

Opinion of STEVENS, J.

## SUPREME COURT OF THE UNITED STATES

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No. 01-1444

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BEN CHAVEZ, PETITIONER *v.* OLIVERIO MARTINEZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[May 27, 2003]

JUSTICE STEVENS, concurring in part and dissenting in part.

As a matter of fact, the interrogation of respondent was the functional equivalent of an attempt to obtain an involuntary confession from a prisoner by torturous methods. As a matter of law, that type of brutal police conduct constitutes an immediate deprivation of the prisoner's constitutionally protected interest in liberty. Because these propositions are so clear, the District Court and the Court of Appeals correctly held that petitioner is not entitled to qualified immunity.

### I

What follows is an English translation of portions of the tape-recorded questioning in Spanish that occurred in the emergency room of the hospital when, as is evident from the text, both parties believed that respondent was about to die:

“Chavez: What happened? Olivero, tell me what happened.

“O[liverio] M[artinez]: I don’t know

“Chavez: I don’t know what happened (sic)?

“O. M.: Ay! I am dying.

    Ay! What are you doing to me?

    No, . . . ! (unintelligible scream).

“Chavez: What happened, sir?

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“O. M.: My foot hurts. . .

“Chavez: Olivera. Sir, what happened?

“O. M.: I am choking.

“Chavez: Tell me what happened.

“O. M.: I don’t know.

“Chavez: ‘I don’t know.’

“O. M.: My leg hurts.

“Chavez: I don’t know what happened (sic)?

“O. M.: It hurts. . .

“Chavez: Hey, hey look.

“O. M.: I am choking.

“Chavez: Can you hear? look listen, I am Benjamin Chavez with the police here in Oxnard, look.

“O. M.: I am dying, please.

“Chavez: OK, yes, tell me what happened. If you are going to die, tell me what happened. Look I need to tell (sic) what happened.

“O. M.: I don’t know.

“Chavez: You don’t know, I don’t know what happened (sic)? Did you talk to the police?

“O. M.: Yes.

“Chavez: What happened with the police?

“O. M.: We fought.

“Chavez: Huh? What happened with the police?

“O. M.: The police shot me.

“Chavez: Why?

“O. M.: Because I was fighting with him.

“Chavez: Oh, why were you fighting with the police?

“O. M.: I am dying. . .

“Chavez: OK, yes you are dying, but tell me why you are fighting, were you fighting with the police?

“O. M.: Doctor, please I want air, I am dying.

“Chavez: OK, OK. I want to know if you pointed the gun [to yourself] at the police.

“O. M.: Yes.

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“Chavez: Yes, and you pointed it [to yourself]? (sic)  
at the police pointed the gun? (sic) Huh?

“O. M.: I am dying, please. . .

“Chavez: OK, listen, listen I want to know what  
happened, ok??

“O. M.: I want them to treat me.

“Chavez: OK, they are do it (sic), look when you took  
out the gun from the tape (sic) of the police. . .

“O. M.: I am dying. . .

“Chavez: Ok, look, what I want to know if you took  
out (sic) the gun of the police?

“O. M.: I am not telling you anything until they treat  
me.

“Chavez: Look, tell me what happened, I want to  
know, look well don’t you want the police know (sic)  
what happened with you?

“O. M.: Uuuggghhh! my belly hurts. . .

“Chavez: Nothing, why did you run (sic) from the  
police?

“O. M.: I don’t want to say anything anymore.

“Chavez: No?

“O. M.: I want them to treat me, it hurts a lot, please.

“Chavez: You don’t want to tell (sic) what happened  
with you over there?

“O. M.: I don’t want to die, I don’t want to die.

“Chavez: Well if you are going to die tell me what  
happened, and right now you think you are going to  
die?

“O. M.: No.

“Chavez: No, do you think you are going to die?

“O. M.: Aren’t you going to treat me or what?

“Chavez: Look, think you are going to die, (sic) that’s  
all I want to know, if you think you are going to die?  
Right now, do you think you are going to die?

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“O. M.: My belly hurts, please treat me.

“Chavez: Sir?

“O. M.: If you treat me I tell you everything, if not, no.

“Chavez: Sir, I want to know if you think you are going to die right now?

“O. M.: I think so.

“Chavez: You think (sic) so? Ok. Look, the doctors are going to help you with all they can do, Ok?. That they can do.

“O. M.: Get moving, I am dying, can’t you see me? come on.

“Chavez: Ah, huh, right now they are giving you medication.” App. 8–22.

The sound recording of this interrogation, which has been lodged with the Court, vividly demonstrates that respondent was suffering severe pain and mental anguish throughout petitioner’s persistent questioning.

