

No. _____

In the
Supreme Court of the United States

CITY OF SANTA MARIA AND ANDY BRICE,
Applicants,

v.

ADOLFO CARDENAS, INDIVIDUALLY,
Respondent.

**APPLICATION DIRECTED TO THE HONORABLE ELENA KAGAN
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.2, Applicants City of Santa Maria and Andy Brice respectfully request a 60-day extension of time, to and including July 20, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. The Ninth Circuit entered its judgment on December 17, 2025, App. A (Op.), and denied a timely petition for rehearing en banc on February 20, 2026, App. B (Reh’g Denial). Without an extension, the time for filing a petition for a writ of certiorari will expire on May 21, 2026. Jurisdiction to review the judgment of the Ninth Circuit in this case will be invoked under 28 U.S.C. § 1254(1).

This case concerns the Ninth Circuit’s effective nullification of *Heck v. Humphrey*, 512 U.S. 477 (1994), in the context of nolo contendere (or “no contest”) pleas. In *King v. R. Villegas*, 156 F.4th 979 (9th Cir. 2025), the Ninth Circuit held that Federal Rule of Evidence 410(a)(2) categorically bars courts from considering a nolo contendere plea when conducting the *Heck* inquiry—thereby permitting § 1983 suits that necessarily imply the invalidity of those convictions to proceed, and creating an express circuit split. Here, the panel applied *King* to bar consideration of Respondent Adolfo Cardenas’s no-contest plea to resisting arrest—a conviction based on his leading police on a high-speed car chase, then charging at an officer before being tased. Cardenas is now free to sue for excessive force arising from that same

encounter, even though, under California law, such excessive force by an officer would have precluded conviction for resisting arrest. Op. 3 & n.1.

Over Judge Koh’s objection, the majority then went further—holding that even if Cardenas’s plea could be considered, *Heck* still would not bar his claim because he engaged in “multiple acts of resistance” and the record did not “clearly” establish which one underlies his conviction (even though *every* act appeared in the police report Cardenas adopted as the “factual basis for [his] plea”). Op. 3-4. As Judge Koh explained, that decision cannot be squared with Cardenas’s own repeated concessions—before the district court, in appellate briefing, and at oral argument—that the *entire* police report supplied the factual basis for his plea. Op. 9 (Koh, J., concurring in judgment). Nor can it be squared with *Heck* itself. The result is a decision that eviscerates *Heck*’s protections for finality and comity in the plea context, while flouting this Court’s settled rule that parties are bound by their concessions.

Undersigned counsel was recently retained to represent Applicants before this Court. Additional time is requested so that new counsel may review the record, narrow the issues for this Court’s consideration, and adequately prepare and file a petition for certiorari. In addition, the Ninth Circuit has granted rehearing en banc in *King*, with oral argument scheduled for the week of June 1, 2026. The requested extension will permit Applicants to account for any intervening developments in *King*, which may streamline the questions Applicants raise and the relief they seek.

BACKGROUND

1. On October 24, 2022, Respondent Adolfo Cardenas crashed his truck into a cemetery wall before leading police on a high-speed car chase. 9th Cir. Excerpts of

Record (“ER”) 3 ¶ 3; ER26 ¶ 14. Cardenas eventually stopped driving, got out of his car, and fled on foot. ER3 ¶ 3. Santa Maria Police Officer Andy Brice later pursued Cardenas into an apartment complex, where Cardenas ran up a staircase and began kicking the door of an apartment as if attempting to force entry. ER3-5 ¶¶ 4, 8; ER26 ¶ 14. When that effort failed, Cardenas turned toward Officer Brice, clenched his fists, made a growling sound, and charged directly at the officer. ER4-5 ¶ 8. Officer Brice deployed his taser, and Cardenas was taken into custody. *Id.*

Officer Brice memorialized the encounter in an eight-page police report describing four acts of resistance by Cardenas: (1) refusing to comply with commands while in his truck; (2) exiting and advancing toward Brice while ignoring repeated orders to get down; (3) fleeing on foot into an apartment complex; and (4) kicking at an apartment door as if attempting to force entry, and then turning toward Brice at the top of a stairwell, clenching his fists, and charging down directly at the officer—prompting Brice to deploy his taser. ER81-88.

