

## ***CHAVEZ v. MARTINEZ (2003)***

News reports have indicated that American officials have used various types of pressure and tactics to disorient terrorism suspects and make them more likely to cooperate in Afghanistan; in Guantanamo Bay, Cuba; and elsewhere. These tactics include sleep and light deprivation; loud and unpleasant, often continuous, noise; questioning persons who are ill or wounded; and other methods. Although the *Chavez* case had nothing to do with war or terrorism, the decision may have significant implications for challenges to these methods of interrogation.

Oxnard, California, police officers investigating narcotics activity detained Oliverio Martinez on November 28, 1997. During a search, Martinez was found to have a knife. An altercation between Martinez and the officers resulted in officer Maria Pea shooting Martinez several times, leaving him permanently blind and paralyzed from the waist down. Martinez was arrested. Paramedics and police supervisor Ben Chavez arrived at the scene within minutes. During the next 45 minutes, Chavez persisted in questioning Martinez, who at times was in great pain and choking and thought he was dying. Neither Chavez nor any other officer gave *Miranda* warnings to Martinez. At one point, Martinez stated that he would not answer questions until he was treated for his injuries, but the questioning continued. At times, Chavez stopped questioning to allow treatment. Among the statements allegedly made by Martinez were that he took a gun from an officer and pointed it at police, and that he regularly used heroin. Because Martinez was never charged with any crime, however, his statements were never used in evidence against him. 123 S.Ct. at 1999-2000.

Martinez claimed that the questioning violated his Fifth Amendment right not to be “compelled in any criminal case to be a witness against himself” and his Fourteenth Amendment due process right to be free from coercive questioning. A person alleging violations of constitutional rights may sue for damages under 42 U.S.C. § 1983. The government official alleged to have committed the rights violation is then allowed a defense of “qualified immunity” if the constitutional right was not clearly established at the time of the challenged acts. In this case, the district court denied the officer’s defense of qualified immunity, a ruling upheld by the Ninth Circuit. The Supreme Court, however, held that the facts of the case did not support the finding of any violation of the self-incrimination clause; because no statement had been used in evidence against Martinez, his Fifth Amendment damage claim should be dismissed. 123 S.Ct. at 2001, 2006-07.

According to Justice Thomas, Martinez’s Fifth Amendment rights could not be violated because he was not prosecuted for a criminal offense nor compelled to be a witness against himself in a criminal case. *Id.* at 2000-2001. The Thomas opinion notes that the Fifth Amendment does not forbid the compulsion of testimony, as can occur under a grant of immunity, but only forbids the use of compelled testimony against the person who made the statement in a criminal trial. *Id.* at 2001.

Thomas also would have held that the Fourteenth Amendment due process violation claim was without merit and should be dismissed, but a majority of the Court rejected that position and ordered the case remanded for further proceedings regarding that claim. Justice Kennedy, joined by Justice Stephens and in part by Justice Ginsburg, concurred in part and dissented in part. In their view, the Court erred in not finding the lawsuit in this case to state a claim of a Fifth Amendment violation:

Justice Souter and Justice Thomas are wrong, in my view, to maintain that in all instances a violation of the Self-Incrimination Clause simply does not occur unless and until a statement is introduced at trial, no matter how severe the pain or how direct and commanding the official compulsion used to extract it.

. . . The Clause must provide more than mere assurance that a compelled statement will not be introduced against its declarant in a criminal trial. Otherwise there will be too little protection against the compulsion the Clause prohibits. The Clause protects an individual from being forced to give answers demanded by an official in any context where the answers might give rise to criminal liability in the future.

*Id.* at 2013-14

The dissent's position was not that this case necessarily represented a Fifth Amendment violation, but rather that Martinez had stated a cause of action and should be able to obtain damages if he could show that the actions of Officer Chavez constituted unconstitutional compulsion. The position expressed in the Thomas and Souter opinions, on the other hand, is that there never can be a Fifth Amendment violation, and thus no civil rights action, for torture or compelled questioning as long as the statements elicited are not introduced into evidence against their maker.

As a result of the *Chavez* decision, no person subjected to government questioning can claim a violation of the self-incrimination clause of the Fifth Amendment unless and until the government seeks to introduce his statement into evidence against him in a criminal trial. Because this case has been remanded for further proceedings regarding the claim of a Fourteenth Amendment due process violation, it remains to be seen how substantial will be the protections against coercive or torturous methods of questioning. Although torture is a crime, it is unlikely that many (or any) torture charges would be brought if the torture represents government policy and if those tortured are said to be terrorists or others who are greatly feared by the general population. Actions for damages may provide the only meaningful method of restraining coercive questioning by government officials. The Court's decision in this case has substantially curbed one of the possible damage claims and has limited the meaning of a key constitutional protection.