No. 24-1050

IN THE

Supreme Court of the United States

ESTATE OF TE'JUAN JOHNSON,

Petitioner,

v.

AMANDA RAKES, ADMINISTRATOR OF THE ESTATE OF AMYLYN SLAYMAKER AND NEXT FRIEND TO THE MINOR CHILDREN G.C. AND M.C.,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Whether the Seventh Circuit correctly held that Officer Te'Juan Johnson violated the Due Process Clause by misrepresenting to Amylyn Slaymaker that her abusive husband would be involuntarily held at a hospital for 24 hours, knowing that was false because the officer had reached an agreement with the husband that ensured his ability to leave at will, inducing Ms. Slaymaker to return to her home because she thought it was safe, where her husband returned and killed her in her sleep.

(2) Whether the Seventh Circuit correctly held that Officer Johnson violated clearly established law.

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INTRODUCTION

For nearly forty years, circuit courts have consistently applied this Court's decision in *DeShaney v. Winnebago County Department of Social Services* to distinguish non-actionable claims arising from a state's failure to protect someone from private harm, on the one hand, and actionable claims in which an affirmative act by the state causes harm, on the other. 489 U.S. 189 (1989). In *DeShaney*, this Court recognized that the state's mere "failure to protect" a young boy against private violence did not violate the Due Process Clause because the state "played no part" in creating the dangers the boy faced, "nor did it do anything to render him any more vulnerable to them." *Id.* at 197, 201. This Court reiterated, however, that the Due Process Clause "forbids the State itself" from "depriv[ing] individuals of life, liberty, or property." *Id.* at 195.

The Seventh Circuit correctly applied that distinction here. As Judge Scudder explained, Officer Te'Juan Johnson did not merely fail to protect Amylyn Slaymaker from her husband: Officer Johnson "reached an agreement with Amylyn's husband" that ensured her husband would not be detained, but then falsely told Amylyn, multiple times, that her husband would be detained at a hospital for 24 hours. Pet. App. 56a. "Officer Johnson's misrepresentations—the false sense of safety he conveyed—created a risk that Amylyn" would go home and be "caught off-guard" when her husband "returned and had access to his AR-15s." *Id.* "This is not a risk Amylyn would have faced had she known" her husband was "free to leave the hospital at a time of his choosing." *Id.* Officer

Johnson's misrepresentations cost Amylyn her life, and thus he violated the Due Process Clause.

Officer Johnson now asks this Court to repudiate decades of precedent across the circuits and hold that no affirmative act by the state—no matter how immediate or severe the danger it creates—can violate the Due Process Clause, as long as a private citizen ultimately pulls the trigger. No circuit court has adopted this view, and there is no reason for this Court to entertain a departure from the settled circuit precedent. In fact, this Court has repeatedly denied petitions raising this same, erroneous theory. It did so again just months before the Seventh Circuit's decision in this case. *See Cnty. of Tulare v. Murguia*, No. 23-270 (cert. denied Jan. 8, 2024). This petition should be denied, as well.

STATEMENT OF THE CASE

I. Factual Background

A. Officer Johnson Responds To A 911 Call And Learns That RJ Slaymaker Assaulted And Threatened To Kill Amylyn Slaymaker.

On the night of July 18, 2019, Officers Te'Juan Johnson and Jonathan Roederer responded to a 911 call reporting that a man was hitting a woman on the street, and that the man might have a gun. Pet. App. 4a-5a. The man was RJ Slaymaker, and he was hitting his wife Amylyn Slaymaker. *Id.* at 2a. Throughout their marriage, RJ had inflicted shocking levels of abuse on Amylyn. *See id.* at 3a ("The allegations of abuse during that period are startling."). Among other things, he had coerced her to engage in sexual acts with other men, he threatened

to break her jaw and put her in the hospital, he shot at her with a gun on multiple occasions, and he once attempted to burn down their house. *Id.* at 3a-4a. He also prevented her from escaping his abuse by threatening to commit suicide if she left him. *Id.* at 4a.

On July 18, RJ had drunk himself to intoxication and threatened to "gun [d]own" Amylyn's ex-husband, who was the father of Amylyn's two children. *Id.* The children were staying with their father that week pursuant to the couple's parenting schedule. In a text message, RJ told Amylyn it would be a "[r]eal suicide crime scene" when he was finished, and that she should "[g]ive it 10 mins and call the cops." *Id.*

Amylyn raced to her ex-husband's home, barely beating RJ there, and she stopped RJ in front of the driveway. *Id.* RJ was armed with a gun, and he taunted her, "Do you want me to shoot you? And then the kids come out in the morning to see their mother dead?" R. Doc. 48-1 at 0:12:53. The two got into an altercation and RJ began hitting Amylyn with the gun. Pet. App. 5a. Concerned neighbors called 911. *Id.* at 4a-5a.

When the officers arrived, they handcuffed RJ and confiscated his gun. Pet. App. 5a. Amylyn told the officers that RJ had punched her and hit her with the front sight of his gun. *Id.* She showed them the threatening texts he had sent her and about his other abusive behavior. *Id.* She told the officers that she was "scared for [her] life." *Id.*

After speaking with several witnesses, Officer Johnson told Amylyn that they were not going to arrest RJ. R. Doc. 48-1 at 0:26:33. The officers agreed,

however, to take custody of RJ's handgun for the night. *Id.* Amylyn asked Officer Johnson if the officers could remove RJ's AR-15 rifles from their house, as well. *Id.* at 0:27:16.

Officer Johnson suggested that Officer Roederer drive RJ back to the house and remove the AR-15 rifles, but Officer Roederer resisted because he was concerned about his own safety. Pet. App. 6a. Officer Johnson had told Officer Roederer that RJ had "apparently tried to burn the house down." R. Doc. 48-1 at 0:29:40. Officer Roederer stated that he did not want to "go in when we . . . know he has weapons in the house." R. Doc. 82-3 at 67.

Amylyn then showed the officers a photo on her phone of RJ with a gun to his head. R. Doc. 48-1 at 0:39:12, 0:42:31; R. Doc. 82-5 at 1. After seeing the photo, the officers went to speak with RJ, and they suggested that he go to the hospital to "get checked out." Pet. App. 7a. RJ expressed concerns that "they'll take [his] gun rights away." R. Doc. 48-1 at 0:45:50.

