

No. 25-1177

**In the
Supreme Court of the United States**

reVamped LLC, a Minnesota limited liability
company; Heliocentrix LLC, a Minnesota limited
liability company; Tammy Grubbs; Vanda Smrkovski,
Petitioners,

v.

City of Pipestone, a Minnesota municipality;
Doug Fortune, in his individual capacity
and official capacities.

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

PETITION FOR REHEARING

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**RULE 29.6 CORPORATE DISCLOSURE
STATEMENT**

The corporate disclosure statement in the petition for a writ of certiorari remains accurate. The Petitioners reVamped LLC, is a limited liability company. It does not have a parent public or private corporation owning any interest in it. Heliocentric LLC is a limited liability company. It does not have a parent public or private corporation owning any interest in it. The remaining Petitioners Tammy Grubbs; Vanda Smrkovski are individuals.

TABLE OF CONTENTS

RULE 29.6 CORPORATE DISCLOSURE STATEMENT.....	i
TABLE OF AUTHORITIES.....	iii
PETITION FOR REHEARING.....	1
GROUNDS FOR REHEARING.....	3
I. There is a square and open conflict between the Courts of Appeal regarding the application of a categorical exception of government police power.	3
II. The overlapping questions presented between this case and <i>Pena</i> and <i>Hadley</i> warrant granting a rehearing.....	7
CONCLUSION.....	10
CERTIFICATION OF COUNSEL.....	11

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alford v. Walton County</i> , 159 F.4th 844 (11th Cir. 2025)	5
<i>Baker v. City of McKinney</i> , 84 F.4th 378 (5th Cir. 2023)	6
<i>Baker v. City of McKinney</i> , 145 S. Ct. 11 (2024)	4
<i>Boumediene v. Bush</i> , 551 U.S. 1160 (2007)	9
<i>Fed. Commun. Comm'n v. Consumers' Research</i> , 606 U.S. 656 (2025)	9
<i>Giles v. California</i> , 552 U.S. 1228 (2008)	9
<i>Johnson v. Manitowoc County</i> , 635 F.3d 331 (7th Cir. 2011)	6
<i>Kimbrough v. United States</i> , 551 U.S. 1111 (2007)	9
<i>Lawrence v. Chater</i> , 516 U.S. 163 (1996)	8
<i>Lech v. Jackson</i> , 791 F. App'x 711 (10th Cir. 2019)	6

<i>Melson v. Allen</i> , 561 U.S. 1001 (2010).....	9
<i>Slaybaugh v. Rutherford County</i> , 114 F.4th 593 (6th Cir. 2024)	6
<i>Whorton v. Bockting</i> , 547 U.S. 1176 (2006).....	9
<i>Yawn v. Dorchester County</i> , 1 F.4th 191 (4th Cir. 2021)	6

PETITION FOR REHEARING

In accordance with this Court's Rule 44.2, petitioners reVamped LLC, a Minnesota limited liability company; Heliocentrix LLC, a Minnesota limited liability company; Tammy Grubbs; Vanda Smrkovski, seek a rehearing of the Court's May 26, 2026, order denying their petition for a writ of certiorari. *reVamped LLC v. City of Pipestone, Minnesota*, No. 25-1177. At the time this case was denied, at least two other petitions for the writ of certiorari were and are now pending before this Court for conference review. Those petitions present related questions of law as identified in *reVamped LLC*: whether the Takings Clause of the Fifth Amendment contains a categorical "police power" exception immunizing the government from providing just compensation to private parties, particularly when an abuse of governmental authority is shown. The question presented also identified a square, acknowledged conflict among the circuits, between the Seventh, Eighth, Ninth, and Tenth Circuits (upholding exemption from Fifth Amendment liability) and the Fourth, Fifth, Sixth, Eleventh, and Federal Circuits (police power of government not per se exempt from the Takings Clause). *See also, Pena v. City of Los Angeles*, No. 25-1163 and *Hadley v. City of South Bend*, No. 25-1158. Where, as here, the courts of appeals disagree over whether the Takings Clause has a categorical police power exception protecting shown governmental abuses of authority for damaging private property, "certiorari is usually granted because of the obvious importance of the

case.” Stephen M. Shapiro, et al., *Supreme Court Practice* 4-35 (11th ed. 2019); see also Sup. Ct. R. 10(a).

The petition in *Pena*, arising from the Court of Appeals for the Ninth Circuit, raises the issue of governmental exemptions from liability under the Takings Clause when police intentionally destroy an innocent person’s property in the course of apprehending a fugitive. Likewise, in *Hadley*, arising from the Court of Appeals for the Seventh Circuit, seeks review of whether the Takings Clause exempts the government from liability outside the context of eminent domain when the government damages private property under its police powers, identifying a split between the Seventh, Tenth, and Federal Circuits (“yes” to the question) and the Fourth, Fifth, Sixth, and Eleventh Circuits (“no” to the question). In circumstances like these, as rare or unusual as it might appear,¹ this Court can allow for a GVR (grant, vacate, remand) order, if this Court grants the petition for certiorari of either *Pena* or *Hadley*, or both, and consider reVamped LLC’s GVR request once *Pena* or *Hadley*, or both, are decided.

