



INSTITUTE FOR JUSTICE

September 20, 2023

Anne Morgan
Austin City Attorney
City Hall
301 W. 2nd Street, 4th Floor
Austin, TX 78701

RE: Compensation for SWAT Raid at the Home of Glen and Mindy Shield

City Attorney Morgan,

I am writing on behalf of the Institute for Justice (IJ), a national nonprofit litigation firm that specializes in vindicating constitutionally protected private property rights. IJ recently learned about an unfortunate situation that started with a SWAT raid on August 6, 2023. From news reports and our own investigation, it appears that Austin Police Department caused approximately \$23,000 in damage to the home of Glen and Mindy Shield—totally innocent property owners who were not the targets of APD. When the Shields requested compensation from the City, claims investigator Mike Hennessy reportedly told the Shields that Texas law immunizes the city from liability. This is simply incorrect. Texas law *requires* Austin to pay for this sort of destruction. The Texas Supreme Court says so. Federal courts say so. And the City's own insurance company says so. The City's refusal to do so is both illegal and unwise.

For over 40 years, it has been black letter law in Texas that when law enforcement officers cause intentional damage to innocent owners' property in the course of performing their duties, the government must pay compensation. As the Texas Supreme Court held in *Steele v. City of Houston*, "[t]he Constitution itself is the authorization for compensation for the destruction of property and is a waiver of governmental immunity for the taking, damaging or destruction of property for public use." 603 S.W.2d 786, 791 (Tex. 1980).

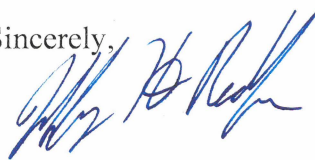
Steele involved a situation in which fugitives had barricaded themselves inside the home of an innocent third party, and the Houston police set fire to the house in order to drive the fugitives out. The Texas Supreme Court held that this was a compensable taking under Article I, Section 17 of the Texas Constitution. *Steele* has been cited with approval in recent years, *see, e.g., City of Dallas v. Stewart*, 361 S.W.3d 562, 568 (Tex. 2012), and its validity has never been questioned. Indeed, the City of Austin's own insurer has just this year filed a brief in which it conceded that *Steele* is still good law. (See the attached brief at file-stamped pages 21-22.)

The Fifth Amendment to the United States Constitution likewise requires compensation under these circumstances. *See Baker v. City of McKinney*, 601 F. Supp. 3d 124, 144 (E.D. Tex. 2022) (“The government took Baker’s property through the total destruction of the House in its pursuit to apprehend an armed fugitive.”). A Fifth Amendment claim, though largely duplicative of an Article I, Section 17 claim, may subject the City to liability for fees, which would vastly outstrip the City’s damages liability in this case.

We sincerely hope that Glen and Mindy Shield will be able to obtain just compensation for their injuries without resorting to litigation. The takings clauses of the Texas and United States constitutions were “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). Removing dangerous criminals from the street is a public good, and that cost should be borne by the public as a whole—not by random, unlucky individuals like Glen and Mindy Shield. But even setting fairness aside, there is simply no colorable argument under existing precedent that the City is not liable for the damage that it caused.

We understand, of course, that the City of Austin may want to see documentation regarding the damage, or that the City may even wish to use its own preferred contractors to effect repairs, but we wish to remind the City that the Shields’ “entitlement to compensation” arose “as soon as the government” took their “property without paying for it.” *Knick v. Township of Scott*, 139 S. Ct. 2167, 2170 (2019). Any further delay could risk subjecting the City to claims for consequential damages. *See City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 710 (1999) (“Del Monte Dunes sought not just compensation per se but rather damages for the unconstitutional denial of such compensation. Damages for a constitutional violation are a legal remedy.”). Accordingly, we request that the City contact Glen and Mindy Shield as soon as possible to assure them that the City will make them whole. We also encourage the City to train its claims personnel about *Steele* so that situations like this will not arise again.

Sincerely,



Jeffrey Redfern
Attorney
Institute for Justice