No. 25-1158

In the Supreme Court of the United States

AMY HADLEY,
Petitioner,

v.

CITY OF SOUTH BEND, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

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.

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INTEREST OF AMICUS CURIAE[1]

Pacific Legal Foundation (PLF) is a nonprofit, public-interest law firm dedicated to defending the foundations of a free society. PLF represents clients in state and federal courts to give voice to Americans who believe in limited government, private property rights, and individual freedom.

PLF has represented petitioners in some of the most consequential property-rights cases in recent times. *See, e.g.*, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023); *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019). PLF has also filed countless amicus briefs on behalf of property owners in this Court and lower courts.

Given PLF's expertise, this brief should assist the Court in resolving the question presented.

SUMMARY OF ARGUMENT

Amicus agrees with Petitioner. There is no police-power exception to the Takings Clause, and the Seventh Circuit was wrong to hold that there can be no compensable taking of private property when police intentionally destroy a person's home.

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[1] Pursuant to Rule 37.2, counsel for all parties received notice of intent to file this brief at least 10 days prior to the due date. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

Amy Hadley is a mother of two whose home was bombarded with 30 canisters of tear gas. Her windows were broken, her walls were destroyed, and her family's belongings were ransacked and ruined when police carried out a violent search for a murder suspect who was never there.

Hadley's home became uninhabitable. She and her children slept in her car for days. Still, the government refused to pay any of the $16,000 in damages.

The Seventh Circuit incorrectly determined Hadley has no constitutional remedy because the government was exercising what the panel called the "police power," rather than a taking of private property for public use. Hadley, however, is right: the outcome below cannot be squared with the text of the Takings Clause or this Court's precedents.

Amicus writes separately to ask a more precise question and to explain how the Seventh Circuit has misapplied this Court's holding in *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021), which Amicus litigated.

The more precise question is whether the public-necessity exception recognized in *Bowditch v. City of Boston*, 101 U.S. 16 (1879) (destruction of building to stop fire), *United States v. Pacific Railroad Co.*, 120 U.S. 227 (1887) (wartime destruction of railroad bridges to prevent a national enemy's advance), and *United States v. Caltex, Inc.*, 344 U.S. 149 (1952) (destruction of oil terminal to prevent impending seizure by the national enemy), extends to the circumstance of this case. This Court should grant certiorari and hold that these cases do not apply.

The public necessity cases are readily distinguishable from Hadley's. *See Baker v. City of McKinney*,

145 S. Ct. 11, 12–13 (2024) (statement of Sotomayor, J. & Gorsuch, J., respecting denial of certiorari) (distinquishing same). *Bowditch*, *Pacific Railroad*, and *Caltex* deal with property in the path of an uncontrollable fire or conquering army, making destruction of the property impending, inevitable, and unstoppable. The destruction of Hadley's home was intentional. It was a deliberate choice by law enforcement to expedite the search for a suspect. It was, in constitutional terms, a taking of property for public use.

In support of this argument, Amicus shows first why such severe damage to a person's home is a per se physical taking that requires compensation. Fairness and consistency demand this result. After all, if the government installed a half-inch cable line on Hadley's roof, she would be entitled to compensation. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 438 (1982). If it required temporary access to her yard for union organizing, again, compensation would be required. *Cedar Point*, 594 U.S. at 149. The government in this case went far beyond these relatively minor intrusions. Therefore, the same simple rule applies: The government must pay for what it takes. *Id.* at 148.

Second, the so-called "public necessity" exception to the Takings Clause does not apply. That exception is rigidly confined to the most extreme circumstances: wartime exigencies and uncontainable conflagrations, situations where the destruction of private property is inevitable and unavoidable. But Hadley's home was not in the path of some conquering army or uncontrollable fire. Hadley's home was singled out by police executing a search warrant based on faulty information. The loss of her home was neither inevitable nor una-

voidable. The police chose to destroy it. That is precisely the kind of ultra-concentrated public burden the Takings Clause was adopted to address.

Third, "background restrictions on property rights" are no help to the government. *See Cedar Point Nursery*, 594 U.S. at 160. What the dictum in *Cedar Point* acknowledges is simply the government's privilege to enter property to arrest someone or enforce the law. *Cedar Point* is about access to private land. And even while acknowledging the government's right of access, this Court held property owners are entitled to compensation when lawmakers compel them to grant access for union organizing. Nothing in *Cedar Point* suggests the government could get around paying compensation to Cedar Point had it only gained access to the nursery's land by setting its fencing and strawberries ablaze. This case is about making one home uninhabitable. And filling a home with tear gas, breaking its windows, punching through its walls, and leaving an innocent family sleeping in their car is not a "background restriction on property rights." It is a compensable taking of property.

