No. 25-1163

IN THE

Supreme Court of the United States

CARLOS PENA,

Petitioner,

v.

CITY OF LOS ANGELES, CALIFORNIA,

Respondent.

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

BRIEF OF CHIEF THOMAS J. TIDERINGTON AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Chief Thomas J. Tiderington spent forty-four years serving in law enforcement, ultimately retiring as one of the longest-serving police chiefs in U.S. history. He is uniquely experienced and qualified in search-and-seizure practices and offers a real-world perspective on the implications that judge-made policies—like the police-power exception to the Takings Clause—have on officers and the execution of their duties.

Chief Tiderington began his career in 1978 with the Detroit Police Department. When budget cuts forced Detroit to lay off 1500 officers, Chief Tiderington transitioned to the Fort Lauderdale Police Department, where, over the next twenty years, he advanced through the ranks—from patrol officer to Captain of the Special Investigations Division. For more than five years, he was assigned to the U.S. Drug Enforcement Administration as Group Supervisor-in-Charge of the South Florida Regional Drug Task Force and led one of the most successful international money-laundering investigations on record. In 2001, Chief Tiderington returned to Michigan as Plymouth Township's Chief of Police, serving in that position until his retirement in 2022.

In addition to his regular duties, Chief Tiderington spent four years on Michigan's Human Trafficking Commission, appointed by Governor Rick Snyder, and

[1] 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. Timely notice of the intent to file this amicus brief was provided to all parties.

has served on numerous boards related to investigation operations. He is also a life member of the International Association of Chiefs of Police.

Chief Tiderington has spent his career instructing and training fellow members of law enforcement. Over the past thirty-five years, he has developed and presented detailed trainings to tens of thousands of state, local, and federal officers on subjects ranging from undercover operations, search-warrant execution, raid planning, use of force, risk and threat assessment, SWAT operations, and police ethics. Chief Tiderington is recognized as an expert on use-of-force policy, having lectured at the International Association of Chiefs of Police annual conference on raid tactics and routinely advising the U.S. Department of Justice on the propriety of use-of-force decisions by federal officers.

Chief Tiderington has no financial or institutional stake in this case. He files this brief because he is concerned that the decision below rests on an empirical premise about police behavior that does not match the reality he has employed, observed, taught, and supervised for over four decades.

Courts assume that requiring the public to bear the cost of property damage caused by lawful police operations would somehow impede effective law enforcement. But that assumption is incorrect. Officers *expect* that their municipality will compensate innocent citizens for the costs of police business. Chief Tiderington files this brief to share that practical perspective and to demonstrate the need for this Court's review.

SUMMARY OF ARGUMENT[2]

The Petitioner asks this Court to clarify whether the Takings Clause allows the government to destroy an innocent person's property in pursuit of a fugitive without paying for the damage. Several courts of appeals have answered "yes," creating a patchwork of "police-power," "public-necessity," and "search-and-arrest" exceptions to the Clause. Whatever doctrinal label they use, those decisions share a common policy assumption: that requiring the public to bear these costs would deter officers from acting and compromise effective law enforcement.

Chief Tiderington, drawing on more than four decades of real-world experience and training, files this brief to clarify that this policy concern does not reflect reality. Quite the opposite:

First, the question of who pays for collateral property damage simply does not enter tactical decision-making. For officers, the answer is obvious and assumed: municipalities (and, in turn, the public) cover the costs of public business. This issue, therefore, does not appear in police-academy curricula, in-service training, or any model policy. Officers planning a search warrant or a SWAT response weigh officer safety, public safety, suspect apprehension, evidence preservation, and the minimization of collateral harm. They do not pause to ask whose pocket

[2] Chief Tiderington files this amicus brief concurrently with an amicus brief in support of petitioner in *Hadley* v. *City of South Bend*, Case No. 25-1158. Chief Tiderington's argument is substantively identical in each case.

will be lighter when the smoke clears; they just assume it will be added to the municipality's tab. This assumption that the public, rather than individual property owners, will bear those costs is not a deterrent to police work. It is just what makes sense.

