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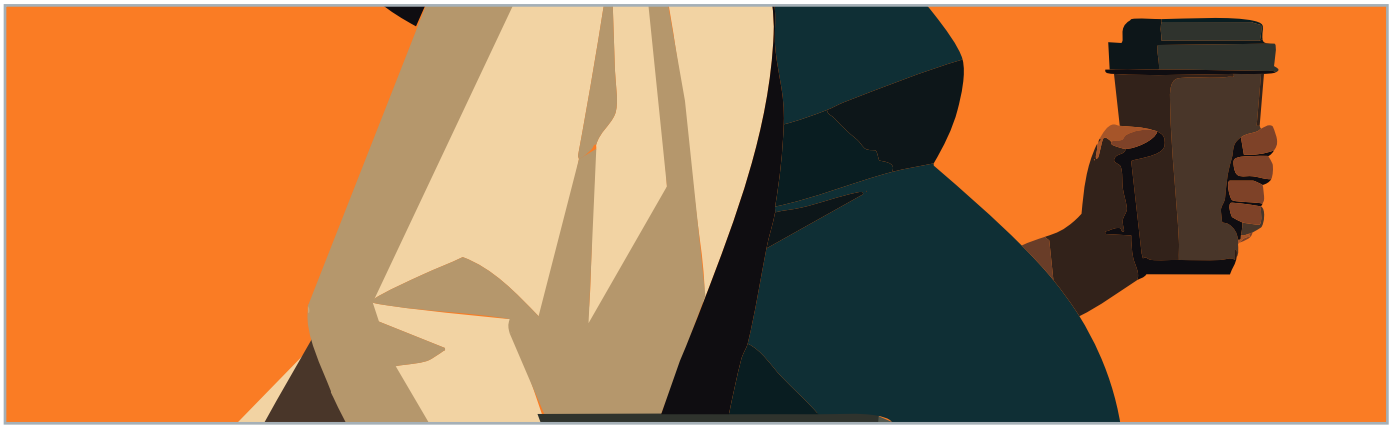
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LETTER FROM THE PRESIDENT

STRONGER TOGETHER:

The Power of Colleagues Supporting Each Other

In the hustle of professional life, deadlines and deliverables often take center stage. But behind every project completed and every milestone reached is a network of people – colleagues – who, when they support one another, become one of the most valuable assets a workplace can offer.

Support among professional colleagues goes far beyond the occasional helping hand or friendly chat over coffee. It's the quiet encouragement that turns self-doubt into confidence. It's the willingness to listen, to step in when someone is overwhelmed, and to celebrate others' successes as if they were your own. In a world that often glorifies individual achievement, we forget that collaboration and mutual support are what drive long-term success.

Consider the moments when a colleague offers to review your work before a big presentation, or when a team member notices you're off your game and checks in. These aren't just acts of kindness – they're acts of leadership. They create an environment where people feel safe, valued, and motivated to do their best work.

Support also fosters resilience. When challenges arise – and they always do – knowing that your team has your back can make all the difference. A culture of support helps transform failure into a learning opportunity rather than a source of shame. It builds trust, and trust builds teams that don't just work together, but grow together.

There's no one way to support a colleague. It might mean advocating for them in meetings, sharing credit, mentoring, or even just being a sounding board. What matters is the intention: choosing to lift others as we climb.

Let's normalize asking for help and offering it freely. Let's lead with empathy and show that professionalism and compassion are not mutually exclusive. Because at the end of the day, success tastes better when it's shared.

In supporting each other, we don't just become better professionals – we become better people.

IMLA fosters numerous opportunities for local government attorneys to participate as part of a mutually supportive professional community. One of those involves attendance at the highly anticipated annual conference each year. This year's conference will be held from October 17-21, 2025 in New Orleans, LA. Attendance at IMLA's annual conference provides the opportunity to learn from colleagues from throughout North America. It will also be a fabulous setting for folks to socialize with colleagues and friends. I hope to see you there!

