No. 25-427

IN THE

Supreme Court of the United States

WALID ABDELAZIZ AND JIMMY MARIN-CORONEL,

Petitioners,

v.

ESTATE OF DECEDENT LOLOMANIA SOAKAI, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Defendants' petition requests to directly overturn the Supreme Court's holdings in three controlling decisions and the majority of the Nation's Circuit Court of Appeals in an attempt to alleviate liability from two officers that misused their police vehicle to deliberately try to cause a suspect to crash into a crowd of people causing one innocent bystander to die and many others to be seriously injured, then the officers laughed and sped away in hopes the witnesses would die too.

The questions presented are:

1. Should this Court overturn its decision in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), and hold that under the Fourteenth Amendment a substantive due process violation no longer occurs when an officer purposely harms a suspect, and by consequence innocent bystanders, unrelated to a legitimate law enforcement objective?

2. Should the Court overturn its decision in *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983), *DeShaney v. Winnebago Cty. DSS*, 489 U.S. 189 (1989) and the Nation's Circuit Courts of Appeal to hold that officers who cause fatal car collisions, witness the victims' injuries and deliberately delay emergency medical treatment to those victims are no longer required to summon emergency medical services and do not violate the Fourteenth Amendment?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners, who were Defendants/Appellants below, are Officers Walid Abdelaziz and Jimmy Marin-Coronel, who are sued in their personal capacity.

Respondents, who were Plaintiffs/Appellees below, are private individuals—Lavinia Soakai, Daniel Fifita, Samiuela Finau & Ina Lavalu—and a decedent/estate Lolomania Soakai.

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Page

Page

Constitutional Provisions and Statutes

I. INTRODUCTION

Defendants request in their petition to overturn this Court's decisions in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), *DeShaney v. Winnebago Cty. DSS*, 489 U.S. 189 (1989) and *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983), a consensus of the Nation's Circuit Courts of Appeals and decades of civil rights case law in order to alleviate liability from two officers that chased after a car—no lights, no sirens, no radio—deliberately caused the car to lose control and crash in hopes of killing the person. Then, when the officers watched the car crash into a crowd, killing an innocent young man, fracturing his mother's back and injuring several others, the officers observed the carnage and death they caused, did not stop, did not arrest anyone, did not call for aid, but sped away to deliberately conceal their actions in order to delay medical services in hopes their victims would die.

Meanwhile, Ms. Soakai—with a fractured spine—literally laid on top of her son *wailing* for help as her son, Lolomania Soakai, slowly died in her arms and the officers drove back to the department to conceal their malicious acts and misuse of their vehicle. Notably, the factual allegations have since been shown, by way of body camera evidence the officers tried but failed to erase, to not only be true but their conduct was much worse than even alleged in the complaint, which included attempts to destroy evidence, tamper with witnesses and chuckled at the death and injuries they caused seconds after the crash.

Defendants conceded that their conduct "if true, is reprehensible" and in their briefing to the Ninth Circuit and this Court accepted that Plaintiffs plausibly alleged

Defendants had an intent to harm unrelated to a legitimate law enforcement objective.

Defendants' petition rests on the assertion that there is a "circuit split" on the purpose to harm claim because the Sixth Circuit, Seventh Circuit, Eighth Circuit and Tenth Circuit have issued decisions that contradict the Ninth Circuit's decision in this case to hold that bystanders cannot recover under the Fourteenth Amendment—even when they show a purpose to harm the suspect. Defendants' claim is false and these Circuits all support the Ninth Circuit's decision here. *See, e.g.*, *Davis v. Twp. Of Hillside*, 190 F.3d 167, 172 (3d Cir. 1999) (McKee, J., concurring) ("if the record supported a finding that police gratuitously rammed [the suspect] Cook's car, and if [the bystander] plaintiff properly alleged that they did so to injure or terrorize Cook, liability could still attach under Lewis").

Defendants' alternative basis for petition is to challenge the Ninth's Circuit decision on the state-created danger claim. Defendants, again, claimed that the First Circuit, Third Circuit, Fourth Circuit, Sixth Circuit and Seventh Circuit conflict with the Ninth Circuit's articulation of the state created danger doctrine claim. Again, Defendants' claim is outright false. These Circuits all uniformly support the Ninth Circuit's decision here as well. *See*, *e.g.*, *Irish v. Fowler*, 979 F.3d 65, 73-74 (1st Cir. 2020) ("Nine other circuits have since recognized the state-created danger doctrine" and "recognize the doctrine uniformly require that the defendant affirmatively acted to create or exacerbate a danger to a specific individual or class of people.").

Finally, Defendants did not challenge or address the Ninth Circuit's decision on denial of qualified immunity anywhere in their brief (see Defendants Petition "Questions Presented" at page i; "Reasons for Granting the Writ" at page 5-35) so Plaintiffs did not address the qualified immunity; and it is not properly before this Court.

