SUPREME COURT OF THE UNITED STATES

No. 01–1444

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 GINSBURG, concurring in part and dissenting in part.

I join Parts II and III of JUSTICE KENNEDY's opinion. For reasons well stated therein, I would hold that the Self-Incrimination Clause applies at the time and place police use severe compulsion to extract a statement from a suspect. See *ante*, at 2–11 (opinion concurring in part and dissenting in part). The evidence in this case, as JUSTICE KENNEDY explains, supports the conclusion "that the suspect thought his treatment would be delayed, and thus his pain and condition worsened, by refusal to answer questions." *Ante*, at 10. I write separately to state my view that, even if no finding were made concerning Martinez's belief that refusal to answer would delay his treatment, or Chavez's intent to create such an impression, the interrogation in this case would remain a clear instance of the kind of compulsion no reasonable officer would have thought constitutionally permissible.

In *Mincey* v. *Arizona,* 437 U. S. 385 (1978), appropriately referenced by JUSTICE KENNEDY, see *ante*, at 10, this Court held involuntary certain statements made during an in-hospital police interrogation.[1] The suspect questioned

[1] While *Mincey* concerned admissibility under the Due Process Clause of the Fourteenth Amendment, its analysis of the coercive nature of the interrogation is nonetheless instructive in this case. See *Dickerson* v.

in *Mincey* had been "seriously wounded just a few hours earlier," and "[a]lthough he had received some treatment, his condition at the time of [the] interrogation was still sufficiently serious that he was in the intensive care unit." 437 U. S., at 398. He was interrogated while "lying on his back on a hospital bed, encumbered by tubes, needles, and breathing apparatus." *Id.*, at 399. Despite the suspect's clear and repeated indications that he did not want to talk, the officer persisted in questioning him as he drifted in and out of consciousness. The Court thought it "apparent" in these circumstances that the suspect's statements "were not the product of his free and rational choice." *Id.*, at 401 (internal quotation marks omitted).

Martinez's interrogation strikingly resembles the hospital-bed questioning in *Mincey*. Like the suspect in *Mincey*, Martinez was "at the complete mercy of [his interrogator], unable to escape or resist the thrust of [the] interrogation." *Id.*, at 399 (internal quotation marks omitted). As JUSTICE KENNEDY notes, Martinez "had been shot in the face, both eyes were injured; he was screaming in pain, and coming in and out of consciousness while being repeatedly questioned about details of the encounter with the police." *Ante*, at 10 (quoting *Martinez* v. *Oxnard*, CV 98–9313 (CD Cal., July 31, 2000), p. 7, App. to Pet. for Cert. 22a). "In this debilitated and helpless condition, [Martinez] clearly expressed his wish not to be interrogated." *Mincey*, 437 U. S., at 399. Chavez nonetheless continued to question him, "ceas[ing] the interrogation only during intervals when [Martinez] lost consciousness or received medical treatment." *Id.*, at 401. Martinez was "weakened by pain and shock"; "barely conscious, . . . his will was simply overborne." *Id.*, at 401–402.

Thus, whatever Martinez might have thought about

United States, 530 U. S. 428, 433–434 (2000).

Chavez's interference with his treatment, I would agree with the District Court that "the totality of the circumstances in this case" establishes "that [Martinez's] statement was not voluntarily given." *Martinez* v. *Oxnard*, CV 98–9313, at 7, App. to Pet. for Cert. 22a; accord, *Martinez* v. *Oxnard*, 270 F. 3d 852, 857 (CA9 2001). It is indeed "hard to imagine a situation less conducive to the exercise of a rational intellect and a free will." *Ante*, at 10 (quoting *Mincey*, 437 U. S., at 398); see *ante*, at 1 (STEVENS, J., concurring in part and dissenting in part) (characterizing Martinez's interrogation as "the functional equivalent of an attempt to obtain an involuntary confession from a prisoner by torturous methods"); cf. 4 J. Wigmore, Evidence §2251, p. 827 (1923) (noting about police interrogations common-law jurisprudence seeks to ward off: "It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence." (emphasis deleted)).[2]

In common with the Due Process Clause, the privilege against self-incrimination safeguards "the freedom of the individual from the arbitrary power of governmental authorities." E. Griswold, The Fifth Amendment Today 51 (1955). Closely connected "with the struggle to eliminate torture as a governmental practice," *id.*, at 3, the privilege is rightly regarded as "one of the great landmarks in man's struggle to make himself civilized," *id.*, at 7. Its core idea is captured in the Latin maxim, "*Nemo tenetur prodere se ipsum*," in English, "No one should be required

---

[2] There was an eye witness, local farm worker Eluterio Flores, to the encounter between the police and Martinez. See Brief for Respondent 1; Defendants' Opposition to Plaintiff's Motion for Summary Adjudication of Issues, in Record for No. CV 98–9313 (CD Cal.), p. 3; *id.*, at App. E (transcript of videotaped deposition of Eluterio Flores). The record does not reveal the extent to which the police interrogated Flores about the encounter.

to accuse himself." *Id.*, at 2. As an "expression of our view of civilized governmental conduct," *id*, at 9, the privilege should instruct and control all of officialdom, the police no less than the prosecutor.

Convinced that Chavez's conduct violated Martinez's right to be spared from self-incriminating interrogation, I would affirm the judgment of the Court of Appeals. To assure a controlling judgment of the Court, however, see *ante*, at 11 (KENNEDY, J., concurring in part and dissenting in part), I join Part II of JUSTICE SOUTER's opinion.