2. On September 14, 2023, Cardenas pled no contest to three criminal charges, including a violation of California Penal Code § 148(a)(1), for his conduct during the encounter with Officer Brice. ER17; ER138-41. On his plea form, Cardenas offered the “police report” as “proof of the factual basis for [his] plea.” Op. 4. Cardenas’s attorney executed an accompanying Attorney’s Statement providing: “I hereby stipulate that there is a factual basis for the plea and refer the court to the . . . police report.” ER17. The Superior Court found a factual basis for the plea and convicted Cardenas.

3. Cardenas then filed this § 1983 action against the City and Officer Brice, alleging that Officer Brice used excessive force in deploying the taser. The City moved for summary judgment on the ground that Cardenas’s claims were barred by *Heck*. Under *Heck*, a § 1983 damages action cannot proceed if “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.” 512 U.S. at 487.

The district court granted summary judgment in favor of the City, finding the *Heck* analysis “rather straightforward” because Cardenas had “conceded” in his briefing that Officer Brice’s police report formed the factual basis for his plea, and the actions leading to the taser deployment were described in that report. ER8 ¶¶ 22-23. The court found “no supportable reason in the record to believe that Plaintiff pled to the first three sequences of obstruction without admitting the fourth portion.” *Id.* ¶ 24.

4. The Ninth Circuit reversed. Relying on the court’s intervening decision in *King v. R. Villegas*, 156 F.4th 979, 983-84 (9th Cir. 2025), the panel held that Federal Rule of Evidence 410(a)(2)—which provides that evidence of a “nolo contendere plea” is “not admissible against the defendant who made the plea” in a “civil or criminal case”—bars admission of a nolo contendere plea to show that a § 1983 plaintiff committed the crimes to which he pleaded. *See Op.* 3 n.1.

Two members of the panel went further. Even assuming the plea could be considered, they held, *Heck* still would not bar Cardenas’s suit because he had engaged in “multiple acts of resistance” before he was tased—“any one of which could,

independently, form the basis for his conviction”—and the record did not “clearly identify which conduct formed the factual predicate” for that conviction. Op. 3. Under the standard the majority applied, *Heck* “does not bar” an excessive-force claim “even when the plaintiff alleges the officer used excessive force during one of several resisting or obstructing acts that could be the basis for the guilty verdict” so long as “the record does not show that this *particular act* was the factual predicate” for the conviction. *Id.* (quoting *Martell v. Cole*, 115 F.4th 1233, 1237 (9th Cir. 2024) (emphasis added)).

Judge Koh saw it differently. Op. 7-8. In her view, Cardenas had “clearly stipulate[d] that the factual basis for his conviction encompassed *all*” the actions in the police report. Op. 9 (emphasis added). She emphasized that Cardenas’s counsel had repeatedly “conceded”—before the district court, in appellate briefing, and at oral argument on appeal—that the *entire* police report formed the factual basis for his plea. *Id.* As she explained, when asked point-blank at oral argument whether he “was conceding” that Cardenas had stipulated that “all four acts of resistance in Officer Brice’s police report were . . . the basis for Cardenas’s plea,” Cardenas’s counsel responded: “I did so in the lower court . . . and I think it would be unethical for me to change my tune now.” *Id.* Judge Koh nonetheless concurred in the reversal solely because *King* “bars consideration of Cardenas’s no contest plea in the first instance.” *Id.*

The majority opinion never engaged with Cardenas’s counsel’s repeated concessions.