II. STATEMENT OF FACTS

A. Oakland Officers Chase After a Car With the Purpose to Harm, Kill and Conceal Their Crimes

On June 25, 2022, Lavinia Soakai, her son Lolomania Soakai, and their cousins Ina Lavalu and Daniel Fifita were returning home from a family graduation ceremony and stopped at a popular taco truck in Oakland, located at 54th and International Boulevard. ER-4. A friend, Samiuela Finau, joined them. ER-7. They placed orders at the taco truck and returned to their cars to wait. (*Id.*).

During this time, Oakland officers Jimmy Marin-Coronel and Walid Abdelaziz had commenced an unauthorized "ghost chase" of a person from a car rally to act out a personal vendetta. ER-4.

A ghost chase is when officers purposefully do not activate lights and sirens or radio in their vehicle pursuit because the department prohibits vehicle pursuits due to the risks to the driver and innocent bystanders' lives. ER-8. One purpose of lights and sirens is to warn surrounding traffic and bystanders in order to avoid collisions and injuries. (*Id.*).

Officers Marin-Coronel and Abdelaziz chased the driver at speeds in excess of 60 mph, even reaching 100 mph, through congested surface streets in Oakland. (*Id.*). Defendant officers purposefully caused the driver to lose control of his vehicle and crash into occupied cars and motorcycles parked in front of the busy taco truck on International Boulevard—a main thoroughfare—where Lavinia Soakai, Lolomania Soakai, Ina Lavalu, Daniel Fifita and Samiuela Finau were waiting for their tacos. Id.

The driver's car struck Lavinia Soakai, Lolomania Soakai, Ina Lavalu, Daniel Fifita and Samiuela Finau, causing severe and fatal injuries. (*Id.*). Lavinia suffered a broken back and, tragically, watched her son, Lolomania, take his last breaths while she cried, desperately waiting for emergency medical services to render aid to him. (*Id.*).

Officers Marin-Coronel and Abdelaziz witnessed the carnage, injuries and death they caused, but did not stop their patrol car to help, to summon emergency medical services or even arrest or detain the driver. ER-8. Instead, they concealed their conduct by keeping their sirens and lights off, their radios dead, and returned to the scene only after they heard other police sirens responding to the scene, wherein they pretended to have just arrived on the scene to help. (*Id.*). Officers Marin-Coronel and Abdelaziz were overheard saying that they were pleased the driver was injured and hoped that he would die. (*Id.*).

Officers Marin-Coronel's and Abdelaziz's refusal to provide, and deliberate delay of, emergency medical services—which their Department and officer training required them to provide—caused Plaintiffs' injuries to worsen and decedent Lolomania Soakai to lose his life. ER-10.

III. REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

A. The Supreme Court's Case *County of Sacramento v. Lewis*, 523 U.S. 833 (1998) Already Settled the Issue

The difficulty of overcoming the purpose to harm standard this Court set out in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998) makes it so that it is rarely accomplished and requires factual circumstances that are "jarring and tragic", like we have here, but that does not make the claim inactionable. *Estate of Soakai v. Abdelaziz*, 137 F.4th 969, 975 (2025). It simply means this Court held that an officer's conduct must be so grotesque that a plaintiff is able to meet the burden of shocks-the-conscience.

The Ninth Circuit acknowledged these special circumstances:

> "In the highly unusual circumstances of this case—including plausible allegations that the officers intentionally caused harm for reasons unrelated to any legitimate law enforcement purpose connected to the chase, and that they witnessed the crash yet drove away and later stated that they hoped that the crash caused a fatality—we affirm."

(*Id.* at 978).

Defendants conceded that the officers conduct met the purpose to harm standard, they merely assert that the

claim is only actionable if a plaintiff can show the target of the officer's purposes to harm is the same as the victim that suffered from the officer's action:

> "The complaint alleges that Defendants acted 'in an effort to make [the] suspect lose control, severely injure himself[,] and die.' Defendants admit that we must treat as true that allegation, see Opening Br. at 21 n.2 ('[T]he Court must accept as true the allegation of the [complaint] that [D]efendants had intended to harm the suspect.'), the plausibility of which Defendants do not challenge. The complaint also alleges that 'Defendants use[d] their law enforcement powers to cause unnecessary harm to a person,' and Defendants do not clearly and distinctly argue otherwise. To the contrary, Defendants premise their argument on the assumption that Plaintiffs pleaded a purpose to harm the suspect unrelated to a legitimate law enforcement objective. See id. at 21 ('If the officer has evil intent that shocks the conscious [sic] when it comes to the suspect, does that matter if the plaintiffs are the bystanders? That is the key question in the present case.'"

Estate of Soakai, at 977-978.

In other words, under Defendants' reasoning and arguments to the Ninth Circuit and in their petition, the only person that can recover for a Fourteenth Amendment action here would be the driver since that is who Defendants were intending to kill unrelated to a law enforcement objective. No one else who suffered injuries

because of that conduct may recover according to them. The entirety of the petition is based on this argument.

