

No. 25-1158

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

REPLY IN SUPPORT OF CERTIORARI

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INTRODUCTION

Respondents' brief confirms why Hadley's petition should be granted: Respondents no longer defend the rule actually applied below; the circuits disagree on the proper framework; and Respondents themselves offer a shifting set of new tests and exceptions. When neither the lower courts nor the government can settle on how to analyze a takings claim involving law-enforcement destruction, only this Court can supply the answer.

Respondents claim that the split is "illusory." Opp.5. But circuit courts acknowledge it and criticize each other's approaches. See *Slaybaugh v. Rutherford County*, 114 F.4th 593, 597 (CA6 2024); *Baker v. City of McKinney*, 84 F.4th 378, 383-84 (CA5 2023). Members of this Court have flagged the dispute, too. See *Baker v. City of McKinney*, 145 S. Ct. 11, 11-13 (2024) (Sotomayor, J., joined by Gorsuch, J., respecting denial of certiorari). A police-power exception governs in three circuits (CA7, CA10, CA Fed.), a public-necessity exception in two (CA5, CA9), a search-and-arrest exception in one (CA6), and ordinary takings rules in two (CA4, CA11).

Under two of these approaches, Hadley's claim would proceed—or at least would not have been dead on arrival. Without the police-power rule, the courts below could not have dodged Hadley's arguments about how ordinary takings rules apply and could have evaluated the historical defenses Respondents now raise.

Declining to fully consider Hadley’s claims (and never reaching Respondents’ newfound arguments), see Pet.App.16a, the Seventh Circuit clung to the police-power rule that concededly produces “unfair” results, *Johnson v. Manitowoc County*, 635 F.3d 331, 336 (CA7 2011). The rule is a crude analytical tool adopted without any analysis, *id.* at 336, and criticized as ahistorical, atextual, and contrary to precedent, see *Baker*, 84 F.4th at 383-84; *Slaybaugh*, 114 F.4th at 597; *Yawn v. Dorchester County*, 1 F.4th 191, 195 (CA4 2021).

Little wonder, then, that Respondents scarcely try to salvage it—and that abandonment is telling evidence that review is warranted.

Instead of standing by the rule, Respondents offer a grab-bag of alternatives. First, they recast the police-power rule as a resemblance test—asking whether government action is the “functional equivalent” of a “classic taking.” Opp.30. Next, Respondents try to unify the circuits with a singular test of Respondents’ own making: Fourth Amendment reasonableness. Then, they invoke a hodgepodge of historical defenses—nuisance, necessity, door-breaking, and more—that Respondents never raised in their motion briefing and that fit other facts, not Hadley’s. Respondents fall back on an argument that the rules don’t matter because outcomes have aligned—getting it backwards: rules decide cases, including Hadley’s.

The Court should grant the petition and reverse. At least, the Court should hold that the Takings Clause has no police-power exception, vacate, and remand for the lower courts to consider the points

Respondents now advance and Hadley’s arguments for how ordinary takings principles apply.

ARGUMENT

A. The split is real, acknowledged, and outcome-determinative.

1. The circuit split is not an illusion. Two Members of this Court have already said so, observing the open disagreement on this “important” issue that “has divided the courts of appeals.” *Baker*, 145 S. Ct. at 11-13.

Respondents recognize (at Opp.4, 7-8) that the court below relied exclusively on the police-power rule—which is that “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 than the power of eminent domain.” *Johnson*, 635 F.3d at 336; accord *Lech v. Jackson*, 791 F. App’x 711, 715-17 (CA10 2019); *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1153-54 (CA Fed. 2008).

They admit, too, that some circuits embrace the police-power rule while others deploy different tests. See Opp.12-14. Indeed, several have condemned the Seventh Circuit’s rule in *Johnson* as ahistorical and atextual. See *Baker*, 84 F.4th at 383-84; *Slaybaugh*, 114 F.4th at 597; see also *Baker*, 145 S. Ct. at 13 (observing the disagreement).

To deny the split, Respondents make three main moves: they recast the rule, propose another one, and say the rule does not matter at all.