On a personal note, I'll be passing the gavel at this year's conference to our incoming IMLA President, Susana Alcala Wood. It has been an incredible honor to serve as IMLA's President during the past year. I owe an immense debt of gratitude to so many people I've met through IMLA – colleagues who have helped me do a better job in my role as a city attorney and folks who have become true friends.

My fellow members of the IMLA board of directors include a collection of individuals who are immensely accomplished attorneys and committed public servants. More importantly, I have found them to be a group of kind and thoughtful people. I thank all of them for their contributions to, and support of, IMLA. Of course, the true stars of IMLA are the dedicated and talented staff. Amanda Karras, Jenny Ruhe, Caroline Storer, Erich Eiselt, Deanna Shahnami, Trina Shropshire-Paschal, Avery Morris, Carolina Moore, Christine Dodd, Sean Cooley, and Chuck Thompson form an amazing team who, collectively, help make IMLA the successful organization that it is.

To all IMLA Members, I hope that you have had an enjoyable summer and I look forward to seeing many of you at this year's Annual Conference in New Orleans!

JEFFREY DANA
City Solicitor,
Providence,
Rhode Island



AMANDA KARRAS

IMLA Executive Director, Rockville, Maryland

LETTER FROM THE EXECUTIVE EDITOR

FINDING BALANCE:

OPPORTUNITIES AND CHALLENGES

This past month, our eyes turned to the District of Columbia as the federal government sought to reduce crime by assuming control of the D.C.'s police force, placing federal law enforcement in the city, and deploying the National Guard. Although Congress enacted the District of Columbia Home Rule Act in 1973, which allows D.C. to maintain a form of local self-governance, D.C. has a special relationship with the federal government, which allows the President more latitude than he would enjoy in other jurisdictions.

The Act allows the President to assume emergency control of the police if the President determines "that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes." Such a presidential takeover is limited to 30 days or until the end of the emergency, whichever comes first. D.C. sued the President to enjoin the takeover of the police, arguing the President and Attorney General Bondi have exceeded their authority under the Home Rule Act and have acted contrary to law in violation of the APA. That action is still pending as of this writing. And while the Home Rule Act creates unique challenges for D.C., the President also mentioned other cities when he made the announcement about the police takeover in Washington, including Chicago, Baltimore, Oakland, Los Angeles, and New York City. As of this writing, the President announced he plans to deploy the National Guard to Chicago, though it remains to be seen whether the President will employ similar actions in other communities.

The deployment of National Guard troops and federal law enforcement officers to help reduce crime in a city is a different legal matter than the takeover of D.C.'s police force. One of the efforts underway in Washington, with the influx of federal troops and law enforcement, is clearing homeless encampments. According to some reports, more than 48 encampments have been cleared in just a few weeks. D.C.'s Mayor has emphasized that there is indoor shelter space available for individuals experiencing homelessness, though it is unclear if people have moved indoors or moved to a new part of the city to create new encampments.

The decision to bring in federal troops and the National Guard to respond to public safety challenges—including encampments of unhoused individuals—raises fundamental questions about governance: Who should bear responsibility for public safety, and what happens when that responsibility shifts away from the local level?

At IMLA, we have long emphasized the importance of local autonomy. Local governments are closest to the people, best positioned to understand their communities' unique challenges. They are often tasked with balancing urgent public safety concerns with the rights of their residents. The recent developments in D.C. highlight what our members across the country already know: public safety is about much more than policing. It increasingly involves addressing homelessness, addiction, mental health, and social services—all of which demand nuanced, community-specific solutions.

Federal involvement in homelessness policy is not new, but it has intensified in recent months. For example, in addition to the actions taking place in D.C., President Trump issued an Executive Order on July 24, 2025, entitled "Ending Crime and Disorder on America's Streets," (the "Homelessness EO"). The Homelessness EO seeks to move away from a housing first model to one focused on civil commitment of individuals with mental illness or those who pose a risk to themselves or the public. It also directs several agencies to set up discretionary grants for States and local governments that have policies and practices in place, including those enforcing prohibitions against urban camping and open illegal drug use.