Normally from here, a petitioner should argue that the Appellate Court cobbled together unrelated caselaw or departed from every other Circuit in its decision, or even explicitly contradicted this Court's jurisprudence—Defendants cannot. The Ninth Circuit turned to the very source of the Fourteenth Amendment's purpose to harm claim in police vehicle pursuit claims—this Court's decision in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

In *Lewis*, this Court explicitly found that the plaintiff passenger Phillip Lewis—a bystander—who brought the Fourteenth Amendment survival claim could only succeed if he could show that the officer had a "a purpose to cause harm unrelated to the legitimate object of arrest" towards the driver, Bryan Willard. *Lewis*, 523 U.S. at 834. Similarly here, the Ninth Circuit found that Plaintiffs—the bystanders—could only recover if they could show "a purpose to cause harm unrelated to the legitimate object of arrest" to the driver which they did (and Defendants conceded this burden was met).

Defendants claimed in their brief the Lewis Court framed the issue if Lewis could show Deputy Willard intended to harm Lewis, not Willard, as the test he would succeed. (Petition at p. 18) That is false.

This Court stated a plaintiff needs only to show "a purpose to harm unrelated to the legitimate object of arrest" in order to "satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due

process violation." *Lewis*, 523 U.S. at 836. This Court found that no substantive due process claim existed for the passenger's claim—brought via his estate and by his parents for familial loss—because the plaintiffs merely alleged the officers were "reckless and careless" in their pursuit of the motorcycle driver and the record at summary judgment failed to offer any evidence of malice, not because he was a bystander. (*Id.* at 854). The Court observed that the record demonstrated that the officer's "instinct was to do his job, not to induce [the driver's] lawlessness, or to terrorize, cause harm, or kill. Prudence, that is, was subject to countervailing enforcement considerations, and while Smith exaggerated their demands, there is no reason to believe that they were tainted by an improper or malicious motive on his part." (*Id.* at 855). [1]

The Ninth Circuit correctly pointed out the flaw in Defendants' reasoning that bystanders cannot recover, which they failed to address in their brief:

> "*Lewis* thus confirms what common sense dictates: High-speed car chases create a clear, known risk of harm, not only to the fleeing driver and to the officers, but also to passengers and bystanders. Because the risks taken by those participating in the chase generate—and, thus, cannot be isolated from—the peril faced by bystanders, it would be illogical to

1. If a substantive due process claim had to be brought by the *target* of the officer's malice, as Defendants' argued, this Court would have simply stated that passengers/bystanders cannot bring substantive due process claims and would not have needed reach to the merits of the lawsuit in *Lewis*.

> distinguish between those dangers when considering whether an officer ought to be liable for injuries that result from the decision to give chase."

Estate of Soakai, 137 F.4th at 978.

In sum, Defendants Abdelaziz and Marin-Coronel seek to overturn Supreme Court's decision in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), its progeny and settled law.

B. There Is No Circuit Split: the Sixth, Seventh, Eight and Tenth Circuits All Support the Ninth Circuit Decision in This Case

Defendants claimed in their petition that there is a split between the circuits about the *Lewis* case, but there is not.

Defendants asserted that the "Sixth, Seventh, Eighth, and Tenth Circuits have held that to sustain a due process claim, bystanders injured by fleeing criminal suspects must show that police intended to injure bystanders." This is false. Defendants cited the following cases: *Claybrook v. Birchwell*, 199 F.3d 350 (6th Cir. 2000); *Bublitz v. Cottey*, 327 F.3d 485 (7th Cir. 2003); *Helseth v. Burch*, 258 F.3d 867 (8th Cir. 2001); *Mahdi v. Salt Lake Police Dep't*, 54 F.4th 1232 (10th Cir. 2022); *Childress v. City of Arapaho*, 210 F.3d 1154 (10th Cir. 2000); *Radecki v. Barela*, 146 F.3d 1227 (10th Cir. 1998).

Tellingly they offered no substantive analysis of their cited cases, likely because it would reveal their deceit. The

Seventh, Eighth and Tenth Circuits all support Plaintiffs' position, the Ninth Circuit's decision here—and generally the Ninth Circuit's jurisprudence on the matter.

1. Sixth Circuit

Defendants' cited *Claybrook v. Birchwell*, 199 F.3d 350 (6th Cir. 2000). In *Claybrook*, the Sixth Circuit was concerned with whether to apply the deliberate indifference standard or the purpose to harm standard for a passenger in a police police shooting case. Ultimately, the Sixth Circuit concluded that the purpose to harm / malice standard applied and that plaintiffs failed to show the officers acted with malice towards anyone or even knew there was a passenger in the car. *Claybrook*, 199 F.3d at 360. Defendants take this to mean that the Sixth Circuit held innocent bystanders cannot recover unless the intent to harm was directed at them, but this is not true. Defendants simply cherrypicked the oldest decision from the Sixth Circuit on the subject to mislead this Court.

