

(ORDER LIST: 604 U.S.)

MONDAY, NOVEMBER 25, 2024

ORDERS IN PENDING CASES

24M39 HORN, ANTHONY R. V. UNITED STATES

24M40 BLANCO, JUAN F. V. GREENE, WARDEN

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

24M41 IN RE SEALED PETITIONER

The motion for leave to file a petition for a writ of mandamus under seal is denied.

24M42 IN RE PIERRE HAOSBH

The motion for leave to file a petition for a writ of habeas corpus with the supplemental appendix under seal is granted.

23-997 STANLEY, KARYN D. V. SANFORD, FL

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

23-1226 McLAUGHLIN CHIROPRACTIC ASSOCS., INC. V. McKESSON CORP., ET AL.

The motion of petitioner to dispense with printing the joint appendix is granted.

24-171) COX COMMUNICATIONS, INC., ET AL. V. SONY MUSIC ENTERTAINMENT, ET AL.

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24-181) SONY MUSIC ENTERTAINMENT, ET AL. V. COX COMMUNICATIONS, INC., ET AL.

The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

24-5052 IN RE KENTON G. FINDLAY

24-5120 STREGE, ADAM V. GMAIL-GOOGLE, ET AL.

24-5421 IN RE TIRAN R. CASTEEL

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

24-5634 ABBOUD, CAMILLE A. V. ABBOUD, IRYNA

24-5666 ORREGO, LIDIA M. V. PASTERNAK LLP, ET AL.

24-5697 DEVILLE, FRANK V. PENSION BENEFIT GUAR. CORP.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 16, 2024, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

23-1269 MARTIN, SUZY V. HALING, SUSAN, ET AL.

23-1325 ALEJOS-PEREZ, MARIO A. V. GARLAND, ATT'Y GEN.

23-7506 L'ESPERANCE, ALICIA V. THIBODEAU, CHLOE

23-7754 CARRASCO, ALEJANDRO V. UNITED STATES

24-2 BOURQUE, CAMILLE V. ENGINEERS AND ARCHITECTS ASSOC.

24-72 HAY, BRUCE L. V. UNITED STATES

24-189 R.J. REYNOLDS TOBACCO, ET AL. V. FDA, ET AL.

24-315 PASULKA, TROY V. LEE, SARAA D.

24-326 DEVENGOECHEA, RICARDO V. VENEZUELA

24-335 VIVENDI S.E., ET AL. V. EPAC TECHNOLOGIES LTD.

24-360 SIKOUSIS LEGACY, INC., ET AL. V. B-GAS LTD., ET AL.

24-364 FUTIA, ANTHONY V. UNITED STATES

24-367 YORK, SCOTT V. UNITED STATES, ET AL.

24-382 HARRIS, QUANNAH L. V. HARGETT, TRE, ET AL.

24-439 MILLER MENDEL, INC. V. ANNA, TX

24-448 MARINARO, OSKANA V. PARKS ZIEGLER, PLLC

24-462 KELLY, MARK V. DORMAN, DANIEL, ET AL.

24-468 SPENCE, JO V. DEPT. OF VA, ET AL.

24-476 ASCENSION DATA, LLC, ET AL. V. PAIRPREP, INC.

24-477 BOUKAMP, THOMAS J. V. UNITED STATES

24-481 LEIBAS, IRMA V. DART, SHERIFF, ET AL.

24-485 PREST, KIRK V. BP EXPLORATION & PRODUCTION

24-496 CROTHERS, WILLIAM M. V. WYOMING

24-5141 DAVIS, MARCUS J. V. UNITED STATES

24-5340 PAWLOWSKI, EDWIN V. UNITED STATES

24-5586 JIANG, ZIYAO V. YUAN, LIU, ET AL.

24-5618 SHARKEY, DARAMIS L. V. HOLLOWAY, WARDEN

24-5622 MICKMAN, ELAINE V. SUPERIOR COURT OF PA

24-5630 SACOMAN, ERNIE V. COLE, WARDEN

24-5635 BOWERS, KIM V. PAYSON, UT

24-5636 MOCO, ROBERT V. JANIK, J. M., ET AL.