¹ See, Aaron-Andrew P. Bruhl, *When is Finality...Final? Rehearing and Resurrection in the Supreme Court*, The Journal of Appellate Practice and Process, Vol. 12, No. 1, 18-20 (Spring 2011).

GROUND FOR REHEARING

I. There is a square and open conflict between the Courts of Appeal regarding the application of a categorical exception of government police power.

1. The petition for certiorari in *reVamped LLC*, No. 25-1177, presented the question of whether “the Takings Clause of the Fifth Amendment contains a categorical ‘police power’ exception immunizing the government from providing just compensation.” Pet. i. The circumstances described the issue as embedded with the abuse of governmental authority in the context of its police powers. *Id.* (question 2). The pending petitions for certiorari in *Pena* and *Hadley* present similar constitutional questions under the Takings Clause as related to the abuse of government authority and police power exemptions from compensation for harm to private parties. In *Pena*, a similar question to *reVamped LLC* is presented: “[w]hether the government is exempt from liability under the Takings Clause when law enforcement officers intentionally destroy an innocent person’s property in the course of attempting to apprehend a fugitive.” *Pena* Pet. at i. Likewise, *Hadley*’s question is similar: “[w]hether 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.” *Hadley* Pet. at i.²

The relationship among these petitions is further reflected in the amicus activity across the related dockets. Owners ’Counsel of America and the Small Property Owners of San Francisco Institute filed amicus briefs in the petitioners’ case, and in *Pena* and *Hadley*. The amicus briefs further demonstrate not only the substantial overlap among the constitutional questions presented of *reVamped*, *Pena*, and *Hadley* and strong interest in the subject matter, but also how the decision will resolve the legal conflict and social and economic implications of governmental police power immunity when private property is destroyed outside of eminent domain doctrine.³

2. The petitions arise from the same unresolved doctrinal landscape identified in *Baker v. City of McKinney*, 145 S. Ct. 11 (2024) (statement of Sotomayor, J., joined by Gorsuch, J., respecting

² A third petition, *O'Donnell v. City of Chicago*, No. 25-1098, likewise remains pending before the Court and presents related questions concerning the constitutional limits of asserted police-power authority: “[d]oes the Takings Clause of the Fifth Amendment place any limit on the ability of a local government to confiscate property under its police power.” *O'Donnell*, Pet. at i. The Court recently called for a response and is not due until July 1, 2026.

³ See briefs of *amici curiae* Owners ’Counsel of America and Small Property Owners of San Francisco Institute, et al. supporting the petitioners, *reVamped LLC*, No. 25-1177, *Pena v. City of Los Angeles*, No. 25-1163, and *Hadley v. City of South Bend*, No. 25-1158 raising related constitutional questions).

denial of certiorari). Members of this Court recognized the division among the court of appeals regarding “whether the Takings Clause requires compensation when the government damages private property pursuant to its police power.” While the issues present “an important and complex question” regarding government harm to private property when police power is the root cause of that harm that should trigger compensation, enough cases have percolated in the lower courts to now justify the Court’s intervention.

The unresolved doctrinal landscape has divided the courts of appeals.

Since *Baker*, multiple courts have continued developing divergent approaches concerning categorical police-power exceptions to Takings Clause liability as applied to and including law-enforcement destruction of innocent owners’ property, emergency government authority affecting private property rights; and the relationship between police powers and constitutional compensation requirements. The Ninth Circuit in *Pena* adopted a necessity-based framework. The Seventh Circuit in *Hadley* reaffirmed a broader police-power approach.

For example, the Eleventh Circuit in *Alford v. Walton County*, 159 F.4th 844 (11th Cir. 2025) recognized that emergencies do eliminate Takings Clause obligations. As the court wrote, “[T]he privilege to carry out a lawful search or arrest (the search-and-arrest privilege)—applies to law enforcement’s conduct here.” *Alford*, at 598. In the

Seventh Circuit, the court squarely declared 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 v. Manitowoc County*, 635 F.3d 331, 336 (7th Cir. 2011). Albeit a non-published decision, the Tenth Circuit has similarly opined that “when the state acts pursuant to its police power, rather than the power of eminent domain, its actions do not constitute a taking for purposes of the Takings Clause.” *Lech v. Jackson*, 791 F. App’x 711, 717 (10th Cir. 2019). There, a SWAT team caused significant damage to a home to the degree it was found uninhabitable.