Seven years later, in *Meals v. City of Memphis Tenn.*, 493 F.3d 720 (6th Cir. 2007), the Sixth Circuit considered a police pursuit vehicle case where an officer chased a suspect that collided at an intersection killing two plaintiffs and severely injuring another. The Sixth Circuit held that the substantive due process claim failed because plaintiffs failed to allege the required intent to harm because "Officer King did not intentionally cause [the suspect] Mr. Harris's vehicle to crash" and "the record does not establish that Officer King intended to harm the occupant of the vehicle being pursued—or the [bystander] victims of her actions") (emphasis added). Therefore, the Sixth Circuit, like here, held that for a

plaintiff to recover under the Fourteenth Amendment claim in a police pursuit case they must show that the officer had an intent to harm *the suspect or the bystander*. *See also*, *Jones v. Byrnes*, 585 F.3d 971, 978 (6th Cir. 2009) ("the estate [of bystander killed in collision with fleeing suspects' vehicle] has not produced any evidence that Officers Lentine or Byrnes were acting with any intent to harm the suspects instead of trying to apprehend what they reasonably believed to be dangerous criminals. Thus, as their actions do not shock the conscience, the estate has not established a *prima facie* case of deprivation of [the bystander] Jones's substantive due process rights") (emphasis added).

2. Seventh Circuit

Defendants' citation to the Seventh Circuit's *Bublitz v. Cottey*, 327 F.3d 485 (7th Cir. 2003) is no better. In *Bublitz*, the Seventh Circuit was focused, again, on whether to apply a deliberate indifference or purpose to harm standard to a vehicle pursuit case. It ultimately concluded that a purpose to harm standard applied but during that discussion the Seventh Circuit also noted approvingly of *Checki v. Webb*, 785 F.2d 534 (5th Cir. 1986).

Notably in *Checki v. Webb*, 785 F.2d 534 (5th Cir. 1986)—a case this Court cited to approvingly in *Lewis*—the Fifth Circuit found a plaintiff passenger/bystander that had no physical injuries could still recover under the Due Process Clause because officers "car-chasing actions were inspired by malice rather than merely careless or unwise excess of zeal so that it amounted to an abuse of official power that shocks the conscience." *Checki*, 785 F.2d at 538.

Therefore, the Seventh Circuit's approval of *Checki* suggests that a plaintiff bystander that showed officers intentionally misused their vehicles would recover too:

> "Mr. Bublitz makes no accusation that the defendants intentionally misused the device, or that they intended to cause a collision that would include the vehicles of innocent bystanders."

Bublitz, 327 F.3d at 491.

3. Eighth Circuit

Similarly, the Eighth Circuit's decision in *Helseth v. Burch*, 258 F.3d 867 (8th Cir. 2001) does not support Defendants' claim of a split. In discussing a car pursuit case where a suspect ran a red light and crashed into innocent bystanders, the Eighth Circuit primarily discussed that an "intent to harm" standard needed to be applied rather than a deliberate indifference standard regardless if plaintiffs were suspects or innocent bystanders. *See generally, Helseth*, 258 F.3d 867. However, the Eighth Circuit did discuss approvingly of the *Checki v. Webb*, 785 F.2d 534 (5th Cir.1986).

Notably, this Court also "cited with approval to the Fifth Circuit's decision in *Checki v. Webb*, 785 F.2d 534 (5th Cir. 1986) . . . The favorable citation to the decision in *Checki* by the Supreme Court in *Lewis* suggests that a law enforcement officer may violate due process by intentionally misusing their vehicle" regardless of the target. *McGowan v. County of Kern*, 2018 WL 2734970 at *7 (E.D. Cal. June 7, 2018).

Similarly, in *Braun v. Burke*, 983 F.3d 999, 1003 (8th Cir. 2020), a passenger/innocent bystander brought a substantive due process claim against a trooper that was chasing a suspect and crashed into the car she was riding in. The Eighth Circuit found the claim failed not because she was a bystander but because she failed to allege the trooper "intended to harm anyone." *Braun*, 983 F.3d at 1003 (emphasis added).

4. Tenth Circuit

In *Radecki*, the Tenth Circuit's analysis supports Plaintiffs' position. In *Radecki*, an officer got into an unexpected physical struggle with a suspect that was trying to take his pistol. *Radecki*, 146 F.3d at 1228. During the struggle, the officer called for a bystander, Radecki, to intervene and help him. (*Id.*). The suspect took the gun from the officer and shot Radecki who sued afterwards the officer under the Fourteenth Amendment. (*Id.*). The Tenth Circuit rejected the Fourteenth Amendment claim because plaintiffs did not allege the officer had a purpose to harm Radecki *or* the suspect: "Sometimes these decisions are negligent, sometimes they are even reckless, sometimes indifferent. Under these circumstances, however, where Plaintiffs have not even alleged that Deputy Barela acted with an intent to harm the participants or to worsen their legal plight, under the Lewis standard there is no constitutional liability." (*Id.* at 1232). Therefore the Tenth Circuit suggested that the bystander, Radecki, could recover under the Fourteenth Amendment if he was able to show the officer acted with an intent to harm the suspect *or* himself.

