

CIVIL LIABILITY FOR INTERROGATION VIOLATIONS

Edmund Zigmund
Senior Instructor, Legal Division
Federal Law Enforcement Training Center

Police questioning is an effective tool for the enforcement of criminal laws.¹ However, coerced statements taken in violation of the Fifth Amendment right against self-incrimination are inadmissible. Also, since *Miranda*², courts have protected this right by suppressing any custodial statement if police fail to comply with certain procedural safeguards.³ There are other remedies as well, including civil liability. When and how can law enforcement officers be held civilly liable for their actions during police interrogation?

The Fifth Amendment Self-Incrimination Clause

In [Chavez v. Martinez, 538 U.S. 760 \(2003\)](#), police officers shot Martinez during an investigation. Chavez, a patrol supervisor, accompanied Martinez to the hospital and then questioned Martinez while he was receiving medical treatment. Eventually Martinez admitted that he took a gun from the officer's holster and pointed it at the police. He also admitted that he used heroin regularly. At no point during the interview was Martinez given *Miranda* warnings. Martinez was never charged with a crime, and his statements were never used against him in any criminal prosecution. He sued Chavez and others under Title 42 U.S.C. §1983, alleging violations of his Fifth Amendment right against self-incrimination and Fourteenth Amendment due process rights.

The Fifth Amendment Self-Incrimination Clause states that “No person...shall be *compelled in any criminal case* to be a *witness* against himself....” The Supreme Court held that a violation of this clause occurs only when statements are used in a “criminal case.” Martinez was not prosecuted for a crime, let alone compelled to be a witness against himself in a criminal case. Therefore, this Constitutional privilege was not violated and Chavez is entitled to qualified immunity.

In [Robinson v. Gunja, 92 Fed. Appx. 624 \(10th Cir. 2004\)](#), a federal prisoner appealed the dismissal of his Title 42 U.S.C. §1983 complaint filed after a warden decided to terminate his telephone access to legal personnel. In his complaint, the prisoner asserted that prison authorities violated his Fifth Amendment right against self-incrimination by providing him with purportedly unmonitored telephone access for legal purposes, monitoring these conversations, and using these conversations as the basis for terminating his legal telephone access. The Tenth Circuit Court held the prisoner could not establish a claim for the violation of his right against self-incrimination because he did not allege that any of the information obtained from the monitored calls was used against him in any “criminal proceeding.” See also [Gibson v. Picou, 101 Fed. Appx. 154 \(7th Cir. 2004\)](#); [Allison v. Snyder, 332 F.3d 1076 \(7th Cir. 2003\)](#).

When is there a “case?”

In *Chavez*, the Supreme Court stated: “In our view, a ‘criminal case’ at the very least requires the initiation of legal proceedings.” “We need not decide today the precise moment when a ‘criminal case’ commences; it is enough to say that police questioning does not constitute a ‘case’”

[Renda v. King, 347 F.3d 550 \(3d Cir. 2003\)](#), followed the *Chavez* case. In *Renda*, Trooper King was investigating Renda’s allegations of domestic abuse against a state trooper who lived with her. By telephone, Renda told King she had been slammed into a wall by the trooper at their residence earlier that day during an argument. Renda also said she did not want to give a statement or file charges and that she wanted to be left alone. After further investigation, King interviewed Renda in-person at her friend’s apartment. He did not provide *Miranda* warnings to Renda. She gave a written statement which did not mention the assault that she had reported earlier that evening. When asked why, Renda admitted that she had lied earlier. Based upon that statement, King then charged Renda with giving false reports to law enforcement authorities. The state court suppressed Renda’s statements because she had not been given *Miranda* warnings prior to what it concluded was a custodial interrogation. The District Attorney then dismissed the case. Renda sued under Title 42 U.S.C. §1983.

The Third Circuit Court noted the factual difference between *Chavez* and *Renda*. In *Chavez*, the plaintiff was never charged with a crime. In *Renda*, the plaintiff was charged with a crime but the charges were later dropped after the state court suppressed the statements obtained in violation of *Miranda*. The Court said that the plaintiff’s statement was used in a criminal case in one sense, i.e., to develop probable cause sufficient to charge her. However, the court said, “It is the use of coerced statements **during a criminal trial**, and not in obtaining an indictment, that violates the Constitution.” (emphasis added). As such, Renda’s constitutional right against self-incrimination was not violated. See also [Jacobs v. Md. Dep’t of Natural Res., 90 Fed. Appx. 677 \(4th Cir. 2004\)](#).

