

In The  
**Supreme Court of the United States**

---

CITY OF STOCKTON, STOCKTON POLICE  
DEPARTMENT, ERIC JONES, KEVIN JAYE HACHLER,  
ERIC B. HOWARD, MICHAEL GANDY,  
CONNER NELSON, AND JASON UNDERWOOD,

*Petitioners,*

v.

FRANCISCO DUARTE,

*Respondent.*

---

**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

---

**BRIEF OF AMICI CURIAE  
CALIFORNIA STATE SHERIFFS' ASSOCIATION,  
CALIFORNIA POLICE CHIEFS ASSOCIATION, AND  
CALIFORNIA PEACE OFFICERS' ASSOCIATION  
IN SUPPORT OF PETITIONERS**

---

JAMES R. TOUCHSTONE  
SCOTT WM. DAVENPORT\*  
JONES & MAYER  
3777 N. Harbor Blvd.  
Fullerton, CA 92835  
Telephone: (714) 446-1400  
Facsimile: (714) 446-1448  
SWD@Jones-Mayer.com

*Attorneys for Amici Curiae  
California Sheriffs' Association,  
California Police Chiefs Association, and  
California Police Officers' Association*

*\*Counsel of Record*

## TABLE OF CONTENTS

	Page
AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS.....	1
I. INTERESTS OF AMICI CURIAE .....	2
A. California State Sheriffs' Association.....	2
B. California Police Chiefs Association .....	2
C. California Peace Officers' Association .....	3
D. Amici Curiae Interests in This Matter .....	3
II. SUMMARY OF ARGUMENT .....	4
III. ARGUMENT.....	7
A. The Ninth Circuit's Opinion Under- mines <i>Heck</i> by Providing a New Remedy to Criminal Defendants Who Have Not Contested Their Arrest or Resulting Criminal Liability.....	7
B. The Ninth Circuit's Opinion Could Result in Limitations on Pre-Trial Diversionary Programs as Well as a Potential Increase in Violence Against Law Enforcement Officers.....	9
C. The Ninth Circuit's Opinion Could Result in Increased Litigation Costs and Public Expenditures Along with Concomitant Reductions in Public Services.....	13
V. CONCLUSION .....	14

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Arroyo v. Starks</i> , 589 F.3d 1091 (10th Cir. 2009) .....	5
<i>DeLeon v. City of Corpus Christi</i> , 488 F.3d 649 (5th Cir. 2007).....	6
<i>Duarte v. City of Stockton</i> , 60 F.4th 566 (9th Cir. 2023) .....	3-6, 8
<i>Fetters v. County of Los Angeles</i> , 243 Cal.App.4th 825 (2016) .....	11, 12
<i>Gilles v. Davis</i> , 427 F.3d 197 (3d Cir. 2005).....	6
<i>Heck v. Humphrey</i> , 512 U.S. 477 (1994) ....	1, 5-8, 11-14
<i>Lujano v. County of Santa Barbara</i> , 190 Cal.App.4th 801 (2010).....	11, 12
<i>McClish v. Nugent</i> , 483 F.3d 1231 (11th Cir. 2007) .....	5
<i>Mitchell v. Morton Cty.</i> , 28 F.4th 888 (8th Cir. 2022) .....	5
<i>People v. West</i> , 3 Cal.3d 595 (1970).....	11
<i>S.E. v. Grant Cnty. Bd. of Ed.</i> , 544 F.3d 633 (6th Cir. 2008) .....	5
<i>Wiley v. County of San Diego</i> , 19 Cal.4th 532 (1998).....	9-12
<b>STATUTES AND RULES</b>	
California <i>Civil Code</i> § 3517 .....	9
California <i>Penal Code</i> § 148(a)(1) .....	4

## TABLE OF AUTHORITIES – Continued

	Page
California <i>Penal Code</i> § 1016(3).....	5
California <i>Penal Code</i> § 1000.10(a).....	5
California Stat. 2009 ch. 372 § 1 .....	9
California Stat. 2009 ch. 372 § 2 .....	9
Rule 37.2 .....	1
Rule 37.6 .....	1

**AMICI CURIAE BRIEF  
IN SUPPORT OF PETITIONERS**

Amici Curiae are the California State Sheriffs' Association, the California Police Chiefs Association and the California Peace Officers' Association (collectively "Amici Curiae").<sup>1</sup> Amici Curiae respectfully submit the following brief in support of Petitioners, City of Stockton, Stockton Police Department, Eric Jones, Kevin Jaye Hachler, Eric B. Howard, Michael Gandy, Conner Nelson, and Jason Underwood.