These actions create both opportunities and challenges for local governments. Federal resources can help communities, but they come with strings attached, compliance requirements, and potential litigation risks. Local governments must carefully navigate the balance between accepting federal assistance and retaining the flexibility needed to address their community's needs.

That balance was at the heart of *Grants Pass v. Johnson*, the Supreme Court homeless encampment case decided last June. IMLA was proud to advocate for

local governments in that case, filing an amicus brief that underscored the need for localities to retain authority over how best to address homelessness in their jurisdictions, including the ability to clear encampments. The Court's decision reaffirmed that these difficult policy choices belong to local communities—not to the federal judiciary. While no ruling eliminates the challenges communities face, *Grants Pass* made clear that local governments have the constitutional space to craft solutions. As Justice Gorsuch, who authored the opinion, explained:

> Instead of encouraging "productive dialogue" and "experimentation" through our democratic institutions, courts have frozen in place their own "formulas" by "fiat." Id., at 534, 537. Issued by federal courts removed from realities on the ground, those rules have produced confusion. And they have interfered with "essential considerations of federalism," taking from the people and their elected leaders difficult questions traditionally "thought to be the[ir] province."

Whether or not clearing encampments and requiring civil commitment of homeless individuals is good policy remains to be seen, and each community may seek to address homelessness in different and nuanced ways. The Homeless EO is incentivizing those policies through discretionary grants, which localities may choose to apply for. Incentives are one thing, but taking the homeless policy decisions away from D.C.'s elected officials and forcing the clearing of encampments within the District would seem to offer some of the same problems that we saw in *Grants Pass* when the federal judiciary had prevented localities from clearing encampments in the Ninth Circuit. IMLA maintains that local elected leaders are in the best position to come up with solutions to the difficult problem of homelessness in their communities.

These developments remind us why IMLA exists: to equip local government lawyers with the tools they need to navigate evolving legal landscapes, assert local authority, and serve their communities effectively. Through our conferences, webinars, working groups, and other resources, we provide education on public safety, homelessness, federal grant compliance, and intergovernmental relations. And through our advocacy, we continue to speak collectively for local governments when the stakes are highest.

As we look ahead to our upcoming Conference in New Orleans, these themes will be front and center. From sessions on homelessness to panels on public safety, immigration, federal funding, and constitutional law, we will explore the most pressing challenges facing our members. I encourage you to join us, connect with colleagues, and share your own experiences.

Local government lawyers stand on the frontlines of some of the most complex and consequential issues of our time. Whether in Washington, D.C., Grants Pass, Oregon, or your own community, the questions of public safety, homelessness, and local autonomy are deeply intertwined. At IMLA, we are here to support you as you address them.

Warm regards,
Amanda Karras
Executive Director, IMLA




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T'S VERSIAL Y - eated Danger

By ERICH EISELT

The Due Process Clause of the Fourteenth Amendment provides "nor shall any State deprive any person of life, liberty, or property without due process of law."[1] Over nearly 170 years, this cornerstone of American personal freedoms has formed the basis for countless challenges to alleged governmental overreach, typically under the aegis of Section 1983.[2] While the vast majority of these claims are grounded in deprivations directly perpetrated by State actors, one variant asserts that governments can also be liable for injury inflicted by third parties: state-created danger. IMLA's legal advocacy program has recently provided amicus support involved in two such cases.

Writing for a 5-4 majority, Chief Justice Rehnquist held that the County's failure to protect Joshua from his father's aggression did not violate the boy's rights under the substantive component of the Due Process Clause.

Dicta with Unforeseen Consequences-First, the back story. The tragic facts of *DeShaney v. Winnebago County*[3] are well known by now: four-year old Joshua DeShaney had been subjected to repeated thrashings at the hands of his father. Although aware of the abuse for more than two years, the County did not remove the child to protective custody. Randy DeShaney ultimately beat his son so viciously that the boy suffered permanent brain damage.