Second, requiring municipalities to compensate private citizens for damage to their property is more than a constitutional imperative; it's sound policy. Property damage caused by police operations is a cost of doing police business; ensuring that the public pays for public actions reinforces community trust—the indispensable foundation of effective policing; forcing innocent owners to bear the financial weight of someone else's crime would create new victims of that crime; and forcing officers, members of the very communities they protect, to knowingly victimize their friends and neighbors would place an unfair and unreasonable burden on law enforcement.

This Court should grant certiorari to uphold the Constitution. Doing so will not chill law enforcement. It will align the law with officers' expectations.

ARGUMENT

I. Requiring the government to compensate property owners for damage does not impede law enforcement activities.

Judge-made exceptions to the Takings Clause, like the public-necessity exception applied by the Ninth Circuit here, are animated in part by a concern that requiring municipalities to compensate innocent property owners for damage will chill police operations. Indeed, in the case at bar, the Ninth Circuit justified its exception to the Takings

Clause by reasoning that, otherwise, "law enforcement officers (and other government actors) faced with split-second decisions regarding protecting the public and saving lives would need to be constantly attendant to the potential *financial* consequences of their actions." *Pena* v. *City of Los Angeles*, 158 F.4th 1033, 1047 (9th Cir. 2025) (emphasis in original). But that concern is not grounded in reality. In Chief Tiderington's experience, the question of who will ultimately pay for property damage caused during lawful police operations simply does not enter the conversation. The assumed answer is so obvious that it needs no discussion: liability is on the municipality.

A. Police training is not concerned with who will pay for damage.

Chief Tiderington has taught law-enforcement courses for more than thirty-five years, including curricula on undercover operations and police raids that he developed and has presented to tens of thousands of state, local, and federal officers. He has trained officers at the Michigan State Police's Drug Unit Commanders School, the Florida Department of Law Enforcement, the Nevada High Intensity Drug Trafficking Area program, the Charlotte-Mecklenburg Police Institute, the St. Louis County and Municipal Police Academy, the Columbus Ohio Regional Police Academy, and numerous other academies and conferences. He has also lectured on use-of-force policy and procedure at the International Association of Chiefs of Police annual conference and on raid tactics at venues across the country.

None of these courses—not one—contains any instruction on the question of who pays when collateral

property damage occurs during lawful police action. Indeed, the leading model use-of-force policy in the country—jointly adopted by eleven major law-enforcement organizations, including the International Association of Chiefs of Police and the Fraternal Order of Police—says nothing about who bears the financial cost of force or its collateral consequences. See International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* (rev. July 2020).

That omission is not an oversight. It reflects officers' universal understanding that compensation, if any, is a matter for the municipality, not for the officers planning or executing the operation. Officer focus is instead, as it should be, on officer safety, the safety of bystanders and the suspect, preservation of evidence, the minimization of force, and the use of de-escalation and crisis-negotiation tools where appropriate. See *id.* To be sure, officers are also trained to avoid *unnecessary* destruction, but they are not taught to avoid *necessary* destruction to save the government's wallet.

Chief Tiderington has been personally involved in hundreds—if not thousands—of search warrants over the course of his career. In none of them did the question "who will pay for any damage" influence a tactical decision. The reason is plain: officers in the field are trained to assess and respond to the situation in front of them, not to let financial decisions dictate their actions.

The record before the Court bears this out. As Sergeant Paul Hong, the on-scene Los Angeles Police Department SWAT supervisor involved in the damage-causing mission at issue in this case, testified, he does

not "take in consideration as far as the cost of what the City might pay out." Sgt. Paul Hong Dep. 47:2–4 (filed in Excerpts of Record at Doc. 10.1, May 28, 2024, *Pena* v. *City of Los Angeles*, 158 F.4th 1033 (9th Cir. 2025), C.A. E.R. (Doc. 10.1) at 60:2–4). Nor does he "sit there during the unfolding of a tactical incident . . . and calculate what said property damage could be," though he certainly remains mindful of his duty to avoid *unnecessary* destruction. Hong Dep. 47:8–12; C.A. E.R. (Doc. 10.1) at 60:8–12. That sworn testimony from the officer who planned and executed the subject law-enforcement action reflects Chief Tiderington's experience: tactical decisions in the field are not driven by financial calculations—and certainly not by concerns about what the municipality might be required to pay.

