

Case Summary: *Martinez v. High*, No. 22-16335 (9th Cir. Jan. 26, 2024)

Written by Bailee Tayles

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

This case involves a respondent police officer revealing a confidential complaint of abuse to the victim's abuser, thereby directly placing the victim in immediate danger. On May 29, 2013, Plaintiff Desiree Martinez made a confidential phone call to the Clovis Police Department to report her abuse at the hands of her romantic partner, Officer Pennington.¹ A few months later on September 7, 2013, Officer Pennington called his colleague and friend, Respondent Officer Channon High, with the Clovis PD Records Office, while Ms. Martinez was present.² Pennington placed this call on speaker phone, where he proceeded to ask Martinez if she was going to tell the "cops" what he "did to her" to which Martinez responded "no."³ On the other line, Officer High revealed that she had access to the record of Martinez's prior confidential report of abuse.⁴ After this, Pennington hung up the phone and proceeded to inflict physical and sexual abuse onto Martinez in

¹ *Martinez v. High*, No. 22-16335, slip op. at 5 (9th Cir. Jan. 26, 2024) ("On May 29, 2013, Ms. Martinez made an anonymous call to the Clovis Police Department to report that Mr. Pennington was still abusing her and to seek information about her legal rights. Ms. Martinez made this report confidentially due to Mr. Pennington's threats, which made her 'fear[] great bodily harm or death.'").

² *Id.* at 6.

³ *Id.*

⁴ *Id.* ("Officer High interjected [in response to Ms. Martinez's denial]: 'Yes, she did. I see a report right here.'").

retaliation.⁵

On May 4, 2015, Ms. Martinez sued Officer High for disclosing her confidential complaint to Officer Pennington, which led directly to an infliction of severe physical harm against her. Her complaint argued that Officer High’s actions violated her substantive due process rights under the Fourteenth Amendment. Following the suit, the district court initially denied Officer High’s movement for summary judgment based on qualified immunity, but later granted Officer High qualified immunity after a successive summary judgment motion. The Ninth Circuit granted qualified immunity to two other officers involved in the case, and thus Officer High was granted the same qualified immunity motion.⁶ Though Ms. Martinez appealed for a reversal of this determination, arguing that Officer High “waived her qualified immunity defense by failing to raise it in the prior appeal,”⁷ the Ninth Circuit disagreed as the prior appeal was made by the Plaintiff. The Court affirmed that Officer High’s decision to not appeal the denial of her first summary judgment motion does not prohibit her from re-raising her qualified immunity defense.⁸

In its opinion, the Ninth Circuit acknowledged that Ms. Martinez suffered brutal physical abuse at the hands of Officer Pennington. This opinion also affirmed

⁵ *Id.*

⁶ *Id.* at 8 (“The district court granted the motion and held that, based on *Martinez I*, Officer High was entitled to qualified immunity [because] it was not clearly established in 2013 that [Officer High]’s conduct violated due process.”) (cleaned up).

⁷ *Id.* at 9.

⁸ *Id.*

that Officer High's actions increased Ms. Martinez's risk of abuse and placed her in "actual, foreseeable danger."⁹ Furthermore, it affirmed that Officer High acted in an ignorant manner toward the potential future abuse that Ms. Martinez might experience as a result of her actions. Due to these acknowledgements, the Circuit found that Officer High violated Ms. Martinez's due process rights. Despite this, the Circuit held that even though Ms. Martinez suffered a constitutional violation, Officer High was still entitled to qualified immunity. The Circuit affirmed its decision given the fact that in 2013, there was no existing case law to put "every reasonable official" on notice that their conduct was unconstitutional. Because this case law did not exist, the Court held that Ms. Martinez's rights were not "clearly established" at the time of the violation.¹⁰

Judge Bumatay concurred in the judgment. While he agreed that Officer High was entitled to qualified immunity, he criticized the state-created danger doctrine itself as having "no support in the text of the Constitution, the historical understanding of the 'due process of law,' or even Supreme Court precedent."¹¹ Moreover, he wrote that the majority should not have addressed whether Ms. Martinez's rights were violated given that the qualified immunity doctrine already foreclosed the case.¹²

⁹ *Id.* at 12 ("First, Officer High's affirmative conduct increased Ms. Martinez's risk of abuse by Mr. Pennington. An officer's statements about a victim to a violent perpetrator can increase the risk of retaliation").

¹⁰ *Id.* at 18 ("At bottom, our precedent dictates that no existing authority gave Officer High sufficient notice in 2013 that her conduct violated due process.").

¹¹ *Id.* at 19 (Bumatay, J., concurring in the judgment).

¹² *Id.* at 20 ("[I]t was simply unnecessary to reach whether Desiree Martinez's allegations against Officer High amount to a claim under the state created danger doctrine. To decide this case, it is

Although the Court affirmed Officer High's qualified immunity, this case clarified what deems an officer of the law liable under the state-created danger doctrine. This case established the precedent that an officer will be held responsible in cases where their actions lead directly to an increase in a victim's vulnerability in a dangerous situation. Thus, the Ninth Circuit affirmed that when an officer discloses a victim's confidential report to a violent perpetrator in a manner that increases the risk of retaliation against the victim, they are considered liable.¹³ Moving forward, this case can be cited as creating a "clearly established" precedent for officer liability under the state-created danger doctrine.

sufficient that everyone agrees that no clearly established law existed at the time of the incident between Martinez, Officer High, and her abuser.").

¹³ *Id.* at 19 (op. of Desai, J.) ("An officer is liable under the state-created danger doctrine when the officer discloses a victim's confidential report to a violent perpetrator in a manner that increases the risk of retaliation against the victim.").