Officer Johnson stated twice that he preferred if RJ would go to the hospital voluntarily, because otherwise Officer Johnson would have to type up a report and remain at the hospital. R. Doc. 48-1 at 0:44:58; R. Doc. 82-12 at 83:22-84:4. The officers also told RJ that if he did not agree to go to the hospital voluntarily, they could compel him to stay there for up to a week. Pet. App. 7a. They made clear that if RJ went voluntarily, "you don't have to stay in there." *Id.*

The officers even agreed not to disclose any details about the evening or the picture Amylyn showed them

to the Emergency Medical Service ("EMS") providers, so that RJ could leave the hospital whenever he wanted. R. Doc. 48-1 at 0:47:40; 1:02:06. Officer Johnson specifically promised that if RJ agreed to go to the hospital voluntarily, "[t]hey do not see this picture on this phone. They don't get this phone, ok?" R. Doc. 48-1 at 0:46:50. And the officers agreed not to accompany him to the hospital. R. Doc. 48-1 at 0:47:40. As a result, RJ agreed to go. Pet. App. 7a.

When an ambulance arrived, Officer Johnson told the EMS providers that RJ "got in trouble with his wife. He's having a bad day. Problems. He wants to volunteer to get checked out." R. Doc. 48-1 at 1:02:41. Officer Johnson did not tell the providers about RJ's violence towards Amylyn, either that night or previously, or his concern that RJ was suicidal. Based on Officer Johnson's statements, the EMS providers noted that RJ was "a veteran and P.D. suggested he go talk to someone," and they assumed, erroneously, that he was "[n]ot suicidal or homicidal." R. Doc. 82-6 at 38.

RJ entered the Clark Memorial Hospital alone at approximately 1:00 am. R. Doc. 82-6 at 26. He told the medical staff that he had an argument with Amylyn, but that he did not threaten anyone and he had no desire to harm himself or Amylyn. *Id.* at 26. He was discharged by 3:16 am. *Id.* at 19.

B. Officer Johnson Repeatedly Tells Amylyn Slaymaker That Her Husband Will Be Held For 24 Hours, Knowing That Is False.

Meanwhile, back at the scene, Officer Johnson told Amylyn that RJ would be held at the hospital for 24 hours, knowing that was false. Specifically, after speaking with RJ and sending him off in the ambulance, the officers returned to Amylyn. Officer Johnson told Amylyn he needed the photo of RJ with a gun to his head "for the hospital" because "this is one of the reasons why we put him in there." R. Doc. 48-1 at 1:05:04. Then, Officer Johnson told Amylyn:

> Johnson: Are you going to go to your house? You're – you're going to be at your parents' house?
>
> Amylyn: Well, you – you said it's a 24-hour thing, right? For an evaluation?
>
> Johnson: Yeah . . . .

Pet. App. 8a.

Under Indiana law, officers are authorized to perform an "immediate twenty-four (24) hour detention for mental evaluation" if they believe an individual is dangerous and mentally ill. Pet. App. 9a n.20 (citing Ind. Code 12-26-4-1). Officer Johnson's police department policy similarly required the officers to exercise such a hold if they had "reasonable grounds to believe that an individual" is "dangerous to themselves or others." *Id.* at 9a n.21.

During the conversation, Amylyn gave Officer Johnson more vivid details about RJ's threatening behavior. She described how "the other day, he even threatened to shoot the dog. It's like, I don't feel like I can protect everybody. So, if I try to protect myself, I feel like I'm potentially putting the kids in harm's way, or my parents in harm's way. . . . I do need help. . . . I feel if he doesn't get help, I'm going to be in danger." R. Doc. 48-1 at 1:19:46. In response, Officer Johnson reassured her, "That's why he's at the hospital trying to get help. R. Doc. 48-1 at 1:13:37.

Later on, Officer Johnson reiterated that RJ would be held for 24 hours:

> Johnson: Okay, so are you going to go to your house?
>
> Amylyn: Well, tonight, yeah.
>
> Johnson: Are you going to --
>
> Amylyn: You said it's a 24 hour?
>
> Johnson: Yeah.

Pet. App. 8a.

Based on those assurances, Officer Johnson asked if Amylyn would go home to retrieve RJ's AR-15 rifles—the very task that Officer Roederer refused to perform out of concerns for his safety:

> Johnson: So are you going to get the guns and everything when you go home?

> Amylyn: Yeah, I'm going to take them with me to my parents.

Pet. App. 8a.

C. Based On Officer Johnson's Misrepresentation, Amylyn Slaymaker Goes Home, Where Her Husband Kills Her.

It was after midnight when Amylyn and the officers left the scene. About an hour later, Amylyn went to the police station to show Officer Johnson an injury on her arm as proof that RJ had hit her. Pet. App. 9a-10a. Detectives later determined that this was likely a cut from the front sight of RJ's gun. R. Doc. 82-12 at 57:24-25, 58:1-10. Before Amylyn left the station, Officer Johnson told her to "make sure to get the other two AR-15s." Pet. App. 10a.

Amylyn left the police station and went home, where later that night, while she was asleep, RJ returned and shot her in the head. *Id.* Police arrived on scene after RJ sent his mother a text message stating, "I'm not going to prison. Amylyn is dead. And so am I." *Id*.

II. Procedural History

In 2021, Amanda Rakes, as the administrator of Amylyn's estate, filed suit under 42 U.S.C. § 1983 and 42 U.S.C. § 1985 against Officer Johnson and Officer Roederer. Pet. App. 11a. Ms. Rakes alleged, among other things, that Officer Johnson violated Amylyn's due process rights by "affirmatively plac[ing] Amylyn in a heightened state of special danger" because Officer Johnson "falsely told Amylyn that RJ would be in the hospital for 24 hours and it was safe to return

home." R. Doc. 1 ¶ 45. The district court granted summary judgment to Officer Johnson and Officer Roederer as to the due process claims on qualified immunity grounds. *See* Pet. App. 126a.

On September 25, 2024, the Seventh Circuit reversed the district court's decision as to Officer Johnson and affirmed as to Officer Roederer. Pet. App. 3a. The majority—Judge Ripple and Judge Scudder—agreed that Officer Johnson's conduct affirmatively placed Amylyn in danger and violated clearly established law. *Id.* As Judge Scudder explained, the Seventh Circuit has long recognized claims "in facts and circumstances where state actors create the danger that proximately causes harm to an individual." Pet. App. 55a-56a. For example, in *Monfils v. Taylor*, 165 F.3d 511 (7th Cir. 1998), the Seventh Circuit held that "a police officer can be liable under the state-created danger doctrine if he makes false promises about the danger a person faces from an identified and violent third party." Pet. App. 56a-57a.