As set forth herein, Amici respectfully request that the Court grant the Petition for a Writ of Certiorari in order to resolve the **Circuit split** on whether a criminal defendant's participation in a pre-trial diversion program invalidates bar to filing a subsequent civil action for damages set forth by this Court in *Heck v. Humphrey*, 512 U.S. 477, 486 (1994).

---

<sup>1</sup> Pursuant to Rule 37.2, the parties were notified at least ten days prior to the due date of this brief of the intention to file.

No party or counsel for a party authored this brief, in whole or in part. No person or entity other than Amici Curiae, its members, or its counsel made any monetary contribution to the preparation or submission of this brief. This representation is made in compliance with Rule 37.6 of the United States Supreme Court Rules.

## **I. INTERESTS OF AMICI CURIAE**

Amici are the above Associations, whose members make up a vast array of law enforcement officers throughout the State of California. Amici Members represent policy making officials, management, and rank and file officers, providing a broad spectrum of law enforcement viewpoints.

### **A. California State Sheriffs' Association**

The California State Sheriffs' Association ("CSSA") is a nonprofit professional organization that represents each of the fifty-eight (58) California Sheriffs. It was formed to allow the sharing of information and resources between sheriffs and departmental personnel, in order to allow for the general improvement of law enforcement throughout the State of California.

### **B. California Police Chiefs Association**

The California Police Chiefs Association ("CPCA") represents virtually all of the more than 400 municipal chiefs of police in California. CPCA seeks to promote and advance the science and art of police administration and crime prevention, by developing and disseminating professional administrative practices for use in the police profession. It also furthers police cooperation and the exchange of information and experience throughout California.

### **C. California Peace Officers' Association**

The California Peace Officers' Association ("CPOA") represents more than 3,000 members, who are peace officers of all ranks throughout the State of California, from municipal, county, state, and federal law enforcement agencies. CPOA provides professional development and training for peace officers, and reviews and comments on legislation and other matters impacting law enforcement.

### **D. Amici Curiae Interests in This Matter**

This case raises important issues for Amici, in that it will determine critical issues applicable to officer safety, law enforcement use of force, and the liability of officers for use of force. Municipalities and Counties represented by the members of Amici are interested in the outcome in this matter because it has the potential to negatively impact officer safety and negatively impact the conduct of trials relating to officer use of force. Local law enforcement officers are engaged in the primary activity of combating crimes and, frequently, encountering dangerous situations and individuals. Their conduct is guided by this Court's pronouncements, and their day-to-day lives in the field are directly impacted by such decisions.

Since Amici represent the interests of a wide variety of law enforcement, Amici provide this Court with a valuable perspective into the potential adverse effects of the opinion of the Ninth Circuit Court of Appeals in this matter. *Duarte v. City of Stockton*, 60 F.4th

566 (9th Cir. 2023). The underlying issues in this case have the potential for wide-ranging impacts on use of force evidentiary and procedural principles at trial and also have the potential to impact important public safety concerns and day-to-day law enforcement activities for all levels of law enforcement.

Given the significant ramifications of the Ninth Circuit’s opinion, Amici respectfully submit this brief in support of Petitioners. Amici’s independent perspective on the issues presented by the underlying opinion of the Ninth Circuit takes into account, in particular, the fact that the members of Amici will be tasked with the actual implementation in the field of the legal principles that this Court will determine in this matter.

## **II. SUMMARY OF ARGUMENT**

Respondent Francisco Duarte was charged with willfully resisting, obstructing, and delaying a peace officer in violation of California *Penal Code* § 148(a)(1). Prior to trial, Duarte executed a “Misdemeanor Advise-ment of Rights, Waiver and Plea Form” in which he entered a plea of “no contest” and further acknowledged that he understood that this plea would have the same force and effect as a plea of guilty other than it could not be used against him in a civil lawsuit. This plea form further indicated that Duarte’s plea would be “held in abeyance” and, upon completion of public service, the case would be dismissed.