5. The City filed a timely petition for rehearing en banc, which the panel denied on February 20, 2026. Reh’g Denial. On April 3, 2026, the Ninth Circuit granted rehearing en banc in *King*, with oral argument scheduled for the week of June 1. Order (No. 23-1713), ECF Nos. 68-69.

REASONS FOR GRANTING THE APPLICATION

1. The lower courts are openly divided on whether Rule 410(a) bars consideration of a nolo contendere plea when conducting the *Heck* inquiry. In *King v. R. Villegas*, the Ninth Circuit held that Rule 410(a) “bars admission of a *nolo contendere* plea to show that a § 1983 plaintiff committed the crimes to which he pleaded *nolo contendere*.” 156 F.4th 979, 984 (9th Cir. 2025). In doing so, the Ninth Circuit expressly rejected the Sixth Circuit’s contrary decision in *Walker v. Schaeffer*, 854 F.2d 138 (6th Cir. 1988), dismissing it as “inconsistent with the text of Rule 410(a).” *King*, 156 F.4th at 985-86. Other circuits have sided with *Walker*. See, e.g., *Claunch v. Williams*, 508 F. App’x 358, 359 n.2 (5th Cir. 2013) (nolo plea “is enough . . . to trigger *Heck*”); *Curry v. Yachera*, 835 F.3d 373, 378 (3d Cir. 2016) (nolo plea “must be treated the same as a conviction under *Heck*”).

This case squarely implicates that split. In the Sixth Circuit, Cardenas’s nolo contendere plea would be part of the *Heck* analysis; in the Ninth Circuit, it is not. Op. 3 n.1.

The Ninth Circuit’s refusal to consider nolo contendere pleas when performing the *Heck* inquiry misreads both *Heck* and Rule 410(a). The *Heck* inquiry does not require “admi[tting]” a plea into evidence, Fed. R. Evid. 410(a)—it requires courts to examine judicial records to determine “which acts formed the basis for the *conviction*.”

King, 156 F.4th at 991 (Callahan, J., dissenting) (emphasis added) (citation omitted). So Rule 410(a) simply does not apply. Rule 410’s text, moreover, bars use of a nolo plea only “*against the defendant* who made the plea.” Fed. R. Evid. 410(a) (emphasis added). When the pleader is the *plaintiff*, there is no “defendant” to protect. *Walker*, 854 F.2d at 143.

Left undisturbed, the Ninth Circuit’s rule will “eviscerate[] the *Heck* bar,” *King*, 156 F.4th at 988 (Callahan, J., dissenting), for the substantial number of criminal cases resolved by nolo pleas—undermining *Heck*’s core protections for finality and comity in the Nation’s largest circuit.

2. The panel’s plea-clarity holding compounds the error—and independently warrants this Court’s review. It is not just wrong—it is egregiously so, flouting this Court’s most basic principles of party presentation while reflecting the Ninth Circuit’s broader pattern of creating obstacles to *Heck*’s application.

Here, the panel refused to hold Cardenas to his own repeated, unequivocal concessions that the *entire* police report formed the factual basis for his plea—concessions Cardenas’s own counsel deemed “unethical” to disclaim. *Supra* at 5; *see* Op. 9 (Koh, J., concurring). The majority instead simply ignored them—even though Judge Koh called them out in her partial concurrence. *See* Op. 6-9 (Koh, J., concurring).

That disregard for a party’s own concessions flouts this Court’s most basic principles. “[I]n our adversarial system of adjudication, we follow the principle of party presentation.” *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam). Facts

“admitted by counsel, may be the ground of the court’s procedure equally as if established by the clearest proof.” *Oscanyan v. Arms Co.*, 103 U.S. 261, 263 (1880). Here, Cardenas’s repeated concessions that the factual basis for his conviction encompassed *all* the actions in the police report resolved the plea-clarity issue.