Joshua's guardian sued the County's Department of Social Services under Section 1983, alleging that by failing to intervene during such an extended period, authorities had deprived the boy of his liberty interest in bodily integrity, violating his substantive due process rights under the Fourteenth Amendment. After holdings in favor of the County at the district court and Seventh Circuit, the case reached the Supreme Court.

Writing for a 5-4 majority, Chief Justice Rehnquist held that the County's failure to protect Joshua from his father's aggression did not violate the boy's rights under the substantive component of the Due Process Clause. The Court advised that a state's failure to act in protecting an individual against private violence generally does not implicate due process. To the contrary, the Due Process Clause prohibits the government from acting, forbidding it from depriving individuals of life, liberty, and property without due process of law; it does not impose an affirmative obligation on the state to prevent third parties from inflicting harm.

That holding applied irrespective of the state's knowledge of the individual's dangerous situation. Although a "special relationship" might create governmental responsibility, the relationship would arise not due to awareness of the individual's peril, but only because the state had limited the individual's freedom to act, by imprisonment, institutionalization, or other similar restraint on personal liberty.

Acknowledging Joshua's obvious need for protection under such horrific circumstances, the Court pointed to recourse under state law: "It may well be that, by voluntarily undertaking to protect Joshua against a danger it concededly played no part in creating, the State acquired a duty under state tort law to provide him with adequate protection against that danger."[4] The ultimate recourse for victims such as Joshua, said the Court, lay with the state's voters and legislature, not in a misreading of the Fourteenth Amendment:

> The people of Wisconsin may well prefer a system of liability which would place upon the State and its officials the responsibility for failure to act in situations such as the present one. They may create such a system, if they do not have it already, by changing the tort law of the State in accordance with the regular lawmaking process. But they should not have it thrust upon them by this Court's expansion of the Due Process Clause of the Fourteenth Amendment.[5]

That analysis might seem to have settled the issue: where the government does not inflict the harm or restrain the individual, the Fourteenth Amendment does not provide a remedy. But in dicta, *DeShaney* offered an additional rationale as to why the County should not be liable--even though it had taken temporary custody of Joshua and returned him to his father, it had not heightened Joshua's risk for harm:

> While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them . . . . [The State] placed [Joshua] in no worse position than that in which he would have been had [the State] not acted at all.[6]

This peripheral language would become salient: if the state avoided Section 1983 liability because it had not placed the individual in danger, the corollary must apply—the government could be found to violate substantive due process by heightening the individual's peril. Advocates would discern in the Court's dicta a "state-created danger" cause of action based in substantive due process.

In the 36 years since *DeShaney*, the Court has never formally validated the state-created danger construct. But neither has it invalidated the paradigm, and litigants have subsequently argued state-created danger in a wide range of Section 1983 contexts. A sampling of these includes:

inmates on work detail in community center abduct and terrorize town clerk (*Cornelius v. Town of Highland Lake*, 880 F.2d 348 (11th Cir. 1989)); female students assaulted in school's unisex bathroom and photographic darkroom (*D.R. by L.R. v. Middle Bucks Area Vo. Tech. School*, 972 F.2d 1364 (3d Cir. 1992)); officers assure woman that belligerent ex-boyfriend will be detained at field station all day, but he is released early and kills her three children in house fire (*Pinder v. Johnson*, 54 F.3d 1169 (4th Cir. 1995)); officers leave intoxicated and incapacitated woman alone on winter night where she falls into ravine and suffers brain damage (*Kniepp v. Tedder*, 95 F.3d 1199 (3d Cir. 1996)); law enforcement ejects inebriated man from bar on cold night and he dies of hypothermia (*Munger v. City of Glasgow*, 227 F.3d 1082 (9th Cir. 2000)); social worker transfers custody of child from mother to father, who kills child with scalding water (*Currier v. Doran*, 242 F.3d 905 (10th Cir. 2001)); officer does not follow up on commitment to arrest pedophile who violated order not to contact twelve year old, resulting in murder of younger sister (*Bright v. Westmoreland County*, 443 F.3d 276 (3d Cir. 2006)); officers leave a phone message for alleged sexual assailant who then sets fire to accuser's home, abducts her, and shoots five people, killing two (*Irish v. Fowler*, no. 20-1208 (1st Cir. 2020)); officers leave apartment before confirming that hostile landlord has no firearms; within minutes he fatally shoots tenants (*Welch v. City of Biddeford Police Department*, no. 20-1474 (1st Cir. 2021)); teachers allow special-needs middle school girl to roam hallway unsupervised; boy with known violent history repeatedly assaults her (*Fisher v. Moore*, 62 F.4th 912 (5th Cir. 2023)).