ARGUMENT

I. Destruction of a person's home is a per se taking

When private property is taken by compulsion into public service, the plain text of the Fifth Amendment requires just compensation. U.S. Const. amend. V, cl. 5 ("nor shall private property be taken for public use, without just compensation"). The textbook trigger for compensation is a straight condemnation where the government initiates a lawsuit seeking transfer of ownership by court order. The other path is inverse

condemnation, where the property owner files an action alleging that government action has caused a taking without payment.

If government "goes too far" the compulsory loss of property rights "will be recognized as a taking" and compensation will be required. *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) ("The general rule at least is that, while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking.").

This Court has defined "too far" with relatively modest intrusions. Installation of a half-inch cable line on an apartment building goes too far. *Loretto*, 458 U.S. at 438. Denial of all economically viable use of property goes too far. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1030 (1992). And requiring temporary access to farmland for union organizing goes too far. *Cedar Point*, 594 U.S. at 149.

Destruction of Hadley's home went further still. It has long been held that "where real estate is actually invaded by superinduced additions of water, earth, sand, or other material . . . so as to effectively destroy or impair its usefulness, it is a taking." *Pumpelly v. Green Bay Co.*, 80 U.S. 166, 181 (1871). Rather than water destroying Pumpelly's farm, the government saturated Hadley's home with tear gas, leaving it uninhabitable. Under *Pumpelly*'s logic, compensation is required. *Id.* at 179 ("there are numerous authorities to sustain the doctrine that a serious interruption to the common and necessary use of property may be . . . equivalent to the taking of it, and that under the constitutional provisions it is not necessary that the land should be absolutely taken").

No one could seriously dispute today, had the government intentionally flooded Hadley's house, it would constitute a taking. *See United States v. Cress*, 243 U.S. 316, 328 (1917). It makes no constitutional difference that it was the police who filled her home with tear gas instead of water or sand. What happened in the real world is the same: the government rendered an innocent person's home uninhabitable and left her with the bill. *See, e.g.*, *Kaiser Aetna v. United States*, 444 U.S. 164 (1979) (requiring compensation where the federal government exercised its commerce power over navigation to require public access to a private marina); *Loretto*, 458 U.S. at 436 (requiring compensation where a city used its police power to require the owners of apartment buildings to allow the installation of cable television equipment).

The fact that the government had a compelling reason to search Hadley's property does not diminish its constitutional obligation to pay for what it intentionally destroyed. A good reason for taking someone's property is not an exemption from the Takings Clause; it is a requirement. All takings of private property must be objectively necessary. The Seventh Circuit's rule—that the Takings Clause never applies when the government acts under the police power rather than eminent domain—inverts this constitutional structure and effectively writes the Clause out of the Constitution for an enormous category of government conduct.

The authority cited below says as much. The Seventh Circuit panel relied on *Arkansas Game & Fish Commission v. United States*, 568 U.S. 23 (2012), for the proposition that there is "no magic formula" and "few invariable rules" in deciding "whether a given government interference with property is a taking."

Hadley v. City of South Bend, 154 F.4th 549, 554 (7th Cir. 2025) (quoting *Arkansas Game & Fish Comm'n*, 568 U.S. at 31). But that language is impossible to reconcile with the panel's categorical rule that the Takings Clause never applies when property is damaged under the police power. If there are "few invariable rules," a blanket police-power exemption is not one of them. There is no precedent for such a broad exception to the Takings Clause, other than the wartime and fire cases discussed in the next section. And, for the reasons explained below, those cases do not apply to routine policing.

The panel also hinted that Hadley's remedy lay under the Fourth Amendment, not the Fifth. *See Hadley*, 154 F.4th at 556. She could have alleged, the Seventh Circuit suggested, that officers executed the warrant unreasonably. *Ibid.* (citing *Cybernet, LLC v. David*, 954 F.3d 162, 168-69 (4th Cir. 2020)). But since the Founding, the Fourth Amendment has regulated *how* the government searches property. The Fifth Amendment regulates *what happens after* the government takes or destroys property. As the panel recognized, the Fourth Amendment is "the constitutional bulwark against law enforcement invading the sanctity of the home," while the Fifth "involves the government's taking of property and allows for just compensation." *Hadley*, 154 F.4th at 557. Those are separate constitutional questions with separate answers, and getting the first one right does not answer the second.