That precedent made clear that it was unlawful for Officer Johnson to "reach[] an agreement" with RJ to go to the hospital voluntarily, knowing that RJ could leave at will, and then misrepresent to Amylyn multiple times that RJ would be held for 24 hours. Pet. App. 56a. These affirmative acts caused Amylyn to think it was safe to go home, gather her belongings, and retrieve RJ's AR-15 rifles, putting her in danger of being killed by RJ. In Judge Scudder's words, "[t]his is not a risk Amylyn would have faced had she known RJ was free to leave the hospital at a time of his own choosing." Pet. App. 56a.

On November 15, 2024, the court denied rehearing en banc, with no judge requesting a vote on the petition for rehearing and all judges on the original panel voting to deny the petition. CA7 R. Doc. 46.

REASONS FOR DENYING THE PETITION

The Seventh Circuit properly held that Officer Johnson violated Amylyn's clearly established due process rights. This Court should deny the petition because the Seventh Circuit's decision implicates no circuit split, it was correct, and it concerned an unusual and tragic set of facts that are not likely to have broader application.

I. There Is No Circuit Split About The State-Created Danger Doctrine.

The Seventh Circuit's decision does not warrant review because it implicates no circuit split. *See* S. Ct. R. 10(a). To the contrary, the circuits have consistently applied *DeShaney* for decades. None of them have adopted Officer Johnson's extreme view that state officials can never be held responsible for affirmative acts that put people in danger and cause them harm.

To start, every circuit recognizes, as the Seventh Circuit did here, that the Due Process Clause does not make state officials liable for failing to protect citizens from private harms.[1] *See Bowers v. DeVito*,

[1] *See Irish v. Maine*, 849 F.3d 521, 525 (1st Cir. 2017) ("As a general matter, 'a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.'"); *Lombardi v. Whitman*, 485 F.3d 73, 79 (2d Cir. 2007) (noting "[i]t is not enough to allege that a government actor failed to protect an individual from a known danger of bodily

686 F.2d 616, 618 (7th Cir. 1982) ("All that is alleged is a failure to protect Miss Bowers and others like her from a dangerous madman, and as the State of Illinois has no federal constitutional duty to provide such protection its failure to do so is not actionable."); Pet. App. 12a-13a ("The Due Process Clause of the Fourteenth Amendment generally does not impose a

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harm or failed to warn the individual of that danger"); *Bright v. Westmoreland Cnty.*, 443 F.3d 276, 284 (3d Cir. 2006) ("Liability requires affirmative state action; mere 'failure to protect an individual against private violence' does not violate the Due Process Clause."); *Pinder v. Johnson*, 54 F.3d 1169, 1175 (4th Cir. 1995) (rejecting liability because "the state did not 'create' the danger, it simply failed to provide adequate protection from it"); *M.J. by & through S.J. v. Akron City Sch. Dist. Bd. of Educ.*, 1 F.4th 436, 449 (6th Cir. 2021) ("Generally . . . the failure to protect a person from violence at the hands of a third party is not a constitutional violation."); *Sandage v. Bd. of Comm'rs of Vanderburgh Cnty.*, 548 F.3d 595, 596 (7th Cir. 2008) ("There is no federal constitutional right to be protected by the government against private violence in which the government is not complicit."); *K.B. v. Waddle*, 764 F.3d 821, 823 (8th Cir. 2014) ("A State's failure to protect an individual against private violence generally does not violate the Constitution."); *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006) (noting that "the state's failure to protect an individual against private violence does not generally violate the guarantee of due process"); *Matthews v. Bergdorf*, 889 F.3d 1136, 1150 (10th Cir. 2018) (noting that "a state actor, *absent some prior affirmative act by the actor* . . . cannot be held liable under the state-created danger exception for the *failure* to protect a plaintiff from harm"); *White v. Lemacks*, 183 F.3d 1253, 1258 (11th Cir. 1999) (rejecting the idea that there is a "constitutional duty to protect individuals from harm by third parties"); *Butera v. D.C.*, 235 F.3d 637, 647 (D.C. Cir. 2001) ("As a general matter, a State's failure to protect an individual from private violence, even in the face of a known danger, 'does not constitute a violation of the Due Process Clause.'").

duty upon the State to protect individuals from harm by private actors."). As Judge Scudder put it, "[w]e know for certain state actors do not shoulder an affirmative duty to protect individuals from dangers posed by third parties." Pet. App. 55a.

In addition, eleven circuits recognize that state officials can be liable if they take affirmative actions that put citizens in danger and cause them harm.[2]

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[2] *Irish v. Fowler*, 979 F.3d 65, 67 (1st Cir. 2020) ("Under the state-created danger substantive due process doctrine, officers may be held liable for failing to protect plaintiffs from danger created or enhanced by their affirmative acts."); *Okin v. Vill. of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 427-28 (2d Cir. 2009) ("[S]tate actors may be liable under section 1983 if they affirmatively created or enhanced the danger of private violence."); *Sanford v. Stiles*, 456 F.3d 298, 304 (3d Cir. 2006) ("We confirmed that liability may attach where the state acts to *create* or *enhance* a danger that deprives the plaintiff of his or her Fourteenth Amendment right."); *Graves v. Lioi*, 930 F.3d 307, 319 (4th Cir. 2019) (holding the state-created-danger doctrine "applies only when the state affirmatively acts to create or increase the risk that resulted in the victim's injury"); *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1066 (6th Cir. 1998) ("Although our circuit has never held the state or a state actor liable under the Fourteenth Amendment for private acts of violence, we nevertheless have recognized the possibility of doing so under the state-created-danger theory."); *Paine v. Cason,* 678 F.3d 500, 510 (7th Cir. 2012) ("Several decisions in this and other circuits hold that people propelled into danger by public employees have a good claim under the Constitution."); *Hart v. City of Little Rock*, 432 F.3d 801, 805 (8th Cir. 2005) (recognizing that "the state owes a duty to protect individuals if it created the danger to which the individuals are subjected"); *Kennedy*, 439 F.3d at 1061 ("It is also well established that, although the state's failure to protect an individual against private violence does not generally violate the guarantee of due process, it can where the state action 'affirmatively place[s] the plaintiff in a position of danger,' that is, where state action creates or exposes an