After his completion of community service, Duarte filed a claim for excessive force and false arrest against

the arresting officers. The District Court granted summary judgment on these claims, concluding that they were barred under *Heck v. Humphrey*, 512 U.S. at 486.

In *Heck*, this Court held that a plaintiff could not state a claim for an unconstitutional conviction, imprisonment, or other harm when doing so would render his conviction or sentence invalid. *Id.* at 486-487. Thus, unless a conviction had been invalidated, no claim for damages would be cognizable. *Id.*

In this case, although Duarte pleaded “no contest” to the underlying criminal charges – an action which, under California law, would ordinarily result in the entry of a plea which was the same as a plea of guilty (see California *Penal Code* § 1016(3)) – Duarte was allowed to participate in a pre-trial diversion program at the conclusion of which his charges were dismissed. California *Penal Code* § 1000.10(a),

Based on Duarte’s participation in this pre-trial diversion, the Ninth Circuit concluded that the *Heck* bar was inapplicable because the criminal charges against him were dismissed without the entry of a conviction. *Duarte v. Stockton*, 60 F.4th at 571-573. **In so doing, the Ninth Circuit expressly noted the split of authority Sixth, Eighth, Tenth and Eleventh Circuits<sup>2</sup> on the one side, and the Third and Fifth**

---

<sup>2</sup> *S.E. v. Grant Cnty. Bd. of Ed.*, 544 F.3d 633, 637-639 (6th Cir. 2008), *Mitchell v. Morton Cty.*, 28 F.4th 888, 895-896 (8th Cir. 2022), *Arroyo v. Starks*, 589 F.3d 1091, 1093-1096 (10th Cir. 2009), *McClish v. Nugent*, 483 F.3d 1231, 1250-1252 (11th Cir. 2007).

**Circuits<sup>3</sup> on the other side. *Duarte v. City of Stockton*, 60 F.4th at 572-573.**

Notwithstanding the Ninth Circuit's representation that it merely followed the plain language of *Heck* and the majority of the Circuits which have considered this issue, this opinion undermines the public interests underlying this Court's ruling in *Heck*. Even worse, the Ninth Circuit's opinion provides a pathway for criminal defendants to file civil lawsuits arising out of the very same allegations which they chose not to contest. Such a ruling undermines this Court's holding in *Heck*, is contrary to public policy, erodes notions of finality, and injects confusion into both the criminal civil justice systems.

Accordingly, Amici urge this Court to grant the Petition for a Writ of Certiorari in order to resolve the Circuit split on whether a criminal defendant's participation in a pre-trial diversion program invalidates the *Heck* bar to filing a subsequent civil action for damages.

---

<sup>3</sup> *Gilles v. Davis*, 427 F.3d 197, 208-212 (3d Cir. 2005), *DeLeon v. City of Corpus Christi*, 488 F.3d 649, 655-656 (5th Cir. 2007).

### III. ARGUMENT

#### A. The Ninth Circuit’s Opinion Undermines *Heck* by Providing a New Remedy to Criminal Defendants Who Have Not Contested Their Arrest or Resulting Criminal Liability

In *Heck*, this Court held that a plaintiff could not state a claim for an unconstitutional conviction, imprisonment, or other harm when doing so would render his conviction or sentence invalid. *Id.* at 486-487. In so holding, this Court established a simple rule which is easy to apply: those who are criminally liable for obstruction and/or resisting arrest cannot file a subsequent civil claim asserting that officers acted improperly. This rule is consistent with public policy, issues of judicial finality, and common sense.

In this case, in the absence of controlling Ninth Circuit precedent, the District Court looked to authority from the Third and Fifth Circuits and concluded that the *Heck* bar was appropriate, noting:

“Plaintiffs here cannot plausibly argue that completing mandatory community service, after pleading no contest to a charge of resisting law enforcement, can possibly constitute a ‘favorable termination’ of the proceedings on their behalf so as to circumvent the *Heck* bar.”

