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

REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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PETITIONERS' REPLY TO OPPOSITION TO THE PETITION

I. THE NINTH CIRCUIT DECISION EXPANDS STATE LIABILITY FOR ACCIDENTAL, UNINTENDED INJURIES AND CREATES A CIRCUIT SPLIT.

A. The Ninth Circuit Decision Conflicts With Decisions of the Sixth, Seventh, Eighth and Tenth Circuits.

Respondents do not meet the issues in this Petition head on. The first Question Presented asks whether plaintiffs bringing a substantive due process claim under *County of Sacramento v. Lewis,* 523 U.S. 833, 853 (1998) ("*Lewis*"), must allege and prove intent to harm them, not a third party.[1] Like the Ninth Circuit in the decision below, Respondents argue that police lacked a "legitimate law enforcement purpose." *Est. of Soakai v. Abdelaziz*, 137 F.4th 969, 977 (9th Cir. 2025) ("Soakai"), App. 10a.

Respondents and the Ninth Circuit barely discuss the "intent to harm" standard. Every other Circuit that expressly decided the issue held that plaintiffs seeking a remedy under the Fourteenth Amendment – whether they were criminal suspects or innocent bystanders – had to plead and prove that officers intended to harm *them*, not a third party

[1] Question Presented No. 1: "Whether bystanders injured when a fleeing criminal suspect lost control of his car and crashed into them have a Fourteenth Amendment substantive due process claim against the pursuing police officers for accidental injuries the officers did not intend."

The cases cited in the Petition and this Reply set out the rule in clear, straight forward language. Respondents do not even try to address the relevant language.

- Sixth Circuit:

> [E]ven if, as the plaintiffs have argued, the actions of the three defendant patrolmen violated departmental policy or were otherwise negligent, no rational fact finder could conclude, even after considering the evidence in the light most favorable to [plaintiff], that those peace enforcement operatives ***acted with conscience-shocking malice or sadism towards the unintended*** **shooting** ***victim.***

*Claybrook v. Birchwell***,** 199 F.3d 350, 360 (6th Cir. 2000) (bystander to police shootout struck by stray bullet) (emphasis added).

- Seventh Circuit

> In our case, of course, the officers who fired their weapons did intend to harm the suspect, John Nieslowski, but it is not John on whose behalf this suit was brought. . . . ***Nobody has suggested that the officers intended to harm*** [bystander/plaintiff] ***Kathy Nieslowski***, and so the straightforward application of the *Lewis* analysis yields a verdict in favor of defendants.

Schaefer v. Goch, 153 F.3d 793, 798 (7th Cir. 1998) (*Lewis* applied to accidental police shooting of bystander) (emphasis added).

> Because Mr. Bublitz ***does not seek to prove any intention or purpose on the part of the defendants to cause harm to the Bublitz family*** during the course of the high-speed chase, he cannot show that what the officers did deprived him or his family of their Fourteenth Amendment rights.

Bublitz v. Cottey, 327 F.3d 485, 491-92 (7th Cir. 2003) (emphasis added).

- Eighth Circuit

> Because there was ***no evidence that Officer Wright intended to harm [plaintiffs] Brittney or Shelby Sitzes***, the district court correctly granted summary judgment in favor of the defendants. While accidents such as this are tragic, they "do not shock the modern-day conscience."

Sitzes v. City of W. Memphis Ark., 606 F.3d 461, 470 (8th Cir. 2010) (applying *Lewis* when an officer struck bystanders' car during a high-speed response to a police radio call) (emphasis added).

> A police officer does not violate Neal's substantive due process rights by acting "deliberately indifferent" in *accidently* shooting another officer while attempting to protect the other officer from an armed suspect who was holding a gun to the head of the other officer. Rather, in such circumstances, ***only a purpose to cause harm to the threatened officer*** is sufficiently conscience shocking to give rise to a

> Fourteenth Amendment violation. Thus, the district court properly dismissed plaintiffs' claims in their entirety.

Neal v. St. Louis Cty. Bd. of Police Comm'rs, 217 F.3d 955, 960 (8th Cir. 2000) (undercover police officer taken hostage was accidentally shot by a fellow officer who exchanged gunfire with the suspect) (emphasis added).

> Burch and the other police officers . . . were not guilty of a conscience-shocking intent to harm. [¶] Society could reasonably decide that an innocent bystander injured during such high-speed police pursuits should be compensated from the public coffers. But that is a legislative decision. There was no violation of [bystander] Helseth's rights under the Due Process Clause.

The bystander struck by the fleeing suspect did not satisfy the "intent to harm" standard even if police "terrorized" the suspect with an "aggressive" pursuit and rammed the suspect's vehicle. standard. *Helseth v. Burch,* 258 F.3d 867, 872 (8th Cir. 2001)

- Tenth Circuit

> Our precedent . . . requires that the intent to harm ***be directed at the plaintiff, not a third person.***

Mahdi v. Salt Lake Police Dep't, 54 F.4th 1232, 1239 (10th Cir. 2022) (bystander injured in police shootout with suspect) (emphasis added).