That includes the Eleventh Circuit, despite Officer Johnson's attempts to suggest otherwise. *See Wyke v. Polk Cnty. Sch. Bd.*, 129 F.3d 560, 567 (11th Cir. 1997) ("The language of *DeShaney* does indeed 'leave room' for state liability where the state creates a danger or renders an individual more vulnerable to it."). The only exception is the Fifth Circuit, which has simply declined to decide whether to recognize such liability. *See Fisher v. Moore*, 73 F.4th 367, 372 (5th Cir. 2023) ("[W]e have not categorically *ruled out* the doctrine either; we have merely declined to adopt this particular theory of constitutional liability."). Thus, no circuit has interpreted *DeShaney* to preclude categorically liability for state-created dangers, as Officer Johnson urges.

The eleven circuits that apply the state-created danger doctrine are consistent, moreover, in the way

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individual to a danger which he or she would not have otherwise faced."); *Gray v. Univ. of Colorado Hosp. Auth.*, 672 F.3d 909, 922 (10th Cir. 2012) ("The state-created danger theory is a means by which a state actor might be held liable for an act of private violence absent a custodial relationship between the victim and the State, under narrowly prescribed circumstances bearing upon conduct, causation, and state of mind, *provided* the danger the state actor created, or rendered the victim more vulnerable to, precipitated a deprivation of life, liberty, or property in the constitutional sense."); *Wyke*, 129 F.3d at 567 ("The language of *DeShaney* does indeed 'leave room' for state liability where the state creates a danger or renders an individual more vulnerable to it."); *Butera*, 235 F.3d at 651 ("We join the other circuits in holding that, under the State endangerment concept, an individual can assert a substantive due process right to protection by the District of Columbia from third-party violence when District of Columbia officials affirmatively act to increase or create the danger that ultimately results in the individual's harm.").

they evaluate these claims. For instance, in order to weed out claims based on a mere failure to protect, the circuits require proof of an "affirmative act."[3] On top

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[3] *Irish*, 979 F.3d at 73-74 ("The circuits that recognize the doctrine uniformly require that the defendant affirmatively acted to create or exacerbate a danger to a specific individual or class of people."); *Okin*, 577 F.3d at 428 (stating that the "Due Process Clause may be violated when police officers' affirmative conduct—as opposed to passive failures to act—creates or increases the risk of private violence, and thereby enhances the danger to the victim"); *Bright*, 443 F.3d at 282 ("[W]e have never found a state-created danger claim to be meritorious without an allegation and subsequent showing that state authority was affirmatively exercised."); *Robinson v. Lioi*, 536 F. App'x 340, 343-44 (4th Cir. 2013) ("This Court has acknowledged that the state-created danger exception is a narrow one and that for the doctrine to apply, there must be affirmative action, not inaction, on the part of the State which creates or increases the risk that the plaintiff will be harmed by a private actor."); *Kallstrom*, 136 F.3d at 1066 ("Liability under the state-created-danger theory is predicated upon affirmative acts by the state which either create or increase the risk that an individual will be exposed to private acts of violence."); *Est. of Her v. Hoeppner*, 939 F.3d 872, 876 (7th Cir. 2019) (requiring that "the government, by its affirmative acts, created or increased a danger to the plaintiff"); *S.S. v. McMullen*, 225 F.3d 960, 962 (8th Cir. 2000) ("[I]f the state acts affirmatively to place someone in a position of danger that he or she would not otherwise have faced, the state actor, depending on his or her state of mind, may have committed a constitutional tort."); *Kennedy*, 439 F.3d at 1061 (noting that a state-created danger claim requires examination of "whether an officer affirmatively place[d] an individual in danger"); *Matthews*, 889 F.3d at 1150 (providing that "a state actor, *absent some prior affirmative act by the actor* . . . cannot be held liable under the state-created danger exception for the *failure* to protect a plaintiff from harm"); *Wyke,* 129 F.3d at 567 (recognizing state-created-danger claim where state actor "affirmatively interfered" and put private individual in worse position than he would have been absent interference); *Butera*, 235 F.3d at 651 (stating that an individual can assert state-created-danger claim "when

of that, the circuits also require heightened culpability by the state actor, such as deliberate indifference, again to weed out claims based solely on the alleged negligence by state actors in failing to protect someone from private harms.[4] Finally, the

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District of Columbia officials affirmatively act to increase or create the danger that ultimately results in the individual's harm").

[4] *Rivera v. Rhode Island*, 402 F.3d 27, 35 (1st Cir. 2005) ("Even if there exists a special relationship between the state and the individual or the state plays a role in the creation or enhancement of the danger, under a supposed state created danger theory, there is a further and onerous requirement that the plaintiff must meet in order to prove a constitutional violation: the state actions must shock the conscience of the court."); *Okin*, 577 F.3d at 432 (where "domestic violence is a known danger that the officers were prepared to address upon the expected occurrence of incidents," "deliberate indifference is the requisite state of mind for showing that defendants' conduct shocks the conscience"); *Sanford*, 456 F.3d at 304 (requiring that "a state actor acted with a degree of culpability that shocks the conscience"); *Graves*, 930 F.3d at 321 (recognizing that the state-created danger doctrine "requires proof that [the defendants] were more than merely negligent"); *M.J. by & through S.J.*, 1 F.4th at 449-50 (recognizing that state-created danger doctrine "requires a showing of at least deliberate indifference," and that "[t]his is a high bar—one that surpasses mere negligence"); *Est. of Her*, 939 F.3d at 874 (requiring that conduct be "so egregious and culpable that it 'shocks the conscience'"); *Montgomery v. City of Ames*, 749 F.3d 689, 695 (8th Cir. 2014) (rejecting state-created danger theory when the officer's culpability did "not rise to the level of deliberate indifference"); *Martinez v. City of Clovis*, 943 F.3d 1260, 1274 (9th Cir. 2019) ("Under the state-created danger test, Martinez must finally show that the officers acted with deliberate indifference to a known or obvious danger.") (internal citations omitted); *T.D. v. Patton*, 868 F.3d 1209, 1222 (10th Cir. 2017) (noting that "neither ordinary negligence nor permitting unreasonable risks qualifies as conscience shocking"); *Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1305 (11th Cir. 2003)

circuits require that the state's affirmative act cause the plaintiff's deprivation of life, to ensure that the deprivation is caused by the "State itself." *DeShaney*, 489 U.S. at 195.[5] Thus, there is no circuit split to warrant this Court's review.