First, they recast the police-power rule as a resemblance test, asking not whether government action rests on “some power other than the power of eminent domain,” *Johnson*, 635 F.3d at 336, but whether it is the “functional equivalent” of a “classic taking.” Opp.30. That’s not how the Seventh Circuit applies the police-power rule. The circuit’s decision in *O’Donnell v. City of Chicago*, 163 F.4th 411 (CA7 2025), confirms this. Quoting the decision below, *O’Donnell* explained that the police power “refers to ‘a state’s general authority to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety,’” and that “the exercise of law enforcement authority” falls within that power. *Id.* at 414. So, the court reasoned, Chicago’s enforcement of the traffic code cannot effect a taking. *Id.* The Seventh Circuit has never asked whether the government action was the “functional equivalent” of eminent domain.¹

No other court applying the police-power rule analyzes claims that way, either—and for good reason: Respondents’ test is no test at all. See *infra* Part C.

Second, Respondents hedge. Anticipating that the police-power rule and the alternatives proposed by the Fifth and Sixth Circuits cannot hold, Respondents offer a new, unifying theory of reasonableness. Opp.5, 12-15. They hypothesize that, since no circuit has awarded compensation for destruction tied to a lawful Fourth Amendment search, Fourth Amendment reasonableness must be the true test for the

¹ While the police-power rule is deeply flawed, the court in *O’Donnell* may have reached the same result by applying ordinary takings principles instead.

Fifth Amendment's Takings Clause when law enforcement is involved. Opp.5, 12-15, 33-34.

But the circuits have not converged on this theory. Respondents' reasonableness test tracks part of the Sixth Circuit's search-and-arrest exception. See *Slaybaugh*, 114 F.4th at 601-02; Pet.26-27. Yet the Sixth Circuit composed that exception only after rejecting the police-power rule that governs in the Seventh—confirming the two are not the same. *Slaybaugh*, 114 F.4th at 597. Nor does Respondents' reasonableness theory match the Fifth and Ninth Circuits' public-necessity exception. Far from equating the public-necessity exception with Fourth Amendment reasonableness, the Fifth Circuit “ma[d]e no attempt to define the bounds of [the] exception” while applying it to destruction “objectively necessary * * * in an active emergency to prevent imminent harm to persons.” *Baker*, 84 F.4th at 388. And the Ninth Circuit followed suit. See *Pena v. City of Los Angeles*, 158 F.4th 1033, 1040 (CA9 2025) (exception applies when destruction is “necessary”).

Third, Respondents fall back on an ends-justify-the-means argument: no circuit has awarded compensation for property damage by law enforcement, so the rules producing those results don't matter. Opp.5, 14. But rules, not raw outcomes, make the law stable and fair—and different rules yield different results, including in Hadley's case.

Courts and judges treat the analytical approach as decisive. That is why the Fourth, Fifth, and Sixth Circuits rejected the police-power rule; why the Eleventh Circuit rejected the public-necessity exception, *Alford*

v. *Walton County*, 159 F.4th 844, 856-60 (CA11 2025); why Judge Friedland faulted the *Pena* majority’s necessity holding, *Pena*, 158 F.4th at 1048-52 (Friedland, J., concurring in judgment); and why Judges Elrod and Oldham dissented from the denial of rehearing en banc in *Baker v. City of McKinney*, 93 F.4th 251, 251-58 (CA5 2024) (Elrod, J., joined by Oldham, J.). The principle reaches beyond these takings issues, too. See, e.g., *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 532 (2005) (rejecting the “substantially advances” takings formula); *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022) (rejecting the “two-step” Second Amendment framework).

2. As rules diverge, so do outcomes—and Hadley’s claim is the proof. Respondents insist she loses everywhere, Opp.14-15, but only by reverse-engineering their reasonableness test from a string of outcomes. Respondents’ reasonableness test would foreclose Hadley’s claim at the threshold. But it is wrong for many of the same reasons the public-necessity and search-and-arrest exceptions fail. See Pet.22-27. After all, if lawfulness defeated takings claims, the government would owe nothing for takings this Court has already recognized. See *Lingle*, 544 U.S. at 543; Pet.26.

Nor would the Fifth and Ninth Circuits’ public-necessity exception foreclose Hadley’s claim. That exception requires destruction “objectively necessary” to prevent “imminent harm” in an “active emergency.” *Baker*, 84 F.4th at 388; accord *Pena*, 158 F.4th at 1040. Those conditions are absent here: the police thought the fugitive was holed up posting on Facebook, not threatening anyone, and he was not in

Hadley’s home—making the destruction neither necessary nor effective. Pet.App.36a-42a.

In the Fourth and Eleventh Circuits, ordinary takings rules would apply—the approach Hadley advances. See Pet.28-31.