App. 29.

The Ninth Circuit rejected this approach and followed a contrary line of cases from other Circuits,

concluding that since there was no conviction to overturn, “the tension with which *Heck* was principally concerned is missing.” *Duarte v. City of Stockton*, 60 F. 4th at 573. Nonsense.

Although it is true that this Court was concerned that awarding civil damages to an incarcerated inmate who had been convicted of voluntary manslaughter could result in an improper collateral attack on the judgment, the core issue in that case was whether such a finding might require the inmate’s release even where his conviction had been repeatedly upheld and where the remedy was not sought in the civil action. However, this was not the end of the inquiry in *Heck*. Indeed, this Court specifically mentioned that the *Heck* rule “sweeps more broadly” than the facts of the case. *Heck v. Humphrey*, 512 U.S. at 489.

By carving out an exception to the bright-line *Heck* bar, the Ninth Circuit has undermined the common-sense rule in *Heck* and its progeny. Duarte had the opportunity to contest the charges filed against him and made a tactical decision to choose not to do so. Now, after taking part in a diversionary program, his collateral civil lawsuit seeks to litigate the very issues which he did not contest and for which a factual basis was found. Such action runs afoul of the clear spirit of *Heck*.

**B. The Ninth Circuit’s Opinion Could Result in Limitations on Pre-Trial Diversionary Programs as Well as a Potential Increase in Violence Against Law Enforcement Officers**

Pre-trial diversion programs serve an important public purpose of reducing recidivism among first-time, low-level, nonviolent offenders all while maintaining a cost which is less than traditional correctional approaches. See California Stat. 2009 ch. 372 § 1. Successful reentry models combine strict accountability with effective mechanisms for offenders to become self-sufficient and crime free. *Id.* at § 2. These programs, however, were not designed to afford criminal defendants with an opportunity to circumvent the *Heck* bar and allow civil actions for damages arising out of one’s own perfidy.

Implicit in the Ninth Circuit’s ruling is the fact that criminal defendants who previously would not have been allowed to sue for civil damages based on their own actions will now be afforded an avenue to do so as long as they participate in a pre-trial diversion program. This is anathema to public policy. California *Civil Code* § 3517 (no one can take advantage of his own wrong); see *Wiley v. County of San Diego*, 19 Cal.4th 532, 537 (1998) (“Courts will not assist the participant in an illegal act who seeks to profit from the act’s commission” [citation]).

Cognizant of these practical realities, California has applied analogous requirements in other areas of

law. For example, California's process for addressing the issue of legal malpractice arising out of a criminal case is instructive. In *Wiley v. County of San Diego*, the California Supreme Court wrestled with a situation in which a criminal defendant's conviction was reversed based on ineffective assistance of counsel and, thereafter, the criminal defendant filed a civil claim against his former attorney. The California Supreme Court held that, in addition to the elements necessary to establish civil malpractice, proof of innocence was a required element. *Id.* at 545.

In so doing, the Court reasoned:

"To begin, the public policy reasons articulated in favor of requiring proof of actual innocence are compelling. Our legal system is premised in part on the maxim, 'No one can take advantage of his own wrong.' Regardless of the attorney's negligence, a guilty defendant's conviction and sentence are the direct consequence of his own perfidy. The fact that nonnegligent counsel 'counsel have done better' may warrant postconviction relief, but it does not translate into civil damages, which are intended to make the plaintiff whole. While a conviction predicated on incompetence may be erroneous, it is not unjust. . . .

"Only an innocent person wrongly convicted due to inadequate representation has suffered a compensable injury because in that situation the nexus between the malpractice and palpable harm is sufficient to warrant a civil action, however inadequate, to redress

the loss. In sum, ‘the notion of paying damages to a plaintiff who actually committed the criminal offense solely because a lawyer negligently failed to secure an acquittal is of questionable public policy and is contrary to the intuitive response that damages should only be awarded to a person who is truly free from any criminal involvement.’ We therefore decline to permit such an action where the plaintiff cannot establish actual innocence.”