> Nowhere do plaintiffs present specific facts suggesting that the officers

> harbored an intent to harm ***them***. Thus, there is no constitutional liability under *Lewis*."

Childress v. City of Arapaho, 210 F.3d 1154, 1158 (10th Cir. 2000) (bystander injured in police shooting) (emphasis added)..

> Plaintiffs have not even alleged that Deputy Barela ***acted with an intent to harm the participants*** [in a lawsuit brought by the survivor of the decedent shot by police] or to worsen their legal plight, [and thus] under the *Lewis* standard there is no constitutional liability."

Radecki v. Barela, 146 F.3d 1227, 1232 (10th Cir. 1998) (bystander who assisted police officer in struggle with suspect was shot by suspect).

> The estate failed to allege sufficient facts to support ***an intent to physically harm or worsen the legal plight of the injured party***.

Ellis v. Ogden City, 589 F.3d 1099, 1103 (10th Cir. 2009) (bystander's car struck by fleeing suspect) (emphasis added)

B. *Soakai* Lowers the Bar Under the Due Process Clause by Allowing Recovery for Accidental Injuries.

This Court's precedents are clear. "[T]he Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Respondents do not dispute the record on the key point: neither the

fleeing suspect nor the police officers intended any harm to bystanders. Petitioners' injuries were accidental and unintended. The lower courts cannot allow Respondents' substantive due process claims – regardless of the Ninth Circuit's view that there was no "legitimate law enforcement purpose" for the chase – when the record shows police did not intend to harm them.

C. Even if the Ninth Circuit and Respondents Correctly Interpreted *Lewis*, There Is Still a Circuit Split that Must Be Resolved.

The Ninth Circuit described its holding as "implicit" in *Lewis,* even if no other Circuit Court reached the same result. *Soakai* at 981; App. 21a. Respondents go further, arguing that the Court would have to overturn *Lewis* to reverse the decision below. Assuming for the sake of argument they are correct, there is still a circuit split that should be resolved. The Sixth, Seventh, Eighth and Tenth Circuits have expressly stated the rule under *Lewis* that plaintiffs must plead and prove police intended to harm *them,* not a third party. The Ninth Circuit in *Soakai* expressly rejected that rule.

The concept of intent in section 1983 law goes to a government actor's state of mind with respect to one or more persons. As explained by Justice Thomas:

> In some cases, the law readily transfers the intent to use force from the object to the actual victim. . . . "[I]f one person intends to harm a second person but instead unintentionally harms a third, the first person's criminal or tortious intent toward the second applies to the

> third as well." Black's Law Dictionary 1504 (defining transferred-intent doctrine).

Voisine v. United States, 579 U.S. 686, 706 (2016) (Thomas, J., dissenting).

This Court has not decided the issue of whether transferred intent applies to the *Lewis* "intent to harm" standard under the Fourteenth Amendment. No Circuit Court (other than the court below) has allowed transferred intent to sustain a due process claim. For example, in dismissing a bystander claim under the Due Process Clause, the Tenth Circuit stated:

> The problem with plaintiff's claim is that no state conduct was directed at him, and he cannot establish that defendants had the requisite intent to violate his rights. He was merely a bystander who was asserting indirect and unintended injury as a result of police conduct directed toward another.

Archuleta v. McShan, 897 F.2d 495, 498 (10th Cir. 1990) (holding that a child who witnessed his father's violent arrest had no due process claim); *see also Bublitz v. Cottey,* 327 F.3d 485, 489 (7th Cir. 2003) (rejecting a "transferred intent" argument in a case brought under the Fourth and Fourteenth Amendments on behalf of bystanders injured by a fleeing suspect).

This issue is not going away. Two weeks before this Petition was filed, a U.S. District Court in New York decided a motion to dismiss under *Lewis* in the case of a bicyclist hit and injured by a suspect fleeing from the NYPD. *Rakchi v. City of N.Y.*, 800 F. Supp.

3d 494 (E.D.N.Y. 2025). Plaintiff alleged the police officers violated his substantive due process rights

> "by acting with deliberate indifference, gross negligence, and recklessness in engaging in the high-speed chase or pursuit of a motor vehicle thus creating/increasing the risk of Plaintiff being struck by either the subject vehicle or a police vehicle."

Rakchi, *supra,* 2025 U.S. Dist. LEXIS 186281 at *8 (E.D.N.Y. Sep. 22, 2025). As in this case, plaintiff did not allege that police intended any harm to the bystander.