24-5648 SCOTT, ARAMIAN V. ILLINOIS

24-5649 ARNOLD, DEANDRE V. PATTERSON, TYARIELLE

24-5651 McLAUGHLIN, MICHAEL T. V. OLIVER, WARDEN, ET AL.

24-5652 SMITH, TIFFANY V. OLDS, WARDEN

24-5655 CRUZADO LAUREANO, JUAN M. V. POPULAR DEMOCRATIC PARTY

24-5665 OLIVER, SHARI L. V. McDONALD, JULIE A., ET AL.

24-5675 ALBERT, LENORE V. GONZALEZ, ROXANNE, ET AL.

24-5680 P. H. V. CUMBERLAND COUNTY, ET AL.

24-5681 POOLE, JACOB V. USCIS PITTSBURGH

24-5694 MIXON, ANTONIO L. V. WILLIAMS, BRIAN, ET AL.

24-5698 MOORE, TONY V. SOUTH CAROLINA

24-5701 YARITZ, HAROLD D. V. MN DOC, ET AL.

24-5703 BOCHRA, MARK V. DEPT. OF EDUCATION, ET AL.

24-5751 DOMINIQUE, NICOLAS V. FLORIDA
24-5772 SEWALK, STEPHEN V. VALPAK DIRECT MARKETING SYS.
24-5819 ROBINSON, OSCAR V. UNITED STATES
24-5820 NGOMBA, TEVON V. UNITED STATES
24-5822 DE LA TORRE, FERNANDO V. UNITED STATES
24-5829 ABNER, RICKY D. V. UNITED STATES
24-5834 HERNANDEZ, GEOVANI V. UNITED STATES
24-5836 HASSAN, STEVEN H. V. UNITED STATES
24-5841 ROSS, CARL J. V. BIVENS, WARDEN, ET AL.
24-5852 KAWLESKI, ALEXANDER W. V. UNITED STATES
24-5862 HERNANDEZ-HERNANDEZ, ISMAEL V. UNITED STATES
24-5863 ANDRES C. V. CONNECTICUT
24-5864 SANDERS, ANTWONE M. V. UNITED STATES
24-5867 BARNETT, COLT J. V. UNITED STATES
24-5869 DURRAH, SHAWN E. V. UNITED STATES
24-5871 PAYNE, JEREMY T. V. UNITED STATES

The petitions for writs of certiorari are denied.

24-178 OAKLAND TACTICAL SUPPLY, ET AL. V. HOWELL TOWNSHIP, MI

The motion of Center for Human Liberty for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

24-5656 GREEN, COURTNEY V. PARAMOUNT

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the

petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

24-5870 PEMBERTON, PAUL C. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

MANDAMUS DENIED

24-5643 IN RE DEANDRE ARNOLD

The petition for a writ of mandamus is denied.

24-5472 IN RE THOMAS JAYATON-KERRY

The petition for a writ of mandamus and/or prohibition is denied.

REHEARINGS DENIED

23-1243 JOHNSTON, KIRK V. KROEGER, CHAD, ET AL.

23-1354 ABDUL-HAQQ, JAMILAH V. TPMG, INC., ET AL.

23-1368 ARANA, LUIS S. V. MALDONADO, LUIS T., ET AL.

23-7372 KELLY, MEGHAN V. SWARTZ, PATRICIA B., ET AL.

23-7394 JACKSON, MOSES V. ALABAMA

23-7442 FARLEY, MICHAEL P. V. WILLS, ANTHONY

23-7500 PENDLETON, JONATHAN V. MIYARES, JASON S., ET AL.

23-7589 LEE, YURI I. V. U.S. BANK NA

23-7618 REYNOLDS, JESSE A. V. TITUS COUNTY, TX, ET AL.

23-7715 BENDER, NOEL V. IA DOC, ET AL.

23-7735 FAUST, MARIA M. V. FAUST, MICHAEL T.

24-34 HORTON, RICKY-DEAN V. PG&E CORPORATION

24-84 VAZQUEZ-QUINTANA, ENRIQUE V. REMIGIO, HERMENEGILDO, ET AL.

24-105 KOTLYARSKY, BORIS V. DEPT. OF JUSTICE, ET AL.