The application of state-created danger among the Circuits is hardly uniform, as a full reading of the cases above will readily illustrate. The Fifth Circuit has declined to adopt the doctrine.[7] Among the others, virtually all require that, in order to make out a state-created danger claim for a substantive due process violation, the plaintiff must establish that: (1) a state actor or actors acted to create or enhance a danger to the plaintiff—with some requiring that they acted "affirmatively"; (2) the act(s) created or enhanced a danger specific to the plaintiff and distinct from danger to the general public; and (3) the act(s) caused the plaintiff's harm.[8] Most add a fourth element: the state actor's conduct, when viewed in total, "shocks the conscience."[9] And some courts search for evidence of a "special relationship"[10] which can arise where law enforcement, although not arresting or jailing an individual, detain or otherwise impede the person from their existing course of action, insinuating a state-instigated deprivation of liberty.

IMLA's Amicus Brush with State-Created Danger-IMLA's legal advocacy program has recently been involved in two state-created danger cases, each involving difficult fact situations and each reflecting the expansive consequences of *DeShaney's* dicta.

County of Tulare v. Murguia-In late 2019, Heather Langdon (Langdon), a mentally ill mother of five, experienced a particularly serious outbreak.[11] Jose Murguia (Murguia), her husband and the father of the two youngest children-infant twins-called 911, summoning Tulare County Sheriff's Department officers. Langdon refused their urging that she go to a hospital and demanded that a friend drive her and the twins to a church. Officers allowed Langdon to take the infants, preventing Murguia from following her. At the church, she again acted erratically, prompting another 911 call. Officers then brought her and the twins to a woman's shelter, where her episodes continued, prompting responding officers to bring in a Tulare Police Crisis Intervention Technician Officer.

The intervention officer called the after-hours hotline at the County of Tulare Child Welfare Services, informing them that Langdon had not been found to require involuntary hospitalization and she did not want to relinquish her twins. Although the welfare services operator was aware that Langdon had a history of child abuse involving her older children, it did not notify the officer of that fact. And based on the officer's call, the welfare operator concluded that Langdon was not an imminent threat to the children, so did not initiate an immediate in-person investigation of Langdon. The intervention officer then arranged to provide Langdon with lodging overnight and drove her and the twins to a motel. The following morning, Langdon was observed screaming for help. When paramedics arrived, they found the infants had been drowned. Langdon was prosecuted for murder but found not guilty by reason of insanity.

Murguia brought twelve federal claims under Section 1983 against various officers, the church, the City and County of Tulare, and others, alleging substantive due process violations as well as violation of the Fourth Amendment right to be free from unreasonable seizure, and violation of the First Amendment right to familial association.