Only in the Seventh Circuit (and other police-power jurisdictions) is her claim doomed before any real takings inquiry begins.

B. Respondents no longer defend the police-power rule applied below, which is wrong and prevented meaningful review of Hadley’s claim.

A sure sign that review is warranted is the gap between Respondents’ arguments below and their arguments now. Their motion-to-dismiss briefing was as conclusory as *Johnson* itself. See ECF 10 at 4 (County Br.) (“As in *Johnson*, the actions in this case were taken under the state’s police power. As such, Plaintiff cannot sustain her Fifth Amendment claim[.]”); ECF 18 at 4 (City Br.) (“The *Johnson* holding applies with equal force here.”); cf. *Johnson*, 635 F.3d at 336 (adopting the exception without analysis).

Now Respondents abandon *Johnson*’s rule, replacing it with new tests and layering on a roster of historical defenses—none raised below, and none accompanied by any explanation of how it would bar Hadley’s claim. That silence exposes the rule as indiscriminate: once the government invokes any power other than eminent domain, compensation is off the table; the case-specific inquiry this Court demands never happens. See *Ark. Game & Fish Comm’n v. United*

States, 568 U.S. 23, 37 (2012) (instructing courts to assess takings claims based on the “particular circumstances of each case,” not “blanket exclusionary rules”).

Under *Johnson*, Hadley’s claim was a “non-starter.” 635 F.3d at 336. The court below had no need to ask whether a narrower, historically grounded excuse for nonpayment applied. And the court expressly declined to consider how the Takings Clause would apply without the police-power exception, even while observing that the court may need to “grapple with” *Johnson*’s “broader application” another day. Pet.App.8a, 13a, 16a.

In this way, the Seventh Circuit—which denied rehearing en banc—cut short the conversation other circuits have been developing since Members of this Court invited them. See *Baker*, 145 S. Ct. at 13 (Sotomayor, J., joined by Gorsuch, J., opining that the issues “would benefit from further percolation”). The district court couldn’t weigh in, either, because Respondents did not raise their newfound arguments and *Johnson* eclipsed them. Pet.App.23a-24a.

In a circuit without the police-power exception, Hadley’s claim would not be a non-starter; the courts could evaluate how “ordinary takings rules” apply and scrutinize any historically grounded excuses the government chose to raise. *Sheetz v. County of El Dorado*, 601 U.S. 267, 276 (2024). So not only is the police-power exception wrong, see Pet.12-16, but it stymies robust review.

C. Respondents’ substitute tests are wrong, and the historical exceptions they raise do not apply.

Respondents’ substitutes for the police-power rule are also wrong.

1. Start with Respondents’ resemblance test, which is really no test at all. Respondents posit that an act is a taking only if it is the “functional equivalent” of a “classic taking,” “stray[ing] into the realm of eminent domain.” Opp.30. But Respondents never explain what makes an action sufficiently resemble a “classic taking.” Opp.28-30. They simply sort this Court’s takings holdings into the eminent-domain column and non-takings into the police-power column. *Id.*

Unsurprisingly, then, Respondents never say why destroying Hadley’s home is not the “functional equivalent” of eminent domain—except to note that police inflicted the damage. Respondents never explain, for example, why destroying Hadley’s house to reach a fugitive cannot be a physical, *per se* taking while demanding mere access to property for another purpose can be. See Opp.12 n.7 (characterizing *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), as involving a classic taking because the regulation there worked like an easement).

If the government must pay when it floods a farm to aid navigation (*Pumpelly v. Green Bay & Miss. Canal Co.*, 80 U.S. (13 Wall.) 166 (1872)), why not when it floods a home with tear gas to flush out a suspect?

If the government must pay when it carts off a raisin grower's crop (*Horne v. Dep't of Agric.*, 576 U.S. 350 (2015)), why not when it forces a family to cart off ruined cameras, family photos, and beds?

If commandeering a car to chase a suspect is the functional equivalent of eminent domain—as Respondents say, Opp.11 n.6 (citing *Blackman v. City of Cincinnati*, 140 Ohio St. 25, 25-26 (1942))—why not commandeering a house, blasting its windows, and smoking its insides to clear a path to a fugitive?

And if bolting a cable box to an apartment building is a taking (*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)), why not punching holes in walls and ripping a home apart from attic to basement?

