part I.D.2. And the courts below did

not fully consider how Hadley's claims should be analyzed without the police-power exception. Pet.App.16a, 24a.

4. Only this Court can resolve the doctrinal confusion. The circuits have entrenched conflicting rules, openly disagreeing with one another, and the Seventh Circuit has reaffirmed a rule others reject as inconsistent with this Court's precedent. Without intervention, lower courts will continue applying divergent, atextual rules—leaving property owners' constitutional rights dependent on geography.

III. This case presents two basic paths to resolve circuit disagreement.

1. The narrower option is to grant and answer QP1 alone. QP1 presents a clean, discrete question over which the circuits are cleanly split: whether the Takings Clause has a police-power exception. Resolving it would be a modest first step toward addressing the "serious," "important and complex" questions surrounding the Takings Clause and destructive law-enforcement activity. *Baker*, 145 S. Ct. at 12–13 (Sotomayor, J., joined by Gorsuch, J., respecting denial of certiorari).

The answer is also straightforward: the police-power exception has no basis in the Constitution's text, history, or tradition, as several circuits have recognized. This Court could so hold, vacate the Seventh Circuit's judgment, and remand for reconsideration of Hadley's claims free of the police-power exception.

That would resolve one split. But it would offer limited guidance on how courts should analyze such claims going forward.

2. Granting and answering QP2 is a way to provide more guidance. Even courts that reject the police-power exception have adopted divergent approaches, crafting new exceptions that deny compensation to innocent owners. No circuit has reconciled its approach with this Court's long-standing takings principles.

By granting QP2, the Court could clarify that "[n]othing in constitutional text, history, or precedent supports exempting [destructive law-enforcement activity] from ordinary takings rules" and apply those rules here. *Sheetz*, 601 U.S. at 276. The relevant question is not whether the government acted under its police power, faced an emergency, or complied with the Fourth Amendment. It is whether the government took private property for public use without paying for it. Courts should analyze these claims as they would any other takings claims.

A court should first determine whether the plaintiff has plausibly alleged the elements of a *per se* physical taking: that the government (1) caused the property damage (2) intentionally or foreseeably (3) for public use (4) without just compensation. See, *e.g.*, *Armstrong*, 364 U.S. at 48–49 (causation); *Ark. Game & Fish*, 568 U.S. at 39 (intentionality or foreseeability); *Lingle*, 544 U.S. at 543 (public use); *Knick* v. *Township of Scott*, 588 U.S. 180, 189 (2019) (compensation).

If those elements are satisfied, the government must pay unless it carries its burden to show a historically grounded excuse. See *Lucas*, 505 U.S. at 1031–32; accord *N.Y. State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 24 (2022) (explaining that the government bears the burden to demonstrate historical exceptions to the plain text of the Bill of Rights).

Here, Hadley alleged a *per se* physical taking. Officers themselves damaged her property intentionally for the public use of apprehending a criminal, and she remains uncompensated.

The government has not established any historically grounded excuse for nonpayment. The only reason it gave below—the police-power exception—lacks historical support.

So the *per se* rule applies: "The government must pay for what it [took]." *Cedar Point*, 594 U.S. at 148.

CONCLUSION

The petition should be granted. At a minimum, the Court should hold that the Takings Clause does not have an unwritten police-power exception, and remand for reconsideration without that exception. But the better course is to provide more guidance—confirming that a takings claim arising from law-enforcement destruction is governed by the same rules as any other takings claim, and applying those rules, which allow Hadley's claims to proceed.

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