The district court dismissed, finding that the Due Process Clause did not impose on the individual defendants an affirmative duty to take specific actions. And because Langdon had not relinquished custody of the twins during the entire scenario, the individual defendants had done nothing to increase the infants' risk. Given the absence of individual liability, Murguia's *Monell* claims against the local governments failed.[12]

A split panel of the Ninth Circuit reversed in part.[13] Although acknowledging that "the state's failure to prevent acts of private parties is typically insufficient to establish liability under the Due Process Clause," it identified two exceptions recognized by the Circuit, one of which was "when the state affirmatively places the plaintiff in danger by acting with deliberate indifference to a known or obvious danger (the state-created danger exception)".[14] It affirmed dismissal of two deputies who had not placed the twins in a more dangerous situation than the one in which they found them, but allowed the claim against the intervention officer: "When [he] left Langdon and the twins at the motel, he removed them from the supervision of the Lighthouse staff and rendered the twins more vulnerable to physical injury by Langdon as a result of their isolation with her."[15] The claim

As indicated in Judge Batumay's illustrative table in Murguia, the need for clarity regarding state-created danger is obvious given the wide disparity among the Circuits.

against the welfare representative also survived, because her false information "rendered the twins more vulnerable to physical injury by Langdon by eliminating the most obvious solution to ensuring the twins' safety: returning them to [Murguia's] custody."[16] Based on its finding of liability by the two, the majority reversed the lower court's denial of *Monell* claims.

In dissent, Judge Ikuta criticized the majority's expansion of the state-created danger doctrine into tort law as conflicting with *DeShaney*. The result was an unwarranted conversion of negligence actions into substantive due process violations:

> Today the majority jettisons even these meager limits on our state-created danger doctrine. Contrary to Supreme Court precedent (and our own), the majority finds a substantive due process violation despite the absence of any abuse of power entrusted to the state. Instead, the majority holds that plaintiffs can state a claim for a violation of their due process rights based solely on negligence and mistake, exactly what the Supreme Court has told us not to do.[17]

The defendants' motion for rehearing and *en banc* reconsideration was narrowly denied, generating a dissent by Judge Bumatay, joined by Judges Callahan, Ikuta, and Nelson:

> In this case, our court once again aggrandizes the "state-created danger" doctrine and expands its scope. Now, commonplace actions—like providing a ride, booking a motel room, or telling a lie—when done by a State actor, could become due process violations if the actions eventually lead to injuries caused by third parties. While Jose Murguia has suffered profound tragedy and deserves redress, the Constitution doesn't provide the remedy.[18]

Buoyed by the sharp dissents in these opinions—including a table by Judge Bumatay illustrating the absence of uniformity among the Circuits in interpreting state-created danger (including outright denial of the doctrine by the Fifth Circuit), Tulare petitioned for Supreme Court review. IMLA supported the County with an amicus brief, joined by the National Association of Counties and the California State Association of Counties. Unfortunately, Tulare's petition for cert in *Murguia* was denied by the Court early in 2024.

***Rakes v. Johnson*:** In July 2019, Charlestown, Indiana police officers responded to a 911 call, arriving to find a man and woman fighting in the middle of the street.[19] The woman told officers that her husband was drunk, had hit her, was carrying a gun, kept AR-15s at their house, and was threatening to kill her and himself. The husband denied hitting her, and said he was having a hard time with the PTSD that he had developed in military service. The officers handcuffed him, confiscated his gun, and called an ambulance so he could get help with mental health issues at a nearby hospital, ostensibly via a 24-hour hold. The husband voluntarily left in the ambulance. In response to the wife's question as to whether the husband would be held for 24 hours, one officer replied "yeah." She asked if the officers could remove the AR-15s from her house, but they declined. The woman then returned home, apparently planning to remove the firearms before going to her parents' residence. But the husband had not been placed in a hold and was not required to remain in the hospital. After being discharged in less than three hours, he returned home, where he shot and killed his wife and then himself.

