

The Right to Remain Silent

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Under the Constitution's Fifth Amendment, no one can be compelled to be a witness against himself in a criminal case.

The prosecution cannot use a defendant's decision not to testify in court as evidence of guilt.

Nor, as a result of the landmark Miranda case, can it use as evidence of guilt a suspect's decision to remain silent after being arrested.

Last week, the Supreme Court heard oral argument in *Salinas v. Texas* about whether the right to silence long applied to trials and police interrogations after arrests should now be extended to suspects before they are arrested and given Miranda warnings.

The justices should say yes.

Before Genovevo Salinas was charged with murder in Texas, he voluntarily went with police officers for questioning.

He answered questions for an hour, but he fell silent rather than answer a key question: whether shotgun shells found at the crime scene would match a shotgun found at his home.

At his trial, the prosecutor called Mr. Salinas's refusal to answer "a very important piece of evidence." Mr. Salinas was convicted of murder in a county court.

The Texas Court of Criminal Appeals upheld the conviction, saying the prosecutor's damaging remark was acceptable.

The police had not required Mr. Salinas to talk, the court said, so the Fifth Amendment's protection against forced self-incrimination was "irrelevant."

But what that means is that if a suspect does not answer every question from the police during an interrogation before he is arrested, the prosecution can use that silence against him in court.

"That is such a radical position, that silence is an admission of guilt," Justice Sonia Sotomayor said during oral argument.

That position gives police officers too much leverage to coerce or cajole a suspect into answering their questions — to compel incriminating testimony in direct contradiction of the Fifth Amendment — or, just as bad, into making a false confession when he is innocent.

There is disagreement among lower courts about this vital issue, some agreeing with Justice Sotomayor, some not. Mr. Salinas's lawyer said the disagreement was intractable and must be resolved by the Supreme Court.

So it should — in favor of the idea that a prosecutor may not use a suspect's silence during an interrogation before his arrest as evidence of guilt.