24-158 COLE-KELLY, ALLISON V. COHEN, MALIA M., ET AL.
24-159 WALL GUY, INC., ET AL. V. FEDERAL DEPOSIT INSURANCE CORP.
24-196 LUO, JENN-CHING V. OWEN J. ROBERTS SCHOOL, ET AL.
24-209 IN RE PALANI KARUPAIYAN

The petitions for rehearing are denied.

Statement of SOTOMAYOR, J.

SUPREME COURT OF THE UNITED STATES

VICKI BAKER *v.* CITY OF MCKINNEY, TEXAS

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

No. 23–1363. Decided November 25, 2024

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GORSUCH joins, respecting the denial of certiorari.

The Takings Clause of the Fifth Amendment provides that private property shall not “be taken for public use, without just compensation.” This case raises an important question that has divided the courts of appeals: whether the Takings Clause requires compensation when the government damages private property pursuant to its police power.

On July 25, 2020, in McKinney, Texas, a fugitive named Wesley Little kidnapped a 15-year-old girl. After evading the police in a high-speed car chase, Little found his way to petitioner Vicki Baker’s home with his victim in tow. Little was familiar with the home because he had previously worked there as a handyman. Baker had recently retired and moved to Montana, so her daughter Deanna Cook was at the house that day, preparing to put it up for sale. When Cook answered the door, she recognized Little and the child with him: Earlier that day, Cook saw on Facebook that Little was on the run with a teenage girl. Cook feigned ignorance and let them into the house, but told Little, falsely, that she had to go to the supermarket. Once outside, Cook called Baker, who called the police.

McKinney police arrived soon after and set up a perimeter around Baker’s home. Eventually, Little released the girl and she exited the house. The girl told the police that Little was hiding in the attic, that he was armed, and that

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he was high on methamphetamine. Later, while still in the attic, Little told the police that he was not going back to prison, that he knew he was going to die, and that he planned to shoot it out with the police. To resolve the stand-off and protect the surrounding community, the police tried to draw Little out by launching dozens of tear gas grenades into the home. When that did not work, the officers detonated explosives to break down the front and garage doors and used a tank-like vehicle to bulldoze the home's backyard fence. By the time the officers gained entry, Little had taken his own life. All agree that the McKinney police acted properly that day and that their actions were necessary to prevent harm to themselves and the public.

The actions of the police also caused extensive damage to Baker's home and personal belongings, however. As the District Court explained:

“The explosions left Baker's dog permanently blind and deaf. The toxic gas that permeated the House required the services of a HAZMAT remediation team. Appliances and fabrics were irreparable. Ceiling fans, plumbing, floors (hard surfaces as well as carpet), and bricks needed to be replaced—in addition to the windows, blinds, fence, front door, and garage door. Essentially all of the personal property in the House was destroyed, including an antique doll collection left to Baker by her mother.”

84 F. 4th 378, 380–381 (CA5 2023). In total, the damage amounted to approximately \$50,000. *Id.*, at 381. Baker's insurance refused to cover any damage caused by the McKinney police.* Baker, who bore no responsibility for

*Homeowners' insurance policies generally do not provide coverage for damage caused by the government. See 10A., J. Plitt, D. Maldonado, & J. Rogers, *Couch on Insurance* §152:22 (3d ed. Supp. 2024) (explaining that “losses [that] occur because of the actions of a civil authority functioning in its ordinary governing capacity” are “typically excluded from

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what had occurred at her home, then filed a claim for property damage with the city. The city denied the claim in its entirety. Baker thereafter sued the city, alleging a violation of the Takings Clause. At the summary judgment stage, the District Court held that the City's destruction of Baker's property was a compensable taking under the Fifth Amendment. *Baker v. McKinney*, 601 F. Supp. 3d 124, 144 (E. D. Tex. 2022). Following trial, a jury awarded Baker nearly \$60,000 in damages.

On appeal, the Fifth Circuit reversed. The court declined to adopt the city's broad assertion that the Takings Clause never requires compensation when a government agent destroys property pursuant to its police power. Such a broad categorical rule, the Fifth Circuit reasoned, was at odds with its own precedent and this Court's Takings Clause jurisprudence. *Baker*, 84 F. 4th, at 383–384. Instead, the Fifth Circuit adopted a narrower rule that it understood to be compelled by history and precedent: The Takings Clause does not require compensation for damaged property when it was “objectively necessary” for officers to damage the property in an active emergency to prevent imminent harm to persons. *Id.*, at 385–388. Because the parties agreed that the McKinney police's actions were objectively necessary, the Fifth Circuit concluded that Baker was not entitled to compensation. *Id.*, at 388. Baker now petitions for certiorari and asks this Court to reverse the Fifth Circuit's judgment.