The administrator of the wife's estate filed a Section 1983 action against the officers based on state-created danger, claiming that they "placed Amylyn in a heightened state of special danger that [she] would not otherwise have faced when they falsely told Amylyn that RJ would be in the hospital for 24 hours and it was safe to return home."[20] The district court granted summary judgment to both officers on the basis of qualified immunity, as there was no clearly established law that put them on notice that their actions violated her Fourteenth Amendment due process rights. The court found that one officer's statements about the length of the husband's stay in the hospital did not propel the wife into danger or create a dangerous condition. As the court put it, "RJ had been a danger to Amylyn for months before the incident and would likely have continued to be so even if he had been held for 24 hours at the hospital."[21]

On appeal, a fractured three-judge Seventh Circuit panel affirmed qualified immunity as to one officer but reversed as to the other, who had confirmed that the husband would be held for 24 hours. His confirmation placed him within the parameters of *Monfils v. Taylor*, a Seventh Circuit precedent involving the release of an informant's telephone call after repeated assurances by a police chief that the call would remain confidential, which "clearly established 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."[22]

Following the Seventh Circuit's denial of *en banc* rehearing, Officer Johnson petitioned the Supreme Court for certiorari in May 2025. Among other points, he argues that the Circuit's holding that inaccurate assurances give rise to state-created danger violates the Supreme Court's teachings in *DeShaney* and *Town of Castle Rock v. Gonzalez,* 545 U.S. 748 (2005) which require a showing of governmental acts which affirmatively place the complainant in harms' way. He also makes the obvious point that there is no uniformity among the Circuits. (As an example, says the Petition, his affirmative response to the wife's inquiry about her husband being held for 24 hours would likely not be actionable in the Tenth Circuit. *See Gray v. Univ. of Colorado Hosp. Auth.*, 672 F.3d 909, 925 (10th Cir. 2012) ("false assurances do not constitute an affirmative act rendering decedent vulnerable to danger within the meaning of the danger creation exception . . . ").[23]

IMLA's amicus brief—captioned as a filing by the Local Government Legal Center based on participation by the National League of Cities and the National Association of Counties—was joined by a broad spectrum, including the Illinois Municipal League, Accelerate Indiana Municipalities, the Association of Idaho Cities, the Georgia Municipal Association, Inc., the Kentucky League of Cities, the League of Oregon Cities, and the Virginia Municipal League.

In addition to arguing the difficulties inherent in inconsistent standards, our brief stresses the inappropriate intrusion of federal law into matters that should be resolved via state tort mechanisms. It also points out the counterproductive impact on the provision of local services if statements or other seemingly innocuous acts can become the fodder for costly substantive due process claims. We await the Court's determination as to whether cert will be granted.

CONCLUSION: As indicated in Judge Batumay's illustrative table in *Murguia*, the need for clarity regarding state-created danger is obvious given the wide disparity among the Circuits. The Supreme Court's recent admonitions that assertions regarding fundamental constitutional rights must find mooring in the nation's founding may add another element to the discussion. As the Fifth Circuit held in *Fisher v. Moore*, declining to adopt the state-created danger theory:

> When adopting the state-created danger doctrine, our sister circuits tend to reason along the lines



What we now call the "state-created danger" exception is really a subset of the special relationship exception.

> of (1) the Supreme Court left open the question in *DeShaney*, and (2) other courts have adopted the doctrine. More recently, however, the Court has reiterated—forcefully—that rights protected by substantive due process "must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.' Without briefing on how the state-created danger doctrine meets the reinvigorated test, we are content to leave the question of adopting the doctrine for another day.[24]

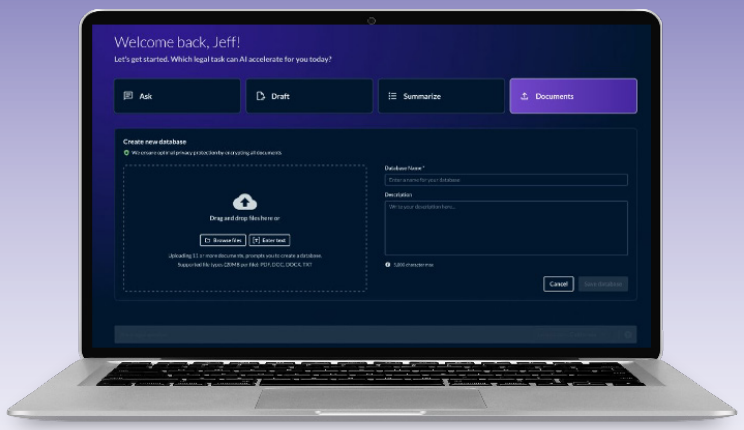
It may be that, under rigorous "history and tradition" scrutiny by the Supreme Court, the state-created danger expansion of governmental liability for actions by third parties will be curtailed. As a "doctrine" without readily definable Constitutional moorings, it is the type of "judge-made law" that at least one Justice is quick to criticize.[25] In that light, the words of Judge Batumay would seem to provide a defensible rationale for limiting unwarranted expansion of the *DeShaney* dicta:

