



FIFTH AMENDMENT · RESOURCES

Pena v. City of Los Angeles: Ninth Circuit Clarifies Takings Clause Limits in Police Operations

By Daigle Law Group

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Pena v. City of Los Angeles: Ninth Circuit Clarifies Takings Clause Limits in Police Operations

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The United States Court of Appeals for the Ninth Circuit recently released an opinion in *Pena v. City of Los Angeles*. This case reached the court after an exercise of police power led to private property damage, raising the question of whether it could trigger compensation under the Takings Clause.

Carlos Pena owned and operated a print shop in Los Angeles that he used for commercial printing work and to store printing equipment and inventory. In August 2022, an armed fugitive, fleeing from the police, entered Pena's print shop without permission, threw out Pena, and barricaded himself inside. The suspect was armed, refused to surrender, and was believed to pose an immediate threat to officers and the surrounding community.

In response, the Los Angeles Police Department activated its SWAT team and established a perimeter around the shop, along with United States Marshals. Officers attempted various tactics to induce the suspect to surrender, but the barricade situation persisted. As the standoff continued, the officers decided that more forceful measures were necessary to neutralize the threat. To do so, they deployed numerous tear gas canisters into the building from multiple angles, including through windows, doors, walls, and even the roof. These tactics were aimed at incapacitating or flushing out the suspect but resulted in significant structural damage to the building itself.

The tear gas and physical breach methods affected the building's exterior and heavily damaged the interior of the shop. Walls, ceilings, and fixtures were broken or punctured. Pena's printing presses, other specialized equipment, paper stock, and finished products were contaminated or destroyed. As a result, Pena alleged that he lost a substantial portion of both the real property value of the premises and the personal property that was essential to his business operations. He claimed that the destruction effectively shut down his print shop and that the damages exceeded \$60,000.

Procedural Posture

Pena first sought compensation from the United States Marshals Service. They denied Pena's claim and advised him to seek compensation from the Los Angeles Police Department. Pena's attorney did not receive a response to the letter seeking compensation from the Los Angeles City Attorney. Subsequently, Pena filed suit under 42 U.S.C. § 1983, framing his claim as a violation of the Takings

Clause of the Fifth Amendment.

Following discovery, the district court denied Pena's motion for partial summary judgment on liability, holding that the destruction of Pena's print shop during the pursuit of the armed fugitive constituted a valid use of police power and did not constitute a taking for purposes of the Fifth Amendment. The court ultimately entered judgment for the City of Los Angeles. Pena appealed to the Ninth Circuit.

The Court of Appeals for the Ninth Circuit

The Ninth Circuit upheld the district court's decision that the destruction of Pena's print shop during the pursuit of the armed fugitive constituted a valid use of police power and did not constitute a taking for purposes of the Fifth Amendment.

On appeal, Pena reiterated that the City had effectively taken his property for public use when it destroyed his building and inventory during the police incident, and that the public purpose of apprehending a dangerous fugitive could not exempt the government from its obligation to pay just compensation. The City maintained that the damage occurred as an incident of the exercise of police power in an emergency, not as a taking for public use, and therefore fell outside the compensation requirement of the Takings Clause.

The court turned to the history of the Takings Clause. The Fifth Amendment's Takings Clause states that "private property [shall not] be taken for public use without just compensation."¹ This protects property owners from government seizure or destruction of their assets unless the government pays fair market value. The Takings Clause applies to federal actions and to state and local governments through the Fourteenth Amendment. Moreover, Pena offered no examples from the time of the founding that supported the need for compensation for government property destruction where it was necessary for public safety, including the pursuit of a dangerous criminal.

The Ninth Circuit then examined the Takings Clause since the founding. The court cited precedent set by the Supreme Court of the United States that has allowed the Takings Clause to cover multiple instances where the government can override various private property rights to serve the public good.² The court also cited *Pennsylvania Coal Company v. Mahon*, 260 U.S. 395 (1922), where the Supreme Court defined regulatory takings as government regulations that go "too far" and deprive property owners of their property rights.³

However, the court then cited *Bowditch v. Boston*, 101 U.S. 16 (1879), a Supreme Court case that recognizes the necessity privilege for the destruction of private property.⁴ Specifically, *Bowditch* held that there is a common law right to destroy private real and personal property when it is necessary to

prevent fire from a burning building from spreading.⁵ The Ninth Circuit then noted that the Supreme Court used the necessity privilege for the destruction of private property for the public good. For example, the Supreme Court held that the government could not be charged for destruction to and of private property during wartime.⁶

Although the Ninth Circuit specifically cited cases that deal with private property destruction during wartime, the court also used the Supreme Court holdings as guidance. The Ninth Circuit concluded that the Supreme Court's rationale is applicable to *Pena* because those cases all address governmental destruction of private property. The court cited Supreme Court concerns that expanding the Takings Clause would create difficulties for law enforcement, as the government would be liable every time an emergency responder may need to break down doors to do their job of protecting the public.⁷ Thus, the court concluded that the history of the Takings Clause continued to support non-payment where the government reasonably and necessarily destroyed property for the public.

The Ninth Circuit concluded its analysis by examining the Takings Clause in light of firefighters. Historically, the government has destroyed private property out of necessity as part of firefighting duties. The court recognized the split in state courts during the nineteenth century, where some held that sufferers are entitled to compensation for the damages, while other courts disagreed. Citing *Bowditch*, the Ninth Circuit found that Supreme Court guidance supports takings in the context of firefighting.

Therefore, the Ninth Circuit ultimately concluded that there is no compensation available to *Pena* under the Takings Clause because the government destroyed his private property under a reasonable and necessary exercise of police power to protect public safety, thus affirming the district court's ruling.

Key Takeaways

Pena emphasizes that property destruction by the government does not automatically trigger compensation under the Takings Clause if it averts greater harm to the public, provided the damage is authorized, necessary, and not excessive. Remember to follow training and protocols in high-risk operations and to document why damage occurred. This will help shield reasonable police work from lawsuits challenging tactical choices in high-stakes incidents filed under the Takings Clause.

1. U.S. Const. amend. V.
2. *Pumpelly v. Green Bay & Mississippi Canal Co.*, 80 U.S. 13 Wall. 166, 179–81 (1871); *United States v. General Motors Corp.*, 323 U.S. 373, 374–80 (1945); *Cedar Point Nursery v. Hassid*, 594

- U.S. 139, 149–52 (2021).
3. Pennsylvania Coal Co. v. Mahon, 260 U.S. 395, 415 (1922).
 4. Bowditch v. Boston, 101 U.S. 16, 18 (1879).
 5. Id.
 6. United States v. Caltex, 344 U.S. 149, 154 & n.6 (1952).
 7. National Board of Young Men’s Christian Ass’ns v. United States, 395 U.S. 85, 92 (1969).

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