By contrast, the Fourth Circuit recognized that “[g]overnment actions taken pursuant to the police power are not per se exempt from the Takings Clause” identifying it as “axiomatic in the Supreme Court’s jurisprudence.” *Yawn v. Dorchester County*, 1 F.4th 191, 195 (4th Cir. 2021). The Sixth Circuit’s decision in *Slaybaugh v. Rutherford County*, 114 F.4th 593 (6th Cir. 2024), *cert. denied*, 145 S. Ct. 1959 (2025) further contributed to the ongoing doctrinal divergence concerning law-enforcement destruction of private property and outlined constitutional exceptions to compensation liability. *Id.* at 596. The lower court declined “to apply the categorical ‘police power’ exception adopted by the district court.” And in the Fifth Circuit, in *Baker v. City of McKinney*, 84 F.4th 378, 384 (5th Cir. 2023), the court concluded in supporting exceptions of the police power as applied to the Takings Clause that, “[W]ith respect to our

sister circuits, their opinions do not rely on history, tradition, or historical precedent, and moreover, the rule they adopt is inconsistent with our court's precedent." These developments illustrate that courts continue to apply differing frameworks when evaluating asserted police-power, and emergency-authority limitations on constitutional compensation obligations.

II. The overlapping questions presented between this case and *Pena* and *Hadley* warrant granting a rehearing.

3. The questions presented in *Pena* and *Hadley* substantially overlap with petitioners' second question presented concerning asserted police-power and emergency-authority limitations on Takings Clause liability resulting in government harm to private property because of the exercise of government police powers without compensation. Pet. i.⁴ With *reVamped LLC*, the petitions involve

⁴ Unlike the SWAT-operation contexts presented in *Pena* and *Hadley*, *reVamped LLC*, this case involves an administrative exercise of asserted emergency police power through municipal condemnation and code-enforcement authority. There, the condemnation of private property involved local officials utilizing emergency condemnation procedures to impose an immediate total business shutdown and eliminate all economically beneficial use of the property despite contemporaneous findings of state officials that found no conditions requiring the business's shutdown, thereby placing the existence of any true emergency squarely in dispute. Unlike *Pena* and *Hadley*, this case presents the threshold question

overlapping questions of governmental destruction of innocent owners' private property during law-enforcement or emergency actions operations and concerning whether asserted police powers, public necessity doctrines, or emergency government authority may limit or eliminate constitutional compensation obligations. A decision in either *Pena* or *Hadley* would affect the doctrinal landscape in the Eighth Circuit, abrogating its rationale to affirm the district court's decision to deny compensation to reVamped LLC for government abuse of its police power. In other words, if either *Pena* or *Hadley* are decided, there is a real likelihood that the Court's reasoning will address the Takings Clause in a way that supports a GVR in *reVamped LLC*. See *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (noting that a GVR may be proper when an intervening question yields "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration"). But, unlike *Pena* and *Hadley*, this case became conference-ready earlier than *Pena*

whether governments may invoke emergency doctrines where the existence of the asserted emergency is itself materially disputed. However, like *Hadley*, this case involves allegations that governmental action was predicated upon an erroneous factual determination yet nevertheless imposed the full burden of the resulting deprivation upon an innocent property owner. This case therefore presents related but distinct questions concerning whether asserted emergency police powers exercised through ordinary municipal regulatory and condemnation mechanisms may circumvent constitutional compensation and procedural protections, particularly where the existence of any true emergency is itself materially disputed.

and *Hadley* likely due to the Respondents waiver of response.

4. This Court has previously granted rehearing where related doctrinal developments materially matured after denial of certiorari. *See, e.g., Oklahoma v. United States*, No. 23-402 (U.S. June 30, 2025) (granting rehearing, vacating prior denial of certiorari, and issuing a GVR order considering *Fed. Commun. Comm'n v. Consumers' Research*, 606 U.S. 656 (2025)); *Boumediene v. Bush*, 551 U.S. 1160 (2007) (granting rehearing, vacating prior denial of certiorari, and granting certiorari); *Melson v. Allen*, 561 U.S. 1001 (2010) (granting rehearing, vacating prior denial of certiorari, and issuing a GVR order). *See also Giles v. California*, 552 U.S. 1228 (2008); *Kimbrough v. United States*, 551 U.S. 1111 (2007); *Whorton v. Bockting*, 547 U.S. 1176 (2006). Indeed, in *Oklahoma*, certiorari was denied before related litigation had fully matured procedurally before the Court. This Court subsequently granted rehearing and reconsidered the petition considering the intervening development of the related doctrinal landscape.

CONCLUSION

Considering the substantial overlap among the questions presented in *Pena*, *Hadley*, and *reVamped LLC*, and the acknowledged conflict among the circuits concerning whether the Takings Clause permits a categorical police-power exception to compensation outside the context of eminent domain, this Court's review of *Pena* or *Hadley*, or both, may provide an opportunity to resolve these important constitutional questions.

Because *Pena* and *Hadley* directly implicate the question presented in *reVamped LLC*, Petitioners respectfully request that the Court grant rehearing and hold this petition pending further proceedings in those cases, or consider appropriate GVR relief if either petition is granted and later decided.

Respectfully submitted,

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CERTIFICATION OF COUNSEL

As counsel of record for the petitioners, I
certify that this petition for rehearing is presented in
good faith and not for delay, and that it is restricted
to the grounds specified in Supreme Court Rule 44.2.

June 22, 2026



Counsel for Petitioner