Similarly, in *Childress*, the Tenth Circuit addressed an incident where officers fired into a van carrying two escaped prisoners with stolen firearms, that had hostages with them, blew through nine of the ten roadblocks and on the tenth one shot 21 shots disabling the vehicle and injuring two of the hostages. *Childress*, 210 F.3d at 1156. The injured bystanders sued and the Tenth Circuit affirmed that the Fourteenth Amendment claim failed because the bystanders failed to allege that the officers acted with an intent to harm. In fact, the Tenth Circuit explicitly noted that in "claims brought on behalf of an innocent bystander killed during a police struggle with a suspect" that "[t]he touchstone is whether the officers 'acted with an intent to harm the participants or to worsen their legal plight'"—not if the innocent bystander was the target.

In *Mahdi v. Salt Lake Police Dep't*, 54 F.4th 1232 (10th Cir. 2022), the Tenth Circuit even came out and *explicitly* said that there could be circumstances where innocent bystanders that were unintended targets would recover under the Fourteenth Amendment: "We do not foreclose the possibility that in some exceptional circumstances (shooting at someone in a parade?) an innocent bystander inadvertently harmed by force directed at a suspect could have a cause of action under § 1983." *Mahdi*, 54 F. 4th at 1239.

Despite Defendants attempts to mislead this Court, the cases Defendants cited from the Tenth Circuit actually support Plaintiffs' position, not theirs.

5. There Is a Consensus Amongst the Nation's Courts that Supports Plaintiffs

In truth, there is a consensus across the nation's courts that affirm Plaintiff's position. As noted before, the Tenth Circuit supports Plaintiffs' position. *See*, *e.g.*, *Mahdi v. Salt Lake Police Dep't*, 54 F.4th 1232 (10th Cir. 2022) (supra); *Childress v. City of Arapaho*, 210 F.3d 1154 (10th Cir. 2000) (supra); *Radecki v. Barela*, 146 F.3d 1227 (10th Cir. 1998) (supra); *Ellis ex rel. Estate of Ellis v. Ogden City*, 589 F.3d 1099, 1103 (10th Cir. 2009) (holding that the estate of a bystander killed during a police chase failed to state a claim, not because the bystander was not the target of the officer's intent to harm, but because "the complaint failed to allege that the officers acted with an intent to harm **either** [the suspect] Mr. Bustos or [the bystander] Mr. Ellis") (emphasis added); *Davis*, 190 F.3d at 172 (McKee, J., concurring) ("if the record supported a finding that police gratuitously rammed [the suspect] Cook's car, and if [the bystander] plaintiff properly alleged that they did so to injure or terrorize Cook, liability could still attach under *Lewis*").

The Sixth Circuit does as well. *See*, *e.g.*,*Meals v. City of Memphis Tenn.*, 493 F.3d 720 (6th Cir. 2007) (supra); *Jones v. Byrnes*, 585 F.3d 971, 978 (6th Cir. 2009) (supra).

The Eight Circuit, too. *See*, *e.g.*, *Helseth v. Burch*, 258 F.3d 867 (8th Cir. 2001) (supra); *Braun v. Burke*, 983 F.3d 999, 1003 (8th Cir. 2020) ("Trooper Burke believed he was responding to an emergency, and thus we apply the intent-to-harm standard. This resolves [the injured bystander] Braun's claim against him, as she does not even

argue, much less present any evidence, that he intended to harm **anyone**.") (emphasis added).

And district courts throughout the nation. *See*, *e.g.*, *Johnson v. Baltimore Police Dep't.*, 452 F.Supp.3d 283, 302-03 (D. Md. Apr. 7, 2020) ("the weight of authority post-*Lewis* holds that the 'intent to harm' standard applies to substantive due process claims arising out of police chases, whether the claim is brought by the target of the chase, or an innocent bystander" and "in none of these cases did a court reject a bystander's substantive due process claim because the police did not intend to harm *them*; rather, the claims all failed because of the claimant's inability to demonstrate that the relevant officer had no intent to harm the target of the pursuit") (emphasis in original); *Donahue v. Borough of Collingdale*, ---F.Supp.3d---, 2024 WL 387455, at *7 (E.D. Pa. Feb. 1, 2024) (granting summary judgment on due process claims of bystanders killed in collision with pursued suspect's vehicle because "[t]here is no genuine issue of fact to show that [officers] Lyons, Lynch, or Richers intended any harm distinct from apprehending [the suspect] Jones" and the bystander plaintiffs failed to allege "any facts to show an intent to harm **anyone**, let alone [the bystanders] McIntyre or Munafo.") (emphasis added); *Fitting v. City of Boynton Beach*, 2015 WL 13777177, at *3 (S.D. Fla. July 20, 2015) ("Because there is no evidence or factual allegation that Defendant Turco intended to harm **anyone**, [the bystander injured by a fleeing suspect]'s § 1983 claim must fail.") (emphasis added); *Smith v. Ciesielski*, 975 F.Supp.2d 930, 941 (S.D. Ind. 2013) (granting summary judgment on due process claim of bystander injured by fleeing robbery suspects' vehicle because "[n]owhere has Plaintiff suggested that the police officers intended any