B. Law enforcement expects that the municipality—not the innocent owner—will cover the costs of property damage.

To the extent officers do think about who will pay for the costs of property damage, Chief Tiderington's experience is that officers assume that the relief requested by the Petitioner in this case is already the reality—the municipality pays for the damage caused. Courts' concerns otherwise, that requiring the public to bear these costs would surprise or deter law enforcement, is out of step with this real-world understanding.

Indeed, if anything, the rule advanced by the courts of appeals—pushing costs onto the innocent property owners—is the greater danger to effective law enforcement. Based on Chief Tiderington's observations, it is far more likely that an officer will pause and second-

guess himself if he knows that the innocent homeowner will bear the entire financial weight of the officer's actions. Officers are trained to act decisively in dangerous situations, but they are also members of the very communities they police. As members of the community—and citizens themselves—officers do not expect that their tactical decisions will leave their neighbors to absorb the financial loss. They expect the government to protect and serve, including by covering the costs—even collateral costs—of such protection and service.

The record here again reflects Chief Tiderington's experience. Explaining that he does not worry about the costs to the municipality when executing a mission, Sergeant Hong clarified that he is, however, concerned with "minimizing the impact of anybody involved, especially a third-party property owner," describing this as a "heavy consideration." Hong Dep. 47:4–7; C.A. E.R. (Doc. 10.1) at 60:4–7. When asked what he understood would happen after the raid, Sergeant Hong testified that "the assumption would be the outside entity at some level would assume some ownership of the incident. . . . That would be the general expectation." Hong Dep. 38:24–39:5; C.A. E.R. (Doc. 10.1) at 53:24–54:5).

Sergeant Hong's testimony is not idiosyncratic. It tracks the general expectation that prevails throughout the law-enforcement community: officers are already heavily concerned about the impact on innocent third parties and, with that existing concern in mind, they expect the municipality in charge of the lawful police conduct will pay for the damage caused by the lawful police conduct.

This expectation is not remarkable. What is remarkable is that the municipality here refused to provide compensation and that the court ratified that refusal, defying the expectations of the officers on the ground and imposing added pressure to their already "heavy" concern for innocent property owners.

C. Municipal compensation does not impede law enforcement.

Municipalities across the country routinely compensate innocent property owners for damage caused during police operations as a matter of state and local policy. There are numerous recent examples: Garfield, Pennsylvania, after a 2024 SWAT shootout damaged neighbors' homes; Kalamazoo, Michigan, which paid $150,000 to a tenant and landlord whose home was torn down during a 2022 police standoff; and Jacksonville, Florida, where the city worked with the police department to fix damage left by a SWAT team.[3] In none of these states—Pennsylvania, Michigan, and Florida—have police forces shown any sign of slowing down out of concern that the taxpayers—instead of the innocent property owner—will pay for any damage.

In Minnesota, state law requires that if officers cause property damage while executing a search warrant or

[3] Andy Sheehan, *City council looks to make homeowners impacted by Garfield shootout financially whole*, CBS Pittsburgh, Feb. 19, 2024, https://perma.cc/9NCL-T9JB; Brad Devereaux, *Kalamazoo offers $150K to tenant, landlord af-ter tearing down home during police standoff*, mlive.com, Mar. 7, 2022, https://perma.cc/77PX-7QM9; Vic Micolucci, *Police work-ing with city to fix damage SWAT team left behind*, News4Jax.com, Aug. 18, 2021, https://perma.cc/AES9-W4FR.

apprehending a suspect, the local government unit "is responsible for paying the compensation," even if the damage is caused by officer negligence. Minn. Stat. § 626.74 (2025). For nearly thirty years, this law has been on the books, yet there is no indication that Minnesota's policing has been chilled, that its SWAT teams hesitate, or that fugitives escape because these costs are paid by the public instead of the private citizens whose property was taken.