The Court's denial of certiorari expresses no view on the merits of the decision below. I write separately to emphasize that petitioner raises a serious question: whether the Takings Clause permits the government to destroy private property without paying just compensation, as long as the government had no choice but to do so. Had McKinney

most property insurance policies”).

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razed Baker’s home to build a public park, Baker undoubtedly would be entitled to compensation. Here, the McKinney police destroyed Baker’s home for a different public benefit: to protect local residents and themselves from an armed and dangerous individual. Under the Fifth Circuit’s decision, Baker alone must bear the cost of that public benefit.

The text of the Takings Clause states that private property may not “be taken for public use, without just compensation.” The Takings Clause was “designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U. S. 40, 49 (1960). This Court has yet to squarely address whether the government can, pursuant to its police power, require some individuals to bear such a public burden.

This Court’s precedents suggest that there may be, at a minimum, a necessity exception to the Takings Clause when the destruction of property is inevitable. Consider *Bowditch v. Boston*, 101 U. S. 16 (1879), in which the Court held that a building owner was not entitled to compensation after firefighters destroyed his building to stop a fire from spreading. *Id.*, at 18 (“At the common law every one had the right to destroy real and personal property, in cases of actual necessity, to prevent the spreading of a fire, and there was no responsibility on the part of such destroyer, and no remedy for the owner”). *Bowditch* interpreted Massachusetts state law, but subsequent cases have relied on *Bowditch* in the Takings Clause context. Similarly, in *United States v. Caltex (Philippines), Inc.*, 344 U. S. 149 (1952), this Court held that the Takings Clause did not require the Government to pay compensation for its destruction of oil companies’ terminal facilities amid a military invasion. The destruction of that property during wartime was necessary, the Court explained, “to prevent the enemy from realizing any strategic value from an area which he

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was soon to capture.” *Id.*, at 155. That holding accorded with the common-law principle “that in times of imminent peril—such as when fire threatened a whole community—the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved.” *Id.*, at 154. These cases do not resolve Baker’s claim, however, because the destruction of her property was necessary, but not inevitable. Whether the inevitable-destruction cases should extend to this distinct context remains an open question.

Only a few Courts of Appeals have weighed in on the extent to which the Takings Clause applies to exercises of the police power. Unlike the Fifth Circuit, the Seventh Circuit and Federal Circuit have held that “the Takings Clause does not apply when property is retained or damaged as the result of the government’s exercise of its authority pursuant to some power other than the power of eminent domain.” *Johnson v. Manitowoc County*, 635 F. 3d 331, 336 (CA7 2011); *AmeriSource Corp. v. United States*, 525 F. 3d 1149, 1154 (CA Fed 2008). The Sixth Circuit rejected a takings claim similar to the one here, without addressing any purported exceptions to the Takings Clause, because the plaintiffs “failed to identify any history or precedent establishing that the police have ‘taken’ their ‘property’ within the meaning of the Fifth Amendment when the police damaged the property while conducting a lawful arrest.” *Slaybaugh v. Rutherford County*, 114 F. 4th 593, 603 (2024); see also *Lech v. Jackson*, 791 Fed. Appx. 711, 717 (CA10 2019) (“[W]hen the state acts pursuant to its police power, rather than the power of eminent domain, its actions do not constitute a taking for purposes of the Takings Clause”). The Fourth Circuit, meanwhile, has held “[t]hat Government actions taken pursuant to the police power are not per se exempt from the Takings Clause.” *Yawn v. Dorchester County*, 1 F. 4th 191, 195 (2021). All those decisions, save

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the Sixth Circuit's, however, predate the Fifth Circuit's determination that there is an "objectively necessary" exception to the Takings Clause. Whether any such exception exists (and how the Takings Clause applies when the government destroys property pursuant to its police power) is an important and complex question that would benefit from further percolation in the lower courts prior to this Court's intervention.