The government rendered an innocent woman's home uninhabitable in service of a public end. The Constitution says plainly what happens next. Hadley is owed just compensation, and no amount of relabeling the police power as something other than a taking can change that.

II. "Public necessity" does not apply to routine law enforcement

The only viable exception to the plain text of the Takings Clause is reserved for the most extreme circumstances of conflagration or wartime exigency. This Court recognized the doctrine of inevitable destruction in *Bowditch v. City of Boston*, when it refused to compensate a building owner for property damage after firemen exploded his building to stop a fire from spreading. 101 U.S. 16 (1879). Later cases involving claims for Fifth Amendment takings relied on *Bowditch* to deny compensation on the grounds that the government enjoys a privilege of necessity. *See* Derek T. Muller, *"As Much Upon Tradition as Upon Principle": A Critique of the Privilege of Necessity Destruction Under the Fifth Amendment*, 82 Notre Dame L. Rev. 481, 495 (2006) (collecting cases). The early cases involved building demolitions in urban areas to create firebreaks. *See* Brian Angelo Lee, *Emergency Takings*, 114 Mich. L. Rev. 391, 396–97 (2015). While building demolition "to create firebreaks was a common tactic for fighting the vast urban fires of the nineteenth century," modern firefighting strategies have reduced the need for such drastic actions. *Id.* at 397.

The fire cases harmonize with those decided in the wake of war. After the Civil War, this Court held that the federal government did not have to compensate railroad companies for bridges demolished by the Union Army to halt advancing Confederate forces. *United States v. Pac. R.R. Co.*, 120 U.S. 227 (1887). And in *United States v. Caltex, Inc.*, 344 U.S. 149 (1952), this Court denied compensation under the Fifth Amendment to oil companies whose terminal facilities in Manila were demolished by the U.S. Army

to prevent them from falling into the hands of the invading Japanese. The Court noted that it "has long recognized that in wartime many losses must be attributed solely to the fortunes of war, and not to the sovereign." *Id.* at 155–56. *see also* Steven J. Eagle, *Regulatory Takings* § 6-5 (5th ed. 2012) (noting that Japanese troops were expected to overrun the refinery within hours, so any fair market value at the time of appropriation was merely "conjectural").

Justice Douglas, joined by Justice Black, dissented in *Caltex*, pointing out that the property destroyed was not a public nuisance, but instead the government appropriated it to help in the war defense. *Id.* at 156 (Douglas, J., dissenting). The dissent proposed "the guiding principle should be this: Whenever the government determines that one person's property—whatever it may be—is essential to the war effort and appropriates it for the common good, the public purse rather than the individual, should bear the loss." *Ibid.* While the dissent did not carry the day in *Caltex*, it highlights the degree to which the Court's decision was meant to be an extreme exception to the general rule that the government must pay for what it takes.

It is one thing to say that under such extreme circumstances as uncontained fires and advancing enemies, the government can take a person's property without compensation. But if the Fifth Amendment does not apply in the face of fire or war, it is because the property was doomed anyway and the government destroys the property only to save much more private property elsewhere. This rule fits nicely with the characterization of the Takings Clause in *Armstrong v. United States*, 364 U.S. 40, 49 (1960), where the Supreme Court said that the Clause is "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." In these extreme circumstances, the government is not forcing an individual to bear public burdens; the emergency has already condemned the property, and the government is simply managing the inevitable. *See Baker*, 145 S. Ct. at 12–13 (statement of Sotomayor, J. & Gorsuch, J., respecting denial of certiorari) (similar).

But Hadley's home was not subject to inevitable destruction. No fire was raging. No enemy army was bearing down on Indiana. A murder suspect was thought to be inside, based on IP address data that turned out to be wrong. The police made a calculated decision to break windows, fire 30 canisters of tear gas, and rage through the house. Nothing about that is inevitable. This case is a far cry from the wartime commander who destroys a bridge in a desperate bid to defend the United States against invading enemy forces.

Hadley's case is the exact scenario about which *Armstrong* warned: the government forcing one person to bear a public burden that should be spread across the community. 364 U.S. at 49. The government chose to inflict $16,000 in damage on her home and then required her to absorb the cost. Extending the necessity exception from wartime destruction to routine search warrants would gut the Takings Clause for the people who need it most: innocent bystanders caught in the crossfire of law enforcement operations they had nothing to do with. This kind of taking requires compensation, even under this Court's longstanding decisions dealing with the most extreme circumstances of conflagration and war.