## II

The Due Process Clause of the 14th Amendment protects individuals against state action that either “shocks the conscience,’ *Rochin v. California*, 342 U. S. 165, 172 (1952), or interferes with rights ‘implicit in the concept of ordered liberty,’ *Palko v. Connecticut*, 302 U. S. 319, 325–326 (1937).” *United States v. Salerno*, 481 U. S. 739, 746 (1987). In *Palko*, the majority of the Court refused to hold that every violation of the Fifth Amendment satisfied the second standard. In a host of other cases, however, the Court has held that unusually coercive police interrogation procedures do violate that standard.<sup>1</sup>

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<sup>1</sup>JUSTICE O’CONNOR listed many of these cases, as well as cases from state courts, in *Oregon v. Elstad*, 470 U. S. 298, 312, n. 3 (1985); “*Darwin v. Connecticut*, 391 U. S. 346 (1968) (suspect interrogated for 48 hours incommunicado while officers denied access to counsel); *Beecher*

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By its terms, the Fifth Amendment itself has no application to the States. It is, however, one source of the protections against state actions that deprive individuals of rights “implicit in the concept of ordered liberty” that the Fourteenth Amendment guarantees. Indeed, as I pointed out in my dissent in *Oregon v. Elstad*, 470 U. S. 298, 371 (1985), it is the most specific provision in the Bill of Rights “that protects all citizens from the kind of custodial interrogation that was once employed by the Star Chamber, by ‘the Germans of the 1930’s and early 1940’s,’ and by some of our own police departments only a few decades ago.”<sup>2</sup>

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v. *Alabama*, 389 U. S. 35, 36 (1967) (officer fired rifle next to suspect’s ear and said ‘If you don’t tell the truth I am going to kill you’); *Clewis v. Texas*, 386 U. S. 707 (1967) (suspect was arrested without probable cause, interrogated for nine days with little food or sleep, and gave three unwarned ‘confessions’ each of which he immediately retracted); *Reck v. Pate*, 367 U. S 433, 439–440, n. 3 (1961) (mentally retarded youth interrogated incommunicado for a week ‘during which time he was frequently ill, fainted several times, vomited blood on the floor of the police station and was twice taken to the hospital on a stretcher’). . . . *Cagle v. State*, 45 Ala. App. 3, 4, 221 So. 2d 119, 120 (1969) (police interrogated wounded suspect at police station for one hour before obtaining statement, took him to hospital to have his severe wounds treated, only then giving the *Miranda* warnings; suspect prefaced second statement with ‘I have already give the Chief a statement and I might as well give one to you, too’), cert. denied, 284 Ala. 727, 221 So. 2d 121 (1969); *People v. Saiz*, 620 P. 2d 15 (Colo. 1980) (two hours’ unwarned custodial interrogation of 16-year-old in violation of state law requiring parent’s presence, culminating in visit to scene of crime); *People v. Bodner*, 75 App. Div. 2d 440, 430 N. Y. S. 2d 433 (1980) (confrontation at police station and at scene of crime between police and retarded youth with mental age of eight or nine); *State v. Badger*, 141 Vt. 430, 441, 450 A. 2d 336, 343 (1982) (unwarned ‘close and intense’ station house questioning of 15-year-old, including threats and promises, resulted in confession at 1:20 a.m.; court held ‘[w]arnings . . . were insufficient to cure such blatant abuse or compensate for the coercion in this case’).

<sup>2</sup> Adding to the cases cited by JUSTICE O’CONNOR, I appended this footnote: “See, e.g., *Leyra v. Denno*, 347 U. S. 556 (1954); *Malinski v.*

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Whenever it occurs, as it did here, official interrogation of that character is a classic example of a violation of a constitutional right “implicit in the concept of ordered liberty.”<sup>3</sup>

I respectfully dissent, but for the reasons articulated by JUSTICE KENNEDY, *post*, at 11, concur in Part II of JUSTICE SOUTER’s opinion.

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*New York*, 324 U. S. 401 (1945); *Ashcraft v. Tennessee*, 322 U. S. 143 (1944); *Ward v. Texas*, 316 U. S. 547 (1942); *Vernon v. Alabama*, 313 U. S. 547 (1941); *White v. Texas*, 310 U. S. 530 (1940); *Canty v. Alabama*, 309 U. S. 629 (1940); *Chambers v. Florida*, 309 U. S. 227 (1940); *Brown v. Mississippi*, 297 U. S. 278 (1936); *Wakat v. Harlib*, 253 F. 2d 59 (CA7 1958); *People v. La Frana*, 4 Ill. 2d 261, 122 N. E. 2d 583 (1954); cf. *People v. Portelli*, 15 N. Y. 2d 235, 205 N. E. 2d 857 (1965) (potential witness tortured by police). Such custodial interrogation is, of course, closer to that employed by the Soviet Union than that which our constitutional scheme tolerates. See *Coleman v. Alabama*, 399 U. S. 1, 15–16 (1970) (opinion of Douglas, J.) (“In [Russia] detention *incommunicado* is the common practice, and the period of permissible detention now extends for nine months. Where there is custodial interrogation, it is clear that the critical stage of the trial takes place long before the courtroom formalities commence. That is apparent to one who attends criminal trials in Russia. Those that I viewed never put in issue the question of guilt; guilt was an issue resolved in the inner precincts of a prison under questioning by the police’.”) *Id.*, at 371–372, n. 19 (dissenting opinion).

<sup>3</sup>A person’s constitutional right to remain silent is an interest in liberty that is protected against federal impairment by the Fifth Amendment and from state impairment by the Due Process Clause of the Fourteenth Amendment. JUSTICE THOMAS’ opinion is fundamentally flawed in two respects. It incorrectly assumes that the claim it rejects is not a Due Process claim, *ante*, at 11, and it incorrectly assumes that coercive interrogation is not unconstitutional when it occurs because it merely violates a judge-made “prophylactic” rule. But the violation in this case is far more serious than a mere failure to advise respondent of his *Miranda* rights; moreover, the Court disavowed the “prophylactic” characterization of *Miranda* in *Dickerson v. United States*, 530 U. S. 428, 437–439 (2000).