("[E]ven conduct by a government actor that would amount to an intentional tort under state law will rise to the level of a substantive due process violation only if it also 'shocks the conscience.'"); *Butera*, 235 F.3d at 651 (noting that a violation requires that "the District of Columbia's conduct was 'so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience'").

[5] *Irish*, 979 F.3d at 74 ("The plaintiff also must show a causal connection between the defendant's acts and the harm."); *Okin*, 577 F.3d at 428 (recognizing that "state actors may be liable under section 1983 if they affirmatively created or enhanced the danger of private violence"); *Sanford*, 456 F.3d at 305 (requiring a showing that "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"); *Graves*, 930 F.3d at 319 ("[W]here [state actors] have engaged in affirmative conduct that creates or increases 'the dangerous situation that resulted in a victim's injury,' 'it becomes much more akin to a[ ] [state] actor itself directly causing harm to the injured party.'"); *Kallstrom*, 136 F.3d at 1066 (recognizing that the state "may not cause or greatly increase the risk of harm to its citizens without due process of law through its own affirmative acts"); *Barber v. Overton*, 496 F.3d 449, 454 (6th Cir. 2007) (describing its "special danger" inquiry as "akin to the notion of proximate causation"); *Buchanan-Moore v. Cnty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009) ("[T]he state's failure to protect that individual from such a danger must be the proximate cause of the injury to the individual."); *Hart*, 432 F.3d at 805 (noting that state-created-danger theory requires proof that state actor's "conduct put them at significant risk of serious, immediate, and proximate harm"); *Sinclair v. City of Seattle*, 61 F.4th 674, 681 (9th Cir. 2023) (stating that state must "affirmatively create[ ] an actual, particularized danger [that the plaintiff] would not otherwise

Officer Johnson tries to manufacture several splits, none of which withstands scrutiny. First, he claims that the Eleventh Circuit "rejected the state-created danger theory of recovery in *Perez-Guerrero v. U.S. Attorney General*, 717 F.3d 1224 (11th Cir. 2013)." Pet. 15. That is incorrect. *Perez-Guerrero* recognized that the state acquires a duty "to protect persons from harm by third parties" in custodial settings, like prison. 717 F.3d at 1233. *Perez-Guerrero* contrasted that "automatic" duty to protect with the state's more limited duty outside of custodial settings: "state officials can violate the plaintiff's substantive due process rights only when the officials *cause harm* by engaging in conduct that is 'arbitrary, or consci[ence] shocking, in a constitutional sense.'" *Id.* at 1234 (emphasis added). In other words, the Eleventh Circuit, like its peers, recognizes that states have a duty not to take affirmative action that puts people in danger and causes them harm. *See Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1305 (11th Cir. 2003) ("The Clause is phrased as a limitation on the State's power to act.").

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have faced"); *Gray*, 672 F.3d at 922 (recognizing liability where "the danger the state actor created, or rendered the victim more vulnerable to, precipitated a deprivation of life, liberty, or property in the constitutional sense"); *Mitchell v. Duval Cnty. Sch. Bd.*, 107 F.3d 837, 840 (11th Cir. 1997) (rejecting state-created-danger claim where there was "there was no connecting relationship" between the state actors and the harm experienced); *Butera*, 235 F.3d at 651 (stating that an individual can assert state-created-danger claim "when District of Columbia officials affirmatively act to increase or create the danger that ultimately results in the individual's harm").

Second, Officer Johnson argues that the Sixth, Seventh, and Ninth Circuits have phrased their standards for proving a state-created danger claim differently. Pet. App. 15a-16a. But even the quotes Officer Johnson provides make clear that the circuits are united in requiring (1) an affirmative act creating a danger, (2) heightened culpability, and (3) the causation of harm. Although the circuits have described the level of culpability in different terms—deliberate indifference, or conduct shocking the conscience—their application of these terms shows no meaningful difference between the standards. *See, e.g.*, *King ex rel. King v. E. St. Louis Sch. Dist. 189*, 496 F.3d 812, 819 (7th Cir. 2007) (requiring that the official's conduct "shock the conscience" and clarifying that the court will "find the official's conduct conscience shocking when it evinces a deliberate indifference to the rights of the individual"). To the extent there is a difference, moreover, it would not matter here, as Officer Johnson's conduct met even the "shock the conscience" standard. Pet. App. 58a ("Officer Johnson's response to what he encountered during the early morning hours of July 19, 2019 remains shocking in the extreme.").

Third, Officer Johnson points to several separate opinions written by individual circuit judges to claim that "the circuits have wrestled with the concept of liability for dangers created by the state." Pet. App. 17a-18a. But separate opinions are not circuit precedent and cannot create a split. Indeed, as noted above, each circuit in which these judges sit has recognized the state-created danger doctrine. *See, e.g.*, *Est. of Romain v. City of Grosse Point Farms*, 935 F.3d 485, 493 (6th Cir. 2019) (Murphy, J., concurring)

(recognizing that "[w]e allow these claims"). These separate writings simply raised individual judges' concerns about whether the state-created danger doctrine is consistent with *DeShaney*. *See id.* Those views are unfounded, as explained below, which is why they have not been adopted as the law of any circuit.

Finally, Officer Johnson cites two cases that he claims held that "an affirmative representation that someone will be taken into custody does not implicate the Due Process Clause." Pet. App. 20a. But that is not what those cases held. The two cases he cites held only that an officer's promise to arrest someone does not create the kind of duty to protect private citizens that *DeShaney* specifically rejected. *See Bright v. Westmoreland Cnty.*, 443 F.3d 276, 284 (3d Cir. 2006) ("[N]o 'affirmative duty to protect arises . . . from the State's . . . *expressions of intent to help*.'"); *Pinder v. Johnson*, 54 F.3d 1169, 1175 (4th Cir. 1995) ("*DeShaney* rejected the idea that such a duty can arise solely from an official's awareness of a specific risk or from promises of aid."). In *Pinder*, for example, the plaintiff based her claim on the notion that the officer's "promises to her created a 'special relationship,' which in turn gave rise to an affirmative duty to protect her under the Due Process Clause."[6] *Id.* at 1172.