III. *Cedar Point* dicta do not authorize the destruction of a person's home without compensation

The panel below believed—incorrectly—that the Takings Clause does not apply where government enjoys "'traditional common law privileges' like the 'privilege to enter property to effect an arrest or enforce the criminal law under certain circumstances.'" *Hadley*, 154 F.4th at 555 (quoting *Cedar Point*, 594 U.S. at 160-61). Even assuming that common law can ever override the plain text of the Fifth Amendment, the panel here confused the government's limited right of entry mentioned in *Cedar Point* with the owner's otherwise exclusive rights to possess, use, and dispose of property.

Amicus litigated *Cedar Point* from start to finish. In the end, this Court held that California effected a per se physical taking when it required landowners to grant access to union organizers three hours a day, 120 days of the year. 594 U.S. at 149. The majority acknowledged in dicta that "many government-authorized physical invasions will not amount to takings because they are consistent with longstanding background restrictions on property rights" and gave, as an example, the common-law "privilege [which] allowed individuals to enter property in the event of public or private necessity." *Id.* at 160-61.

This is mere truism. No one disputes that police have the right to pursue suspects onto private land. The police in this case surely could have entered Hadley's home to execute their search warrant. The door was open after all. Access is not the issue. Read correctly, *Cedar Point* is about government's access to property. The common-law privileges discussed in

dicta tell us that sometimes government access to land does not implicate the Takings Clause because the government has always enjoyed that type of access. This tells us nothing about the government's wholesale destruction of a person's home.

The panel below leaned on *Cedar Point*'s statement that "'government searches that are consistent with the Fourth Amendment and state law cannot be said to take any property right from landowners.'" *Hadley*, 154 F.4th at 555 (quoting *Cedar Point*, 594 U.S. at 161). But entering a home and looking around is a search. The facts of this case do not amount to a "search." They amount to destruction. The common-law privilege to enter property and enforce the criminal law is a privilege of entry. Yet, the Seventh Circuit treated it as a privilege of destruction.

The search-and-arrest privilege authorizes officers to enter property and, if necessary, to break down a door. It does not authorize them to fire 30 canisters of tear gas through walls, windows, and the roof of an innocent person's house, leaving the home so toxic and uninhabitable that she and her family must sleep in their car. The Sixth Circuit in *Slaybaugh v. Rutherford County*, 114 F.4th 593 (6th Cir. 2024), adopted this type of search-and-arrest privilege, too, but there is a constitutional difference between entering a home and destroying it. The search-and-arrest privilege recognized now by the Sixth and Seventh Circuits conflates two distinct concepts—the power to search a home on one hand and the obligation to pay for destroying it on the other.

This Court "has never held that anything that would have been privileged by public necessity at com-

mon law is non-compensable under the Fifth Amendment." *Baker v. City of McKinney*, 93 F.4th 251, 255 (5th Cir. 2024) (Elrod, J. & Oldham, J., dissenting from denial of rehearing en banc). The common law must conform to the Takings Clause, not swallow it. And all this Court's decisions since ratification of the Takings Clause have involved property destroyed when destruction was already inevitable, and the government merely accelerated the process to save other people's property. *See id.* at 257. Hadley's case is nothing like that. Her home was intact before the police arrived. Nothing threatened her home other than the way the police chose to carry out their search. Because they chose to destroy the home, the Constitution says they have to pay.

It follows that nothing in *Cedar Point* supports the Seventh Circuit's leap in this case. *Cedar Point* does not authorize the uncompensated destruction of an innocent person's home. *Cedar Point* required the government to pay for granting union organizers temporary access to farmland. It does not follow that no compensation would have been required in *Cedar Point* had the government accessed the farmland by setting its strawberry fields ablaze, driving out the owners, and organizing workers atop the ashes. *Cedar Point* cannot sensibly be read to excuse the government from paying when it fills a home with tear gas, breaks its windows, and punches through its walls.

* * *

It is a cornerstone of American constitutionalism that government cannot take private property for public use without compensating the owner. Naturally,

governments prefer not to pay. But fiscal reality cannot overcome constitutional text. *See* David A. Thomas, *Finding More Pieces for the Takings Puzzle: How Correcting History Can Clarify Doctrine*, 75 U. Colo. L. Rev. 497, 546 (2004) ("Predictions of doom for governmental entities required to carry greater compensation burdens do not ameliorate the unconstitutionality, illegality, and moral perfidy of wrongful deprivations of private property by irresistible public power.").

CONCLUSION

Certiorari should be granted, the decision below should be reversed, and the Court should hold that there is no general public necessity exception to the Takings Clause.

Respectfully submitted,

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