Even setting aside these concessions, the plea-clarity holding is irreconcilable with this Court’s precedents. By pleading no contest, Cardenas shielded himself from further prosecution for *any* of the acts which constituted resisting arrest—jeopardy attached—while simultaneously waiving any right to challenge the factual basis of his conviction. As Judge Koh observed, “Cardenas could have excluded the fourth act of resistance in Officer Brice’s police report from his factual basis, but chose not to do so.” Op. 9 (Koh, J., concurring). Allowing him to nonetheless sue based on those same facts does not merely “imply” the invalidity of his conviction; it eviscerates it. *Heck*, 512 U.S. at 487. And it transforms the plea-bargaining process into a one-way ratchet: defendants can secure favorable deals by stipulating broadly, then disclaim those stipulations as “unclear” the moment it becomes convenient to do so in a civil-rights action. That is precisely the gamesmanship *Heck* was designed to foreclose.

3. Applicants respectfully request a 60-day extension within which to prepare a petition for certiorari in this case. Undersigned counsel did not serve as Applicants’ counsel in the courts below and was recently retained to assist in the evaluation and preparation of a petition for a writ of certiorari. A 60-day extension of time is warranted to permit counsel to research and, as appropriate, refine the issues for this Court’s review and prepare a petition that addresses the important questions raised

by this case in the most direct and efficient manner for the Court's consideration. The additional time also will assist potential amici in considering this case. Moreover, the Ninth Circuit has granted rehearing en banc in *King*, with oral argument scheduled for the week of June 1, 2026. The requested 60-day extension will allow Applicants to account for those proceedings—including any resulting decision—in streamlining and refining the questions presented for this Court's review. The requested extension also will mean that any en banc decision in *King* could, potentially, issue while Applicants' petition is still pending, allowing this Court to consider that decision in evaluating the petition.

The extension requested would not work any meaningful prejudice on any party. If the Court grants certiorari, the case may be briefed and argued next Term.

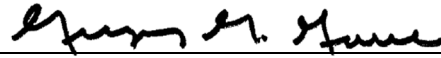
CONCLUSION

Accordingly, Applicants respectfully request a 60-day extension of time, to and including July 20, 2026, within which to file a petition for a writ of certiorari.

Dated: May 1, 2026

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APPENDIX A

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

DEC 17 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADOLFO CARDENAS, individually,

Plaintiff - Appellant,

v.

CITY OF SANTA MARIA; ANDY
BRICE; DOES, 1 through 25, inclusive,

Defendants - Appellees.

No. 24-5457

D.C. No.
2:23-cv-10146-MRW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael R. Wilner, Magistrate Judge, Presiding

Argued and Submitted October 9, 2025
Pasadena, California

Before: WARDLAW and KOH, Circuit Judges, and CHEN, District Judge.**
Partial Concurrence by Judge KOH.

Adolfo Cardenas appeals the district court's grant of Defendants' motion for summary judgment. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *Anthoine v. N. Cent. Counties Consortium*, 605 F.3d 740, 747 (9th Cir.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Edward M. Chen, United States District Judge for the Northern District of California, sitting by designation.

2010), we reverse.

Civil suits for damages are barred when “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). “A conflict can arise between a [California Penal Code] § 148(a)(1) conviction and an excessive force claim because a violation of § 148(a)(1) requires the officer to be ‘engaged in the performance of his or her duties’” at the time of the § 148(a)(1) violation “and ‘California courts have held that an officer who uses excessive force is acting unlawfully and therefore is not engaged in the performance of his or her duties.’” *Martell v. Cole*, 115 F.4th 1233, 1236 (9th Cir. 2024) (quoting *Lemos v. Cnty. of Sonoma*, 40 F.4th 1002, 1006 (9th Cir. 2022) (en banc)). “To decide whether success on a section 1983 claim would *necessarily* imply the invalidity of a conviction, we must determine which acts formed the basis for the conviction.” *Lemos*, 40 F.4th at 1006. “When the conviction is based on a guilty plea, we look at the record to see which acts formed the basis for the plea.” *Martell*, 115 F.4th at 1236 (quoting *Lemos*, 40 F.4th at 1006). If the record does not “make clear” which act or acts formed the basis for the conviction, the *Heck* bar does not apply. *Id.* at 1239.