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[6] Similarly, the police officer in *Bright* told the father of the victim three weeks prior to her death that the individual who ultimately killed her would be arrested. *Bright*, 443 F.3d at 284. In this context, the Third Circuit noted that merely "expressing an intention to seek such detention" and failing to do so cannot give rise to constitutional liability. *Bright*, 443 F.3d at 283-84.

Here, the Seventh Circuit's decision does not turn on whether any "promises of aid" created a "special relationship" that obligated the police to detain RJ. *Pinder*, 54 F.3d at 1175; *see Doe v. Rosa*, 795 F.3d 429, 438 n.6 (4th Cir. 2015) (explaining that "'creation' of a danger implicates the alternate framework of § 1983 liability wherein a plaintiff alleges that some conduct by an officer directly caused harm to the plaintiff"). Officer Johnson was not obligated to arrest RJ. "[T]his does not mean," however, "that no constitutional violation can occur when state authority is affirmatively employed in a manner that injures a citizen or renders him 'more vulnerable to injury.'" *Bright*, 443 F.3d at 281. That is what the Seventh Circuit addressed: Officer Johnson affirmatively misled Amylyn about the deal he had reached with RJ, "putting Amylyn at a very high risk of losing her life," and ultimately costing her life. Pet. App. 60a.

II. The Seventh Circuit's Decision Is Correct.

The Seventh Circuit's decision also does not warrant review because it was consistent with this Court's precedent. *See* S. Ct. R. 10(c). In *DeShaney*, this Court concluded that state officials did not violate the Due Process Clause because the harms to Joshua DeShaney were "inflicted not by the State of Wisconsin, but by Joshua's father." 489 U.S. at 203. Those harms were solely caused by the father because the state "played no part in their creation, nor did it do anything to render him any more vulnerable to them." *Id.* at 201, 203. The Court explained that mere

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When the defendants sought certiorari, this Court denied the petition. *See Bright v. Westmoreland Cnty.*, No. 06-563 (cert. denied Mar. 5, 2007).

"knowledge of the individual's predicament," or even "expressions of intent to help him," do not create a special relationship where the state is obligated to protect the individual from private harms. *Id.* at 200. Accordingly, the state's mere "failure to act" did not violate the Constitution. *Id.* at 191. Only where the "State itself" acts in a way to "deprive individuals of life, liberty, or property" is the Due Process Clause implicated. *Id.* at 195.[7]

Under *DeShaney*, the Seventh Circuit has long recognized that "mere inaction is insufficient" to state a claim under the Due Process Clause. *Stevens v. Umsted*, 131 F.3d 697, 705 (7th Cir. 1997). Rather, the state itself can be said to deprive someone of life only when the state engages in an "affirmative act" that causes harm. *Id.* at 705. The court properly applied that distinction here, denying summary judgment based not on any failure to protect, but on "Officer Johnson's duplicity," which left Amylyn "vulnerable to new risk—more immediate and acute risk." Pet. App. 59a. As Judge Scudder explained, "yes, Amylyn was in an abusive marriage, but she had no idea that Officer Johnson had cut a deal with RJ that would allow him to return home in less than 24 hours, find her there alone, and murder her with one of the guns known to be in the house." *Id.*

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[7] Although sometimes describes as an "exception" to *DeShaney*, Pet. 11, the state-created danger doctrine actually predates that decision and was preserved by it. *See Kennedy*, 439 F.3d at n.1 (recognizing that *DeShaney* preserved the preexisting state-created danger doctrine).

To challenge the state-created danger doctrine, Officer Johnson invokes the arguments from the dissent in *Murguia v. Langdon*, 61 F.4th 1096 (9th Cir. 2023). Pet. 17. As an initial matter, those same arguments were brought directly to this Court two years ago, when the defendants in *Murguia* sought certiorari. *See Cnty. of Tulare v. Murguia*, No. 23-270 (cert. denied Jan. 8, 2024). This Court denied that petition. And it was right to do so: the dissent expressed concerns that the state-created danger doctrine should not apply to "negligence, mistakes of judgment, and the failure to provide safety and security to those who need it." *Murguia*, 61 F.4th at 1120 (Ikuta, J., dissenting in part). But as discussed above, none of the circuits permit claims to proceed on the basis of negligence; all require a heightened form of culpability like deliberate indifference. *See supra* at 15 n.4. The Seventh Circuit here, for example, required Ms. Rakes to "show that the officers' conduct was 'so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'" Pet. App. 21a. It concluded that Ms. Rakes had met that demanding standard, clearly distinguishing this case from the facts in *DeShaney*. Officer Johnson fails to offer any argument challenging that determination.[8]

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[8] *Amici* Local Government Legal Center et al. also attack what they view as cases of negligence subjected to liability under the state-created danger doctrine, and argue that these cases violate federalism principles. *See* Amicus Br. 12-15. These arguments fail on their own terms because the circuits consistently reject claims based on negligence. *E.g.*, *M.J. by & through S.J.*, 1 F.4th at 449 (recognizing that the state-created danger doctrine "requires a showing of at least deliberate indifference" and that "[t]his is a high bar—one that surpasses mere negligence");

In an effort to identify a conflict with this Court's precedent, Officer Johnson also cites *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005). That case, however, addressed an entirely different kind of claim: "whether an individual who has obtained a state-law restraining order has a constitutionally protected property interest" in enforcement of the restraining order. *Id.* at 750-51. Because the alleged right was framed as a property right, stemming "only from a State's *statutory* scheme," the Court focused on "whether what Colorado law has given respondent constitutes a property interest." *Id.* at 756, 765. This Court found that, under Colorado law, enforcement of the restraining order was not "mandatory," and thus Colorado had "not created such an entitlement." *Id.* at 766. The Court noted, moreover, that enforcement of a restraining order did not "resemble any traditional conception of property." *Id.*

Unlike *Town of Castle Rock*, this case does not concern a property claim, nor a claim to compel enforcement of any court order, nor a claim that the police are "obligate[d] . . . to take someone into custody." Pet. 21. This case is about "the state's 'increasing' the danger of private violence" through affirmative acts, which caused Amylyn's death. *Sandage v. Bd. of Comm'rs of Vanderburgh Cnty.*,

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Sandage, 548 F.3d at 596 (noting that if state officers were "merely negligent, the plaintiffs would have no case"); *Martinez*, 943 F.3d at 1274 ("The [state-created danger] standard is higher than gross negligence, because it requires a 'culpable mental state.'"). There are also no federalism concerns because the state-created danger doctrine imposes only a narrow limitation on affirmative, harm-causing actions, and therefore does not intrude on states' ability to carry out their traditional functions.