harm to the robbery/burglary suspects they pursued other than their lawful arrest. Still less, of course, has she suggested that the officers harbored any hostile intent towards her as a bystander."); *Alexander v. Brockman*, 2008 WL 4101508, at *2 (E.D. Mich. Sep. 2, 2008) (granting summary judgment on due process claim brought by estate of bystander killed in collision with pursued suspect's vehicle because "there is no basis for finding that [officer] McCormick and [officer] Schneider's actions were malicious or sadistic for the purpose of causing harm to **either** [the pursued suspect] Brockman **or** [the bystander] Davis.") (emphasis added); *Huffman v. Village of Newburgh Heights*, 120 F.Supp.3d 691, 696 (N.D. Ohio July 27, 2015) ("the [bystander] plaintiffs' substantive due process claim cannot survive summary judgment, since the plaintiffs [who were injured by the pursued vehicle] have failed to provide any evidence that Patrolman Hoover intended to harm the driver of the suspect vehicle (or anyone else)."); *Sidi v. City of Cincinnati*, 2014 WL 1276195, at *4 (S.D. Ohio Mar. 27, 2014) (dismissing due process claims by estates of decedent bystanders who were killed in a collision with the fleeing suspect's vehicle because "none of these facts, or any other facts in the Second Amended Complaint, plausibly suggest any intent by the officers to intentionally cause [the suspect] Gerth's vehicle to crash, to intentionally cause harm to [the suspect] Gerth, **or** to intentionally cause harm to any innocent bystanders.") (emphasis added); *Waddell v. Tishomingo County Mississippi*, 2022 WL 683094, at *7 (N.D. Miss. Mar. 3, 2022) ("The U.S. Supreme Court and other Circuits have recognized a Fourteenth Amendment violation may occur during a pursuit if the pursuing officer intends to harm the fleeing suspect; intends to worsen the suspect's legal plight; causes injury

by the intentional misuse of his vehicle; has a purpose to cause harm unrelated to the arrest; intends to punish the suspect; or otherwise acts arbitrarily in the constitutional sense."); *Knight v. Pugh*, 801 F.Supp.2d 1235, 1240 (M.D. Ala. 2011) (finding that the estate of the bystander decedent failed to state a cognizable claim under *Lewis* because "the First Amended Complaint fails to allege that [officer] Culbreath was motivated by anything other than the desire to arrest [the fleeing suspect] Pugh", whose vehicle struck the bystander decedent while fleeing from police); *Perez v. City of Sweetwater*, 2016 WL 11002555, at *4 (S.D. Fla. Dec. 22, 2016) ("Thus, here, the Officers are liable only if their actions 'shock the conscience,' which requires [the bystander] Plaintiffs to plausibly allege the Officers intended to harm [the pursued suspect] Torrealba, unrelated to the legitimate object of arresting him."); *Simmons v. Baltimore City Police Dep't.*, 2021 WL 3418840, at *14 (D. Md. Aug. 5, 2021) (finding that the innocent bystander plaintiffs had "adequately alleged the type of conscience-shocking behavior that *Lewis* requires" because the officers "were intentionally misusing their vehicles by engaging in a pursuit [of a suspect] that was not necessary in its purpose nor in the manner that it was executed."); *Matousek v. City of Waukomis*, 2020 WL 2119852, at *3 (W.D. Okla. May 4, 2020) ("Under [the intent to harm] standard, unless the officers intended to harm [the suspect] Bajo physically or to worsen his legal plight by engaging in the high-speed pursuit, their conduct did not violate [the bystander] Mr. Matousek's constitutional rights."); *Burdick v. Kerns*, 2023 WL 2993392, at *3 (N.D. Okla. Apr. 18, 2023) ("Under the intent to harm standard, unless [the officer] Defendant intended to harm [the suspect] Lane physically or to worsen his legal plight by engaging in the high-speed pursuit, Defendant's conduct

did not violate the [bystander] Decedents' constitutional rights.").

C. The State-Created Danger Doctrine Claim Is Rooted in this Court's Jurisprudence

The parties agree that the state-created danger doctrine was developed from this Court's decision in *DeShaney v. Winnebago Cty. DSS*, 489 U.S. 189 (1989). Since then, every single Circuit Court of Appeal in the Nation accepts the state-created danger doctrine, except the Fifth Circuit.

Defendants admitted that the Court's decision in *DeShaney* does permit a substantive due process claim. (Def. Petition at p. 25). In *DeShaney*, this Court "recognized that the Due Process Clauses generally confer no affirmative right to governmental aid" (*DeShaney*, 489 U.S. at 196) and "that a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." (*Id.* at 197). However, this Court observed there were situations where the State's affirmative acts and failure to render aid do trigger a substantive due process claim (e.g., providing medical care in jails, prisons and in-custody). The Court explained the rationale for finding the State liable in these situations is the "State's affirmative act of restraining the individual's freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—which is the 'deprivation of liberty' triggering the protections of the Due Process Clause." (*Id.* at 200).