1. Cardenas’s California Penal Code § 148(a)(1) conviction does not bar

this excessive force suit because the record of that conviction does not clearly demonstrate that the conviction is irreconcilable with his civil claim. Cardenas’s civil suit alleges that Officer Brice used excessive force when he tased Cardenas. The record of Cardenas’s § 148(a)(1) conviction demonstrates that before Cardenas was tased, Cardenas engaged in multiple acts of resistance to the police, any one of which could, independently, form the basis for his conviction. “*Heck* does not bar” a civil action for excessive force “even when the plaintiff alleges the officer used excessive force during one of several resisting or obstructing acts that ‘could be the basis for the guilty verdict’ if the record does not show that this particular act was the factual predicate for the plaintiff’s § 148(a)(1) conviction.” *Martell*, 115 F.4th at 1237 (quoting *Lemos*, 40 F.4th at 1007). And, here, the record does not clearly identify which conduct formed the factual predicate for Cardenas’s § 148(a)(1) conviction.¹

2. *Sanders v. City of Pittsburg*, 14 F.4th 968 (9th Cir. 2021), is not to the contrary. In *Sanders*, the plaintiff pled to a § 148(a)(1) conviction. *Id.* at 970. At the plea colloquy, the plaintiff stated that there was a factual basis for the plea

¹ Alternatively, Cardenas pleaded “no contest” or “nolo contendere” to his conviction. Following oral argument in this case, our court issued a decision holding that Federal Rule of Evidence 410(a) “bars admission of a *nolo contendere* plea to show that a § 1983 plaintiff committed the crimes to which he pleaded *nolo contendere*.” *King v. R. Villegas*, 156 F.4th 979, 984 (9th Cir. 2025). No case in our circuit had previously addressed this issue.

“based on the preliminary hearing transcript.” *Id.* Because “Sanders stipulated that the factual basis for his conviction encompassed the three instances of resistance identified in the preliminary hearing transcript,” we held that he could not bring an excessive force suit related to the officers’ actions during any of those three acts since each of those “acts led to his conviction[.]” *Id.* at 972.

Here, Cardenas did not clearly stipulate that the factual basis for his conviction encompassed all the of the actions in Officer Brice’s police report. Rather, Cardenas acknowledged, in a check box on his plea form, that the Santa Barbara Superior Court “may consider” a “[p]olice report” as “proof of the factual basis for [his] plea.” The plea form’s “Attorney’s Statement” further indicated that Cardenas’s counsel “stipulate[d] that there is a factual basis for the plea and refer[ed] the court to the [] police report.” Thus, Cardenas merely stipulated that there was a factual basis and then referred the court to the police report. Accordingly, the record does not demonstrate that each of Cardenas’s acts, as described in the police report, was the factual basis for his conviction. Moreover, the “suggestion in *Sanders* that the factual bases for a § 148(a)(1) conviction are ‘indivisible’ was based in part on a statement we made in *Smith* about the scope of § 148(a)(1),” and “our en banc court in *Lemos* specifically disapproved that statement from *Smith*[.]” *Martell*, 115 F.4th at 1239 (quoting *Sanders*, 14 F.4th at 972, and citing *Smith v. City of Hemet*, 394 F.3d 689, 699 n.5 (9th Cir. 2005) and

Lemos, 40 F.4th at 1008–09). Indeed, “when the record shows the defendant may have been found guilty, based on one of several different events, then a guilty verdict,” or in this case, a plea, “does *not* necessarily determine[] the lawfulness of the officers’ actions throughout the entire encounter.” *Id.* (internal quotation marks and citations omitted). The record herein does not “make clear” which act or acts formed the basis for the § 148(a)(1) conviction. *Martell*, 115 F.4th at 1236.

REVERSED and REMANDED.