548 F.3d 595, 600 (7th Cir. 2008). Again, Officer Johnson was not obligated to detain RJ, but he was obligated not to make affirmative misrepresentations to Amylyn that placed her in harm's way.

Next, Officer Johnson makes a stunning factual argument that "[n]othing in the record suggests that Johnson knew that RJ would be held for only a few hours or that RJ would return while Amylyn was there." Pet. 22. Based on that implausible view of the record, Officer Johnson claims that he engaged in only a "negligent act," which cannot be the basis for liability under the Due Process Clause. *Id.*

To the contrary, there is ample evidence from which a reasonable jury could find that Officer Johnson knew that his misrepresentations to Amylyn were false and put her in danger. To take just a few examples, Officer Johnson's own report of the evening recounted that he "told Ronald that he was not going to jail." R. Doc. 74-5 at 11. Officer Johnson reiterated to RJ that "[t]hey're going to talk to you and you're going to be able to go home. You're not going to jail." R. Doc. 67-4 at 49:8-10. He even promised RJ that he would not disclose information about RJ's violence against Amylyn, including photos on Amylyn's phone. R. Doc. 67-4 at 51:16-21.

And yet, when Officer Johnson returned to speak with Amylyn, he assured her that RJ would be held for 24 hours. Pet. App. 22a. He even asked Amylyn for "those pictures," including the photo of RJ holding a gun to his head, claiming they were "for the hospital, you know, get him checked out . . . this is the – one of the reasons we sent him down there." R. Doc. 67-4

at 76:20-25. Amylyn told Officer Johnson that she felt like "if he doesn't get help, [she was] going to be in danger," to which Officer Johnson reiterated, "that's why [RJ's] at the hospital trying to get help." R. Doc. 67-4 at 90:6-11. Having assured Amylyn that RJ would be detained, Officer Johnson then asked if she was "going to get the guns and everything when you get home?" Pet. App. 97a. Given that all of the evidence must be viewed "in the light most favorable to Amylyn Slaymaker," it is easy to see why the Seventh Circuit concluded that a reasonable jury could find that this was not a case of mere negligence. Pet. App. 56a.

Finally, Officer Johnson claims that the Seventh Circuit improperly denied qualified immunity. Pet. 24. In his view, the mere fact that the district judge and the dissenting circuit judge disagreed about whether Officer Johnson violated clearly established law proves that the law was not clearly established. *Id.* He goes so far as to suggest reversing the denial of qualified immunity by "summary disposition." *Id.* at 25.

The Seventh Circuit properly denied qualified immunity. As an initial matter, the mere fact that a circuit judge or district judge disagreed does not mean the law was not clearly established. *See, e.g.*, *Taylor v. Riojas*, 592 U.S. 7, 8 (2020) (reversing grant of qualified immunity by Court of Appeals); *Groh v. Ramirez*, 540 U.S. 551, 556 (2004) (affirming denial of qualified immunity contrary to the ruling of the district court). Nor did the Seventh Circuit apply binding precedent at too "high a level of generality." Pet. App. 48a. To the contrary, Judge Ripple and

Judge Scudder both carefully analogized the facts of this case to *Monfils*, which concerned a police officer's repeated misrepresentations that a tape of an informant would not be released, putting the informant in danger from those on whom he had informed. *See* Pet. App. 24a, 56a-57a. As Judge Ripple noted, "this case presents a more egregious situation than the one presented in *Monfils*" because Officer Johnson not only knew his misrepresentations were false, but used them to induce Amylyn to do what his own partner was unwilling to do: "secure RJ's weapons." Pet. App. 26a.[9]

In contrast, the Seventh Circuit's careful attention to the facts of *Monfils* led it to affirm the grant of qualified immunity to Officer Roederer. Pet. App. 57a. As Judge Scudder explained, "[l]ike the officer's false assurances to Thomas Monfils, Officer Johnson's false assurances rendered Amylyn more vulnerable to a danger," but Officer Roederer "made no representations to Amylyn" that would bring him within the scope of *Monfils*. *Id*. The court's careful application of precedent properly followed this Court's instructions about qualified immunity.

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[9] To the extent that Officer Johnson or the *amici* suggest that binding Seventh Circuit precedent cannot constitute clearly established law, that is plainly incorrect. *See, e.g.*, *Reichle v. Howards*, 566 U.S. 658, 665 (2012) (assuming that "controlling Court of Appeals' authority could be a dispositive source of clearly established law in the circumstances"). Every circuit looks to this Court's precedent and its own binding precedent for the qualified immunity inquiry, as the Seventh Circuit did here. *See, e.g.*, *Santander v. Salazar*, 133 F.4th 471, 480 (5th Cir. 2025); *Tachias v. Sanders*, 130 F.4th 836, 845 (10th Cir. 2025); *Brown v. Dickey*, 117 F.4th 1, 9 (1st Cir. 2024).

Thus, there is no error below, much less the kind of clear error required for summary reversal. Summary reversal is an "extraordinary remedy." *Major League Baseball Players Ass'n v. Garvey,* 532 U.S. 504, 512-13 (2001) (Stevens, J., dissenting); *see Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 422 (1990) ("Summary reversals of courts of appeals are unusual under any circumstances"). It is a "rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). This case falls far short of that high bar. Indeed, there is no error in the first place.