Respondents themselves describe the quintessential taking in *Pumpelly* as “a permanent physical invasion of the property” and a “practical ouster of [the owner's] possession.” Opp.23. Rightly so. This Court consistently treats such physical invasions as *per se* takings. See, e.g., *United States v. Cress*, 243 U.S. 316 (1917); *United States v. Causby*, 328 U.S. 256 (1946); *Loretto*, 458 U.S. 419. And that is precisely what happened here—shattered windows, a gas-filled home, and ruined contents.

2. Respondents' reasonableness test fares no better—for the same reasons that, as we explained in the petition, the Sixth Circuit's search-and-arrest exception wrongly imports Fourth Amendment reasonableness. Pet.22-27. Ultimately, Respondents' reasonableness test would make the Fifth Amendment a “poor

relation” of the Fourth. *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994). Respondents have not addressed our arguments on this point, much less refuted them.

3. Each historical exception Respondents marshal concerns facts absent from Hadley’s case: seizure of evidence (Opp.6-7), contraband (Opp.6-7, 23), nuisance abatement (Opp.22, 31), fire suppression (Opp.22-23), garbage ordinances (Opp.24), “incidental” damage “in aid of replevin” (Opp.15-16), and door-breaking (Opp.16-20). Not one addresses the kind of damage at issue here—damage that was intentional, not inevitable, and that stripped the owner not only of her right to exclude but also her rights to use, possess, and dispose of her property. Pet.24-25, 30-31.

Door-breaking comes closest but still doesn’t fit. As Respondents admit, that privilege arose only where “the door be shut, and upon demand it be refused to be opened.” Opp.18-19. Here the door stood open, no one refused entry, and much of the destruction preceded entry. Pet.App.37a-40a. Even when the privilege to break doors applied, it never licensed destroying the house, too. Pet.25, 27.

Respondents’ reliance on the *Conductor Generalis*’s discussion of officer tort immunity does not aid them. See Opp.17-20. Long ago this Court observed that even when necessity insulated individuals from tort liability, “the government is bound to make full compensation to the owner.” *Mitchell v. Harmony*, 54 U.S. (13 How.) 115, 134 (1852).

Respondents' remaining authorities confirm that history is on Hadley's side. Respondents concede the Takings Clause's main target was "the uncompensated appropriation of private property for use by the government," Opp.21—precisely what happened here. And the destructive takeover of Hadley's home to combat crime echoes the wartime impressments that prompted the Clause more than building a park or road through eminent domain, which are "classic" takings in Respondents' view. Opp.30; Pet.12-13.

Perhaps in other settings the government could establish a historically grounded excuse for nonpayment. Respondents never had to try here because *Johnson* foreclosed Hadley's claim before any such argument could be tested. And the exceptions Respondents now scramble to assemble have no purchase on these facts.

D. This case is an excellent vehicle to resolve circuit conflict.

Respondents' vehicle objections are merits arguments in disguise, and they fail too.

Because the governing rule determines the outcome here, *supra* Part A.2, this case is precisely what the City of Los Angeles, as Respondent in *Pena*, identified as a good vehicle: "a case in which the choice between the different approaches determines the case outcome." Opp.31, *Pena v. City of Los Angeles*, No. 25-1163.

Respondents protest that Hadley's framework—applying ordinary takings principles, Pet.29-31—is "riddled with holes" because compensation turns on

the particular facts of each case. Opp.35. But that is a feature of this Court’s takings jurisprudence, not a flaw in Hadley’s position: takings are to be judged “with reference to the ‘particular circumstances of each case,’” not by resorting to “blanket exclusionary rules.” *Ark. Game & Fish*, 568 U.S. at 37.

While the outcome in any takings case turns on specific facts, the questions this Court should decide remain discrete and legal—whether the Takings Clause contains two blanket exceptions: one for police power and one for intentional destruction of an innocent person’s property during a manhunt.

Once this Court resolves either question (or both), the lower courts can converse about how ordinary takings principles apply to various facts. They might recognize, for example, that no compensation is due to an owner who created the need for the government’s action—as when the owner maintains a nuisance, *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029-32 (1992), or proposes a development that justifies a public improvement, *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013). Hadley created no such need. She does not recover under the rule applied below but would recover under the proper governing framework: “ordinary takings rules,” *Sheetz*, 601 U.S. at 276.

CONCLUSION

The petition for a writ of certiorari should be granted.

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June 22, 2026

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