Again, the record here reflects the same reality. Asked whether "the tactics [his] team employs would remain unchanged, regardless of whether the City would be on the hook for property damage," Sergeant Hong unequivocally answered: "That is correct." Hong Dep. 45:20–46:1; C.A. E.R. (Doc. 10.1) at 58:20–59:1.

These real-world examples reinforce Chief Tiderington's experience and demonstrate that concerns about police deterrence do not justify the judge-made exceptions to the Takings Clause's clear demands. Officers have not asked for, do not expect, and are not motivated by this constitutional carveout.

II. Shifting the cost of police-caused damage from innocent owners to the public supports, rather than undermines, effective law enforcement.

The empirical case for granting certiorari is straightforward: police expect municipalities to pay for the costs of damage caused by lawful police activities. Fulfilling that expectation and treating these costs as a public expense, rather than as a burden on innocent owners, is not merely *required* as a matter of constitutional

doctrine; it is *preferable* as a matter of sound policy and policing.

A. Property damage caused by lawful police action is properly understood as a cost of police business.

Police departments cause property damage every year in the lawful execution of their duties. They knock down doors. They breach walls. They deploy chemical munitions, flash-bang devices, and ramming vehicles. They take these actions to enforce the law for the benefit of the public. The damage that results, like every other expense of operating a police department, is a cost of the public function the department performs. Municipalities should, therefore, treat it as such: account for collateral damage in their budgets and pay these costs as a matter of course.

Adopting the Ninth Circuit's reasoning and treating this damage as a private misfortune—the unrecoverable bad luck of the innocent property owner stuck in the path of destruction—is profoundly inequitable and serves neither the public nor the private citizen.

B. Forcing innocent owners to bear these costs creates new victims of crime and erodes community trust.

Police departments do not exist in isolation from their communities. The legitimacy on which effective law enforcement depends is built case by case, interaction by interaction. When a department's response to a crime ends with an uninvolved homeowner or shopkeeper paying tens of thousands of dollars in repair costs—on top of

having had her home invaded by tear gas or her business smashed open by a battering ram—that homeowner has, in a meaningful sense, become a new victim of the underlying crime. She has been harmed by conduct she did nothing to cause by the very people who are charged with protecting her from harm.

That is not a foundation on which community-oriented policing can be built. Chief Tiderington introduced and managed community-policing strategies for more than two decades and understands that public confidence in the police is a fragile and indispensable resource. See, *e.g.*, Office of Community Oriented Policing Services, *President's Task Force on 21st Century Policing, Final Report* 9–18 (May 2015) (identifying "Building Trust and Legitimacy" as the foundational pillar of effective modern policing). Enforcing the text of the Takings Clause—ensuring that public costs are borne by the public—reinforces that confidence. The exceptions crafted by the courts of appeals—forcing innocent owners to individually pay the costs of police activity—erode it.

Innocent people should not be forced to pay for the crimes of others. The purpose of the government's police power is to protect people from becoming victims—not to create new ones.

C. Officers themselves are citizens of the communities they police.

Police officers are not a separate caste. They live in the communities they protect. They have neighbors, friends, and family who own homes and businesses, and they, themselves, own homes and businesses in the community.

Asking officers to execute raids or pursue fugitives knowing that their innocent neighbors or loved ones will foot the bill places an unfair burden on officers' already heavy shoulders. It asks officers to harm the people they are charged to protect—to act against the very mission of policing. Such a policy decision would flatly undermine everything that Chief Tiderington has taught for decades, and, based on his experience, would not be supported by the officers responsible for its implementation.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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