III. The Questions Presented Are Not Important And This Is Not A Good Vehicle.

In addition to not implicating a circuit split and being correct, the decision below does not present any important question worthy of the Court's review. *See* S. Ct. R. 10(c). There is no better proof of that than the fact that this Court has denied at least 29 petitions requesting review of the state-created-danger doctrine.[10] There is no reason to change course here,

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[10] *See Williams on Behalf of J. J. v. Williams*, 145 S. Ct. 263 (2024); *Fisher v. Moore*, 144 S. Ct. 569 (2024); *Cnty. of Tulare v. Murguia*, 144 S. Ct. 553 (2024); *Reilly v. Ottawa Cnty.*, 142 S. Ct. 900 (2022); *First Midwest Bank v. City of Chicago*, 142 S. Ct. 389 (2021); *Robinson v. Webster Cnty., Mississippi*, 141 S. Ct. 1450 (2021); *Doe v. Jackson Loc. Sch. Dist. Bd. of Educ.*, 141 S. Ct. 895 (2020); *Anderson v. City of Minneapolis*, 141 S. Ct. 110 (2020); *Cook v. Hopkins*, 140 S. Ct. 2643 (2020); *Est. of Her v. Hoeppner*, 140 S. Ct. 1121 (2020); *Cancino v. Cameron Cnty.*, 140 S. Ct. 2752 (2020); *Robinson v. Lioi*, 140 S. Ct. 1118 (2020);

as this case concerns an unusual set of "shocking" circumstances that are not likely to recur or have broader application. Pet. App. 58a.

In response, Officer Johnson and the *amici* claim that the state-created danger doctrine exposes officials to broad and costly liability. But those claims are belied by the evidence, which shows that such claims "rarely survive dismissal, much less summary judgment" on appeal. Laura Oren, *Some Thoughts on the State-Created Danger Doctrine:* DeShaney *Is Still Wrong and* Castle Rock *Is More of the Same*, 16 TEMP. POL. & CIV. RTS. L. REV. 47, 48 (2006). Indeed, since January 1, 2024, circuit courts across the country have rejected eighteen state-created-danger claims[11]—while only two state-created-danger claims have survived appeal in the same time period.[12] In

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Turner v. Thomas, 140 S. Ct. 905 (2020); *Long v. Cnty. of Armstrong*, 582 U.S. 932 (2017); *Est. of Reat v. Rodriguez*, 581 U.S. 904 (2017); *Doe 2 v. Rosa*, 577 U.S. 1065 (2016); *Crockett v. Se. Pa. Transp. Auth.*, 577 U.S. 820 (2015); *Lioi v. Robinson*, 572 U.S. 1002 (2014); *Campbell v. Wash. Dep't of Soc. & Health Servs.*, 568 U.S. 883 (2012); *Repking v. Lokey*, 562 U.S. 1221 (2011); *Cravens v. City of La Marque*, 552 U.S. 822 (2007); *Jones v. Kish*, 549 U.S. 1166 (2007); *Rios v. City of Del Rio*, 549 U.S. 825 (2006); *Vaughn v. City of Athens*, 549 U.S. 955 (2006); *Piotrowski v. City of Houston*, 534 U.S. 820 (2001); *Est. of Henderson v. City of Philadelphia*, 531 U.S. 1015 (2000); *Kirk v. Del. Cnty. Sheriff's Dep't*, 522 U.S. 1116 (1998); *Settles v. Penilla*, 524 U.S. 904 (1998); *White-Page v. Harris Cnty.*, 522 U.S. 913 (1997).

[11] *Tackett v. City of Hailey*, No. 24-4924, 2025 WL 1576794, at *2 (9th Cir. June 4, 2025) (affirming denial of qualified immunity); *Est. of Soakai v. Abdelaziz*, 137 F.4th 969, 975 (9th Cir. 2025) (affirming denial of motion to dismiss).

[12] *Trout v. Cnty. of Madera*, No. 24-2956, 2025 WL 1367830, at *1 (9th Cir. May 12, 2025) (affirming dismissal); *Lambert v. Casteel*,

short, liability under the state-created-danger doctrine is a rarity, reserved only for affirmative and highly culpable misconduct with egregious consequences.

This is one of those rare cases, as Judge Ripple and Judge Scudder properly recognized. Their decision does not warrant further review.

No. 24-2946, 2025 WL 892556, at *1 (3d Cir. Mar. 24, 2025) (per curiam) (noting that plaintiff failed to allege cognizable state-created danger theory); *Franz v. Oxford Cmty. Sch. Dist.*, 132 F.4th 447, 452 (6th Cir. 2025) (affirming dismissal); *Wadsworth v. Nguyen*, 129 F.4th 38, 65 (1st Cir. 2025) (affirming summary judgement in favor of defendant); *Est. Admin. Servs., LLC v. City & Cnty. of Honolulu*, No. 24-595, 2025 WL 586359, at *1 (9th Cir. Feb. 24, 2025) (affirming dismissal); *Harmon v. Preferred Fam. Healthcare, Inc.*, 125 F.4th 874, 885 (8th Cir. 2025) (affirming qualified immunity); *Eubanks v. Hansell*, No. 24-1165-CV, 2024 WL 4662983, at *3 (2d Cir. Nov. 4, 2024) (affirming dismissal); *Gorsline v. Randall*, No. 23-15853, 2024 WL 4615742, at *1 (9th Cir. Oct. 30, 2024) (vacating district court's denial of motion to dismiss); *Hardy v. City of Flint*, No. 23-1773, 2024 WL 5420940, at *3 (6th Cir. Sept. 25, 2024) (affirming dismissal); *Hendrix v. City of San Diego*, No. 22-55732, 2024 WL 4036570, at *2 (9th Cir. Sept. 4, 2024) (affirming dismissal); *Cohen as next friend of Cohen v. City of Portland*, 110 F.4th 400, 403 (1st Cir. 2024) (affirming dismissal); *Smith v. City of Detroit*, No. 23-1448, 2024 WL 1931496, at *1 (6th Cir. May 2, 2024) (affirming dismissal); *Fullman v. City of Philadelphia*, No. 23-3073, 2024 WL 1637550, at *2 n.2 (3d Cir. Apr. 16, 2024) (noting that plaintiff failed to allege cognizable state-created danger theory); *Ivers v. Brentwood Borough Sch. Dist.*, No. 23-1799, 2024 WL 1088447, at *1 (3d Cir. Mar. 13, 2024) (affirming summary judgment in favor of defendant); *Johnson v. City of Biddeford*, 92 F.4th 367, 369 (1st Cir. 2024) (granting qualified immunity); *Martinez v. High*, 91 F.4th 1022, 1025 (9th Cir. 2024), *cert. denied,* 145 S. Ct. 547 (2024) (granting qualified immunity).

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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