The *Rakchi* court relied on the decisions of the Sixth and Tenth Circuits cited above in dismissing the claim:

> Plaintiffs have not made any allegations that the Officer Doe Defendants directed any conduct towards Plaintiffs at all.
>
> [FN 2] Although this has not yet been addressed by the Second Circuit, other circuits have held that the officers' intent to harm must be directed at the plaintiff, and not a third party. *See Mahdi v. Salt Lake Police Dep't*, 54 F.4th 1232, 1239 (10th Cir. 2022) (noting that circuit precedent "requires that the intent to harm be directed at the plaintiff, not a third person") (collecting cases); *Claybrook v. Birchwell*, 199 F.3d 350, 360-61 (6th Cir. 2000) (finding no "conscience-shocking" behavior where defendant

> officers shot and killed a bystander victim that they were unaware was present). . . .
>
> Accordingly, Plaintiffs' allegations fail to state a substantive due process claim.

Id., *supra,* 2025 U.S. Dist. LEXIS 186281 at *9-*11.

There is a well-defined split of authority between the Ninth Circuit and the Sixth, Seventh, Eighth, and Tenth Circuits on an issue that is litigated nationwide on an ongoing basis. The Court should grant the Petition to resolve this split and overrule the Ninth Circuit's "brand-new theory of substantive due process — contrary to precedent and to the Supreme Court's admonition against such judicial overreach." *Soakai* at 988 (Bumatay, J., dissenting); App. 39a.

II. THE NINTH CIRCUIT FURTHER EXPANDED DUE PROCESS RIGHTS BY HOLDING THE GOVERNMENT LIABLE FOR UNINTENDED INJURIES INFLICTED BY PRIVATE ACTORS.

Respondents misconstrue Petitioners' argument with respect to the Ninth Circuit's state-created danger doctrine. Petitioners do not ask the Court to overturn wholesale the Ninth Circuit's (or any other Circuit's) adoption of the doctrine. Rather, Petitioners assert the decision below runs afoul of this Court's Fourteenth Amendment jurisprudence. This Court has never approved substantive due process liability based on the state-created danger doctrine. The Ninth Circuit's application of this, or

any other, legal doctrine must comport with this Court's Fourteenth Amendment jurisprudence.

For purposes of its analysis under the state-created danger doctrine, the Ninth Circuit assumed the officers had a "legitimate law enforcement objective" for the chase. In other words, they assuming Petitioners were not liable under the *Lewis* "intent to harm" standard. *Soakai* at 981; App. 21a.

Under this doctrine, the court went on to find that the chase created a danger to which Respondents would not otherwise have been exposed. "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.'" *Soakai* at 983; App. 27a. Because the officers' then failed to act – i.e., render or summon emergency aid – they were deliberately indifferent to Respondents' plight. Accordingly, the officers would be liable under substantive due process. *Id.* at 984; App. 29a.

This holding runs directly counter to *Lewis.* When an officer without intent to harm (as assumed by the Ninth Circuit in this portion of the decision) engages in a pursuit, officers are not liable under the Fourteenth Amendment for the injuries that may result. *Lewis,* 523 U.S. at 854. This is true even if the pursuit was negligent, reckless, deliberately indifferent to safety, or contrary to police department policy. *Id.*

The Ninth Circuit is not free to rebalance the risks and benefits of police pursuits and impose constitutional liability where the Supreme Court has

ruled it out. This Court has made clear that police pursuits are inherently dangerous, but police did not create the risks.

> [The officer] was faced with a course of lawless behavior for which the police were not to blame. They had done nothing to cause [the driver's] high-speed driving in the first place, nothing to excuse his flouting of the commonly understood law enforcement authority to control traffic, and nothing (beyond a refusal to call off the chase) to encourage him to race through traffic at breakneck speed forcing other drivers out of their travel lanes.

Lewis, *supra,* 523 U.S. at 855; *accord Jones v. Byrnes,* 585 F.3d 971, 977 (6th Cir. 2009).

Next, as the dissent in the Ninth Circuit observed, "the majority expands the state-created-danger doctrine to create a new constitutional duty requiring law enforcement officers to render or summon medical aid for civilians harmed by private actors[.]" *Soakai* at 988; App. 40a. While a duty to render aid in these circumstances would be appropriate as a matter of police department policy or state tort law, it is contrary to bedrock constitutional law:

> [T]he Fourteenth Amendment does not confer an affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.

DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 196 (1989).

As this Court has cautioned, federal courts should not "make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States." *Paul v. Davis*, 424 U.S. 693, 701 (1976); *Daniels, supra,* 474 U.S. at 332 (same).

Respondents erroneously rely on *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239 (1983), for the proposition that the Fourteenth Amendment requires the state to provide medical care to persons injured by police. The person at issue in that case was in police custody. As *DeShaney* explains, the state's duty to provide medical care to persons in custody is an exception to the general rule under the Fourteenth Amendment. *DeShaney*, 489 U.S. at 200. Respondents were not in police custody or otherwise restrained.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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