> [T]he best reading of *DeShaney's* language concerning state-created danger is that the Court was supplementing its discussion of the special relationship exception—not carving out a new exception. What we now call the "state-created danger" exception is really a subset of the special relationship exception. And with that understanding, we should recognize that state-created danger must follow the limits of the special relationship exception. While DeShaney may expand this exception outside the purely custodial context, it does not untether noncustodial claims from all constitutional constraints. Rather, at the heart of *DeShaney* was the understanding that "it is the State's affirmative act of restraining the individual's freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—which is the 'deprivation of liberty' triggering the protections of the Due Process Clause."[26] ML

Notes

1. U.S. Const. Amend. XIV § 2.
2. 42 U.S.C. § 1983 provides recourse against any person who "under color" of any law, subjects any citizen or other person in the United States "to the deprivation of any rights, privileges, or immunities secured by the Constitution."
3. *DeShaney v. Winnebago County Dep't of Soc Svces*, 489 U.S. 189 (1989).
4. 489 U.S. at 201.
5. *Id*. at 203.
6. *Id* at. 201.
7. *Fisher v. Moore*, 62 F.4th 912 (5h Cir. 2023).
8. *See* Judge Batumay's dissent in the denial of rehearing in *Murguia v. Langdon*, 73 F.4th 1103, 1113 (9th Cir. 2023), providing a Circuit-by-Circuit comparison of the divergent application of state-created danger).
9. *Id.*
10. *Id.*
11. *Murguia v. Langdon*, 21 WL 4503055 (E.D. Cal. Oct. 1, 2021).
12. *Id.*
13. *Murguia v. Langdon*, 61 F.4th 1096 (9th Cir. 2023).
14. *Id*. at 1111.
15. *Id*. at 1113.
16. *Id*. at 1115.
17. *Id*. at 1124.
18. *Murguia v. Langdon*, 73 F. 4th 1103 (9th Cir. 2023).
19. *Rakes v. Johnson*, 117 F. 4th 968 (7th Cir. 2024).
20. *Rakes v. Roederer*, 2023 WL 2712370 (S.D. Ind. March 30, 2023).
21. Complaint, at p. 6, *Rakes, supra* note 20.
22. *Rakes, supra* note 19, at 978, (*citing Monfils v. Taylor*, 165 F.2d 511 (Dec. 23, 1998)).
23. Petition for Writ of Certiorari at 4, Johnson v. Rakes, no. 24-1050 (U.S. Apr. 2. 2025).
24. *Fisher v. Moore*, 62 F.4th 912, 918 (5th Cir. 2023) at 918.
25. *See, for example*, Justice Thomas' concurrence in *Ames v. Ohio Dep't of Youth Services*, no. 23-1039 (US 2025): I write separately to highlight the problems that arise when judges create atextual legal rules and frameworks. Judge-made doctrines have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts. The "background circumstances" rule—correctly rejected by the Court today—is one example of this phenomenon. And, the decision below involves another example: The Sixth Circuit analyzed Ames's Title VII claim under the three-step framework developed by this Court in *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973). As with the "background circumstances" rule, the *McDonnell Douglas* framework lacks any basis in the text of Title VII and has proved difficult for courts to apply.
26. *Murguia v. Langdon*, 73 F.4th 1103 (9th Cir. 2023).

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