

THE WEEK

Can American police use pain to make you talk? Depends on where you live.

A case from Texas sets a dangerous precedent

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In the United States, government officials cannot inflict pain to compel you to speak — unless you live in Texas, Louisiana, or Mississippi.

A three-judge panel of the Fifth Circuit Court of Appeals recently held that police officers do not violate the Constitution when they use "pain control maneuvers" against restrained, non-resisting people to make them answer questions, setting a dangerous, legally incorrect precedent. But the full court still has a chance to fix this outrageous decision, protect Americans from similar future abuses, and ensure that if such violations do occur, government officials are held accountable.

The Fifth Circuit is no stranger to cases that implicate the infamous qualified immunity doctrine. This judge-made rule shields government officials, including police officers, from liability — and in turn accountability — in most cases. To get past this defense, it's not enough to show that a constitutional violation occurred. Plaintiffs must show that the official violated a "clearly established" right. To meet this high threshold, courts of appeals generally require plaintiffs to identify a case (1) from their own jurisdiction (2) with virtually identical facts (3) that holds that the specific right at issue exists. More often than not, even the smallest factual difference will prompt courts to save government officials from accountability, no matter how clear and gross the constitutional violation.

But that is not what the U.S. Supreme Court demands. Recently, the high court has emphasized that judges must not shut their eyes to obvious constitutional violations and that government officials will not be shielded from liability simply because there is not a factually identical case on point. The relevant question, says the Supreme Court, is whether the government actors were "on notice" that their behavior violated the Constitution's demands. And some behavior is so obviously unconstitutional that every officer would be on notice even though there is no factually analogous case telling them so. Despite this admonishment — and the fact that the Supreme Court has reversed the Fifth Circuit twice in recent years for failing to recognize obvious constitutional violations — the court of appeals continues to parse minute factual details to deny accountability.

That is what happened in the case of Jacqueline Craig. In 2016, Craig reported to police that a neighbor had choked her 7-year-old son for "littering" (dropping raisins on the neighbor's lawn). Rather than take the allegations seriously, Fort Worth, Texas, police officer William Martin interrupted Jacqueline to ask why she failed to teach her son not to litter. He then suggested that the neighbor's violence was justified because her 7-year-old "broke the law." Martin warned that if Jacqueline kept yelling at him, he would arrest her for "piss[ing him] off."

Martin made good on his threat. Shoving his taser in her back, Martin took Jacqueline to the ground and forcefully handcuffed her. He then forcefully arrested her 15-year-old daughter before kicking her for not getting into his cruiser fast enough.

While this was unfolding, Jacqueline's 18-year-old daughter, Brea Hymond, recorded the interaction from a safe distance. Infuriated with Brea for recording and yelling at him, Martin charged at her, grabbed her, threw her against his police vehicle, ripped the phone from her hands, and placed her under arrest for "interfering." But he was not done showing his authority.

Martin stood by his patrol vehicle, effortlessly holding Brea by his side with a single hand, when she declared that she saw Martin kick her little sister. At this, Martin began to question Brea about her name and age, but she didn't answer. So, with her hands cuffed behind her back, Martin wrenched Brea's arms backward into the air, using what is known as a "pain control maneuver," and loudly repeated his questions into her ear.

Brea was restrained. She was not resisting arrest. She did not pose a risk to anyone's safety. Yet Martin inflicted pain on her solely to compel her to answer his questions.

Seeking to vindicate their constitutional rights, the family sued Martin, arguing that his force against each woman was unconstitutionally excessive. Predictably, the officer invoked qualified immunity. The district court rejected that defense, but three judges on the court of appeals disagreed.

On appeal, the panel ruled that none of Martin's actions amounted to a constitutional violation. And with respect to Brea, it held that the officer's use of a pain control maneuver "was not objectively unreasonable" because the force was "relatively minimal," meaning it did not cause her severe physical injury. Yet, at the same time, it acknowledged that the force was not a response to any risk Brea posed; "[o]nly after Hymond refused to provide Martin with her name did Martin employ any force against her."

This decision is objectively, obviously incorrect under Supreme Court and Fifth Circuit precedent. The Fifth Circuit has repeatedly held that striking a non-resisting suspect is unconstitutional, no matter if the injury was severe or insignificant. Any force that is not legally justified is excessive.

Instead of honoring that well-established rule, however, the panel here brushed aside any harm Brea suffered and split hairs between earlier cases to avoid holding Martin accountable.

Martin's actions were excessive and violated Brea's constitutional right to be free from unreasonable force. Numerous groups across the ideological spectrum agree. The Institute for Justice (where I am an attorney), the American Civil Liberties Union Foundation, the ACLU of Texas, Cato Institute, and the Howard University School of Law Civil Rights Clinic all filed friend-of-the-court briefs asking the full Fifth Circuit to overturn the panel's decision.

If this precedent is allowed to stand, police officers would have carte blanche to coerce answers out of restrained individuals through pain. But the Constitution demands more than a system that endorses government officials forcing people to play "say uncle." It demands reason. It demands accountability.