



## SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

# *LEGAL AFFAIRS*

# *UPDATE*

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### **A deputy may be liable for statements under the state created danger doctrine where they affirmatively expose a person to a greater risk of a known danger.**

Desiree Martinez (Plaintiff) was a victim of domestic violence who contacted law enforcement on two separate occasions after her boyfriend, a City of Clovis Police Department officer, physically abused her. On May 2, 2013, one officer interviewed Plaintiff and subsequently told her boyfriend about her allegation of his prior abuse. The officer asked the boyfriend why he was dating a girl like Plaintiff and stated that she didn't think that Plaintiff was a good fit for him. Later that night, the boyfriend physically abused Plaintiff. He called her a "leaky faucet" and asked her what she had told the officer and whether she was trying to get him into trouble. On June 4, 2013, Plaintiff's neighbor made a 9-1-1 call after Plaintiff's boyfriend physically and sexually abused Plaintiff. After speaking with Plaintiff, one of the officers believed that she had probable cause to arrest the boyfriend and notified her acting supervisor on the scene of her intent to arrest. Instead, the supervisor ordered her to refer the matter to the District Attorney. The supervisor knew of the boyfriend, and, within earshot of the boyfriend, stated that the boyfriend and his dad were "good people." After the officers left, the boyfriend beat and sexually assaulted Plaintiff. The boyfriend was arrested the next day, and a criminal protective order was issued.

Plaintiff sued, arguing that the officers "violated her right to due process under the state-created danger doctrine." The district court dismissed the case, and Plaintiff appealed to the Ninth Circuit Court of Appeal.

On appeal, the Plaintiff argued that the state-created danger doctrine applies because the officers affirmatively exposed her to a greater risk of a known danger. *Martinez v. City of Clovis* (Dec. 2019).

According to the Ninth Circuit, in order to succeed on this claim, the Plaintiff must establish three elements. First, Plaintiff must show that the officers' affirmative actions created or exposed her to an actual, particularized danger that she would not have otherwise faced. The Court held that a reasonable jury could find that Plaintiff was placed in greater danger after the officer told the boyfriend about Plaintiff's

complaint of prior abuse and made comments to the boyfriend that conveyed contempt for the Plaintiff. Thus, the first requirement was satisfied. Additionally, a reasonable jury could find that the supervisors' positive remarks about the boyfriend and his family also placed Plaintiff in greater danger by emboldening the boyfriend to freely continue his abuse.

Second, Plaintiff must show that the injury she suffered was foreseeable. The Court stated that, as a matter of common sense, the assaults that Plaintiff suffered after the police interventions were objectively foreseeable.

Third, Plaintiff must show that the officers were deliberately indifferent to the known danger. The Court held that a reasonable jury could find that disclosing a report of abuse while engaging in disparaging small talk with the boyfriend, and/or positively remarking on his family while ordering other officers not to make an arrest despite the presence of probable cause, constitutes deliberate indifference to a known or obvious danger.

As a result, the Plaintiff met her burden as to all three elements of the state-created danger doctrine. However, the Court determined that the officers were entitled to qualified immunity because at the time of the events, a reasonable officer would not have known that such conduct violated the due process rights of a domestic violence victim.

The Court stated that, going forward, the law is clearly established that "the state-created danger doctrine applies when an officer reveals a domestic violence complaint made in confidence to an abuser while simultaneously making disparaging comments about the victim in a manner that reasonably emboldens the abuser to continue abusing the victim with impunity. Similarly, ... [the] doctrine applies when an officer praises an abuser in the abuser's presence after the abuser has been protected from arrest, in a manner that communicates to the abuser that the abuser may continue abusing the victim with impunity."

### **WHAT THIS MEANS:**

**Deputies should be cautious with comments in the presence of domestic abuse victims and perpetrators. Specifically, deputies should not engage in comments or actions that may encourage a suspect's abuse.**