*Id.* at 538-539 (citations omitted)

Moreover, in *Fetters v. County of Los Angeles*, 243 Cal.App.4th 825 (2016), the California Court of Appeal determined that an informal juvenile diversion which had resulted in a dismissal was still subject to a *Heck* bar. *Id.* at 837.<sup>4</sup> In so doing, the Court noted that successful completion of probation was *not* an indication that the plaintiff was *innocent* of the charges that were subsequently dismissed. *Id.*; see also *Lujano v. County of Santa Barbara*, 190 Cal.App.4th 801 (2010) (“Accepting informal probation is not a favorable termination allowing for civil tort liability” (*id.* at 808); “What she may not do is take advantage of the leniency of the state and thereafter pursue a civil claim for damages” (*id.* at 809)).

---

<sup>4</sup> Amici note that *Fetters* plead *nolo contendere* pursuant to *People v. West*, 3 Cal.3d 595 (1970) which, under California law, was not only a “no contest” plea but also indicated that the plea was made solely for the purposes of obtaining a beneficial plea bargain.

The logic and public policy underlying *Wiley*, *Fetters*, and *Lujano* are compelling and equally applicable in this context. Just because a first-time offender is afforded an opportunity to participate in a pre-trial diversionary program does not mean that he or she should be entitled to circumvent the procedural bar this Court set forward in *Heck*. Simply stated, a criminal defendant should not be allowed to refuse to contest a charge, participate in a government-funded program, and then turn around and file a civil lawsuit against the government after participating in a program designed to rehabilitate rather than punish. Instead, if a criminal defendant truly believes that his or her civil rights were violated, he or she should be compelled to contest the criminal charges in the underlying matter and, if successful, then be allowed to pursue those claims in a collateral civil lawsuit.

Indeed, by providing a potential pathway for a civil lawsuit, the Ninth Circuit's opinion actually provides an incentive for suspects to resist arrest in the first place, thereby undermining public safety and the safety of officers. Such an unintended consequence is a very real concern to Amici in this matter.

Simply stated, the California pre-trial diversionary program serves a laudable purpose; however, it was never intended to provide an avenue for subsequent civil actions for those who never contested their criminal liability. If the Ninth Circuit's ruling is allowed to stand, it could have the unintended consequence of limiting the expansion and/or continuation of such programs for fear of increased liability.

**C. The Ninth Circuit’s Opinion Could Result in Increased Litigation Costs and Public Expenditures Along with Concomitant Reductions in Public Services**

Finally, one last issue warrants discussion: the Ninth Circuit’s opinion comes at a significant societal cost that must be considered before any new civil remedy is created.

Since the start of the global pandemic in 2020, municipalities have struggled with funding for the continuation of governmental services. The Ninth Circuit’s changes to the *Heck* bar will result in the greater expenditure of taxpayer dollars, higher insurance premiums, and reduced services. It is difficult to justify creating a civil remedy for a criminal defendant who does not contest the charges against him at the societal cost of providing adequate funding for law enforcement, public safety, parks, teachers, and other governmental necessities.

Often times the real-world problems associated with the application of a new Ninth Circuit rule are not considered by the Courts, as well as its impact on the actual citizens who are impacted by these decisions. Amici urge this Court to grant the Petition for a Writ of Certiorari and revisit the decision and the impact it has on the community, in general, and law enforcement, in particular.

## V. CONCLUSION

Accordingly, for all these reasons, Amici respectfully request that the Court grant the Petition for a Writ of Certiorari in order to resolve the **Circuit split** on whether a criminal defendant's participation in a pre-trial diversion program invalidates the *Heck* bar to filing a subsequent civil action for damages.

DATED: May 31, 2023

Respectfully submitted,

JAMES R. TOUCHSTONE  
SCOTT WM. DAVENPORT\*  
JONES & MAYER  
3777 N. Harbor Blvd.  
Fullerton, CA 92835  
Telephone: (714) 446-1400  
Facsimile: (714) 446-1448  
SWD@Jones-Mayer.com

*Attorneys for Amici Curiae  
California Sheriffs' Association,  
California Police Chiefs Association, and  
California Police Officers' Association*

*\*Counsel of Record*