In the *Deshaney* case, the State simply failed to protect the child from his father while he was in his father's custody. Therefore, this Court found the State took no affirmative act that increased the dangers the child faced, render him more vulnerable to them and therefore established no affirmative duty of constitutional protection.

Based on this holding, Defendants argue that Plaintiffs state-created danger claim fails because Defendants never took Plaintiff into custody. (Def. Petition at p. 25: "This exception does not apply to the present case as Respondents were not in State custody."). First, this Court did not limit the substantive due process claim to cases where a person is in state custody (otherwise the Court would have said that), it merely used those as examples to identify situations where state actors took affirmative actions to restrain an individual's freedom to act on his/her behalf. Instead, this Court observed that the substantive due process claim is triggered when a state actor's affirmative act deprives, restrains or impedes an individual's freedom to act on his own behalf including to care or summon care oneself.

That is exactly what the Ninth Circuit found here, and it is exactly what happened. Defendants affirmative action of deliberately causing a car crash caused such significant and fatal injuries to Plaintiffs that it restrained their freedom to call emergency medical services for themselves.

Nonetheless, Defendants countered that the Ninth Circuit reasoning "is unsound" because any injuries caused from the car crash "can only be imposed in

accordance with the *Lewis* intent-to-harm standard." (Def. Petition at 26). Defendants' argument is flawed and unnecessarily conflates to separate, distinct claims.

As the Ninth Circuit correctly noted before analyzing the state-created danger claim, Plaintiffs' state-created danger "claim is narrow because it addresses only those additional harms that Plaintiffs would not have suffered had Defendants provided or summoned aid right after the crash, not the injuries caused by the crash itself." *Estate of Soakai*, 137 F.4th at 981. Therefore, for the injuries from the crash the *Lewis* standard applied, but for the injuries suffered for failure to provide or summon emergency aid after the crash—the state created danger claim applied.

The constitutional principle that officers are required to provide or summon medical care from persons who have been injured while being apprehended by the police is well established. In *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983), this Court explicitly held that "the Due Process Clause requires the responsible government or governmental agency to provide medical care to persons . . . who have been injured while being apprehended by the police." *Revere*, at 463; *see also*,

Nonetheless, Defendants are arguing that officers can initiate vehicle pursuits to apprehend people and cause large fatal car crashes, with multiple victims, then drive away without summoning medical aid. They argue, with apparent sincerity, that the officers *would* have had a duty to summon emergency medical aid only if they personally struck Plaintiffs' with their car rather than just caused the car crash. Taking this argument to its natural absurd end, this would mean in cases where officers are chasing

suspects that injure themselves during vehicle chases and crash, or that fall off buildings while on foot pursuit or any other number of ways persons can injure themselves or people can being injured when police are apprehending them, that it is constitutionally sound for officers to turn around and leave people to die (e.g., an officer fires a gun into a crowd and strikes suspect and non-suspects then just leave them to die; officers get into a gunfight and the suspect strikes innocent bystanders and the officers leaves them to die; or, like here, officers pursue a suspect in a car that crashes into a crowd and several bystanders are fatally injured, the officers simply arrest the suspect and leave the others to die).

Defendants make a similar, nonsensical argument that they made no affirmative actions that caused the injuries, but as the Ninth Circuit noted this point "requires little discussion". *Estate of Soakai*, 137 F.4th at 983. Defendants took the affirmative actions of deliberately chasing and causing a person to lose control and crash into a taco truck injuring Plaintiffs. The vehicle chases would have never occurred but for the officers' decision to chase the vehicle without lights, sirens and radio. Moreover, they saw the injuries and damage they caused and knew that Plaintiffs needed emergency medical care and delay could worsen their injuries or lead to death. They had a duty to then summon medical aid and certainly not to delay it. *See Tagstrom v. Enockson*, 857 F.2d 502 (8th Cir. 1988) (officer fulfilled his due process requirement to summon medical aid by immediately calling for an ambulance after seeing the suspect crash his motorcycle).

D. Eleven of the Nation's Circuits Uniformly Accept and Articulate the State Created Danger Doctrine

Again, Defendants attempt to misguide and mislead this Court into believing there is a circuit split in regard to the state created danger claim. Defendants argue the First, Third, Fourth, Sixth and Seventh Circuit are split against the Ninth Circuit's decision on the state created danger claim in this case. Again, this is false.

As the First Circuit aptly stated, "[n]ine other circuits have since recognized the state-created danger doctrine" and "recognize the doctrine **uniformly** require that the defendant affirmatively acted to create or exacerbate a danger to a specific individual or class of people." *Irish v. Fowler*, 979 F.3d 65, 73-74 (1st Cir. 2020) (emphasis add_; *see also Ramos-Piñero v. Puerto Rico*, 453 F.3d 48, 55 n.9 (1st Cir. 2006); *Rivera v. Rhode Island*, 402 F.3d 27, 37 (1st Cir. 2005).