Miranda

In [Dickerson v. U.S., 530 U.S. 428 \(2000\)](#), the Supreme Court ruled that “*Miranda* announced a **constitutional** rule that Congress may not supersede legislatively.” The *Miranda* warnings have taken on **constitutional** stature. (bold added). Is there civil liability then for failing to give the warnings or giving them improperly?

In *Chavez*, six Supreme Court Justices agreed that mere custodial interrogation absent *Miranda* warnings is not a basis for a Title 42 U.S.C. §1983 claim. The “procedural safeguards” required by *Miranda* are “not themselves rights protected by the Constitution but measures to insure that the right against compulsory self-incrimination was protected....” (see [Michigan v. Tucker, 417 U.S. 433 \(1974\)](#)). “All the Fifth Amendment forbids is the introduction of coerced statements at trial. Accordingly, Chavez’s failure to read *Miranda* warnings to Martinez did not violate Martinez’s constitutional rights and cannot be grounds for a §1983 action.”

Following the guidance of *Chavez*, the Third Circuit Court in *Renda* held that a plaintiff may not base a §1983 claim on the mere fact that the police questioned the plaintiff in custody without

providing *Miranda* warnings where there is no claim that the statements obtained in violation of *Miranda* were used against the plaintiff. Violations of the prophylactic *Miranda* procedures do not amount to violations of the Constitution itself.

The Fourteenth Amendment Due Process Clause (Fifth Amendment Due Process Clause for federal officers/agents)

The Supreme Court's views on the proper scope of the Fifth Amendment's Self-incrimination Clause do not mean that police torture and abuse that result in confessions is constitutionally permissible so long as the statements are not used at trial. The Fourteenth Amendment (and the Fifth Amendment Due Process Clause) provides that no person shall be deprived of life, liberty, or property, without due process of law. In *Chavez*, the Supreme Court held that convictions based on evidence obtained by methods that are so brutal and so offensive to human dignity, that "shock the conscience," violate this Due Process Clause and that this type of police behavior may be the basis of a §1983 action. In [Miller v. Fenton, 474 U.S. 104, 109 \(1985\)](#), the Supreme Court said: "Certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment." A majority in *Chavez* agreed that additional consideration was necessary to determine whether Chavez's actions were so brutal and offensive that they shocked the conscience and, therefore, could support Martinez's claim for a substantive Fourteenth Amendment Due Process violation. This issue was remanded to the Ninth Circuit Court of Appeals.

On remand, the Ninth Circuit Court held that "If Martinez's allegations are proven, it would be impossible not to be shocked by Sergeant Chavez's actions....Under the facts alleged by Martinez, Chavez violated Martinez's clearly established due process rights."⁴ The case is now pending trial in the District Court.

Conclusion

Civil liability under the Fifth Amendment Self-Incrimination Clause and for *Miranda* violations is limited to those cases where the obtained statements are used against the defendant in a criminal trial. Liability does not exist if the statements are used for other purposes, like investigating police misconduct or developing probable cause to arrest a suspect in a criminal case.

However, there can be civil liability under the Fourteenth Amendment when police use physical or mental interrogation techniques so brutal and offensive that they "shock the conscience." This civil liability exists even if the obtained statements are never used in a criminal case against the person who was subjected to the interrogation.⁵

Edmund Zigmund is a Senior Legal Instructor at the Federal Law Enforcement Training Center. He has served as a local police officer, state prosecutor, police legal advisor in Pennsylvania, and a legal instructor for the North Carolina Justice Academy.

¹ [Moran v. Burbine, 475 U.S. 412, 426 \(1986\)](#)

² [384 U.S. 436 \(1966\)](#)

³ [Mason v. Mitchell, 320 F.3d 604, 631 \(6th Cir. 2003\)](#)

⁴ [Martinez v. City of Oxnard, 337 F.3d 1091 \(9th Cir. 2003\)](#)

⁵ *See* [Cooper v. Dupnik, 963 F.2d 1220 \(9th Cir. 1992\)](#)