Of course, Defendants did not discuss this case, or any of the contemporary ones, because, like before, they cherry-picked a older, outdated appellate case—*Soto v. Flores*, 103 F.3d 1056, 1064 (1st Cir. 1997)—to mislead and misguide this Court into granting their petition for writ.

The other cases they cited from the Third, Fourth, Sixth and Seventh Circuit are no better. *Jackson v. Schultz*, 429 F.3d 586, 591 (6th Cir. 2005); *Windle v. City of Marion*, 321 F.3d 658, 660 (7th Cir. 2003); *Murguia v. Langdon*, 61 F.4th 1096 (9th Cir. 2023).

Defendants claimed *Kaucher v. Cty. Of Bucks*, 455 F.3d 418 (3d Cir. 2006) conflicts with the Ninth Circuit's decision here, but it does not. In *Kaucher*, the Third Circuit stated an identical articulation of the state-created danger doctrine claim as the Ninth Circuit here:

"We require the following four elements of a meritorious state created danger claim:

> (1) the harm ultimately caused was foreseeable and fairly direct;
>
> (2) a state actor acted with a degree of culpability that shocks the conscience;
>
> (3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of persons subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general; and
>
> (4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all."

Kaucher, 455 F.3d 431.

It is unclear how the *Kaucher* decision conflicts with the Ninth Circuit in *Soakai* in any way. Defendants' brief offered little insight. They appear to argue the *Kaucher*

case stands for failure to allege "affirmative acts" but the Ninth Circuit's decision here included the affirmative acts requirement. Moreover, the *Kaucer* case is a wildly different set of facts where there are not actually individual state actors, but rather two correctional officers broadly appear to claim the jail medical staff could have done more to prevent the spread of MRSA infections in the jail. Unlike here, where Plaintiffs alleged two officers' vehicle chase was an affirmative action that caused a car crash and subsequent failure to summon medical aid worsened their injuries.

Similarly, *Turner v. Thomas*, 930 F.3d 640 (4th Cir. 2019) acknowledged the general principles of the state created danger doctrine described above but simply found that officers' refusal to intervene in a protest cannot be the basis for an affirmative action.

In *Jones v. Reynolds*, 438 F.3d 685 (6th Cir. 2006), officers arrived *after* a car rally had began and did nothing to stop it. One of the cars racing struck a person in the crowd and killed her. The officers did not participate, encourage or cause the car in any way to lose control so the Sixth Circuit simply found that "nothing in the record indicates that the officers made Jones 'more vulnerable' to the risk that she had already undertaken by voluntarily choosing to watch the race." *Jones*, 438 F.3d at 691. Unlike here, where the officers' initiated the vehicle chase (which actually created the danger), caused a car collision and left the victims to die.

Simlarly, *Jackson v. Schultz*, 429 F.3d 586 (6th Cir. 2005) and *Windle v. City of Marion*, 321 F.3d 658, 660 (7th Cir. 2003) both acknowledged state-created danger claims

as described above, but simply state that the plaintiffs in these cases had not stated sufficient affirmative acts that worsened the danger to the person. In *Jackson*, plaintiffs claimed the paramedics moved an injured person to a more dangerous area without articulating how or why that impacted medical care and offered no allegations it "hindered third party aid." *Jackson*, 429 F.3d at 591. In *Windle*, an officer was aware of conversations that suggested a teacher was molesting a minor but took no action. The Seventh Circuit found, like the other courts, inaction is insufficient to meet the affirmative act test of the state created danger doctrine.

In all of these cases, based on the Ninth Circuit's articulation of the state created danger doctrine claim in *Soakai*, the Ninth Circuit would have reached the same conclusions as the Circuits in defendants' cited cases. That is to say, if in this case Defendants simply responded to the car collision—rather than cause or participate in it—there would be no affirmative act to tie liability under the Fourteenth Amendment to. But here, the Ninth Circuit analysis was spot on:

> Plaintiffs allege that Defendants "sped after the suspect" without alerting the suspect to pull over by turning on their lights and sirens. We can plausibly infer from those allegations that, in the absence of Defendants' affirmative actions, the suspect would not have raced through the city and lost control of his vehicle and, therefore, that Plaintiffs would not have required urgent medical attention to keep their conditions from deteriorating further. So, even if Defendants initiated the chase for a legitimate

> purpose, Defendants undoubtedly "increased the level of danger" faced by Plaintiffs "above the counterfactual baseline level of danger that would have existed without [Defendants'] intervention."

Estate of Soakai, 137 F.4th at 983 quoting *Sinclair v. City of Seattle*, 61 F.4th 674, 682 (9th Cir. 2023).

Plaintiffs met the requirements of a state-created danger doctrine claim that would satisfy the Nation's circuits. Therefore, there is no split but rather uniform agreement.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Writ of Certiorari.

Respectfully submitted,

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Date: January 5, 2026