FILED

DEC 17 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Cardenas v. City of Santa Maria, et al., No. 24-5457

KOH, J., concurring in part and concurring in the judgment:

I concur with my colleagues that our recent decision in *King v. Villegas*, 156 F.4th 979 (9th Cir. 2025), requires us to reverse the district court’s grant of summary judgment in favor of the City. I respectfully disagree, however, with the majority’s conclusion that the record in this case “does not clearly identify which conduct formed the factual predicate for Cardenas’s § 148(a)(1) conviction.” Maj. Op. at 3. Because I would resolve this case solely on the grounds that *King* precludes consideration of Cardenas’s no contest plea, I concur in part and concur in the judgment.

1. In *King*, the plaintiff, Jerry Lee King, brought an action under 42 U.S.C. § 1983 against two correctional officers and alleged that the officers used excessive force against him in violation of the Eighth Amendment. 156 F.4th at 982. After King filed his civil suit, he was charged with one count of battery by a state prisoner and one count of obstructing or resisting an executive officer for his conduct during the incident in question. *Id.* King later pleaded *nolo contendere* to the charge of resisting an executive officer under California Penal Code § 69. *Id.* At his plea hearing, King stipulated “to a factual basis based on the probable cause statement and the reports in discovery,” including medical reports and incident reports by prison staff. *Id.*

The defendant officers in King’s civil suit then moved for judgment on the pleadings based on King’s plea. *Id.* The district court ultimately agreed with the officers and ruled that King’s § 1983 action was barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). In reaching that conclusion, the district court “compared the facts contained in King’s complaint to those contained in one of [the officer’s] incident reports,” and found that “there was no possible way these two sets of facts could simultaneously be true.” *King*, 156 F.4th at 983 (citation modified).

The majority in *King* reversed and concluded that the district court erred in considering evidence of King’s *nolo* plea. As a matter of first impression, the court held that Federal Rule of Evidence 410(a) “bars admission of a *nolo contendere* plea to show that a § 1983 plaintiff committed the crimes to which he pleaded *nolo contendere*.” *Id.* at 984. The court noted that this conclusion “follow[ed] from a straightforward application of the text of the Rule” and was “consistent with the established understanding” that no contest pleas are not an admission of factual guilt. *Id.* at 984-85.

King requires that we reach the same result here. Similar to *King*, Cardenas pleaded no contest to one count of resisting arrest for his conduct during the same incident that forms the basis of his excessive force claim. Similar to *King*, the district court relied on Cardenas’s no contest plea and the factual basis for that plea, including Officer Brice’s police report, in determining that Cardenas’s claim

was *Heck*-barred. Under *King*, that was error because Federal Rule of Evidence 410(a) bars admission of Cardenas's *nolo* plea and plea statements to prove that Cardenas committed the crimes to which he pleaded.

The City's arguments to the contrary are not persuasive. In its supplemental briefing, the City puts forth several reasons why *King*'s application of Rule 410(a) in the *Heck* analysis is incorrect. Those arguments necessarily fail, as *King* is controlling precedent in this Circuit. The City also tries to distinguish *King* on the facts, but none of the purported factual differences between this case and *King* undermines *King*'s central holding that "Rule 410(a) bars admission of a *nolo contendere* plea to show that a § 1983 plaintiff committed the crimes to which he pleaded *nolo contendere*." *King*, 156 F.4th at 984.¹

2. Because *King* controls here, we need not—and should not—decide whether the factual basis for Cardenas's no contest plea is irreconcilable with his civil suit. However, because the majority's decision rests on its determination that "the record does not clearly identify which conduct formed the factual predicate for Cardenas's § 148(a)(1) conviction," I must express my disagreement with that conclusion. Maj. Op. at 3.

¹ The City also notes that Cardenas did not object to the admission of his conviction below. However, we may decline to apply the waiver doctrine where, as here, a "new issue arises while the appeal is pending because of a change in the law." *Hunter v. U.S. Dep't of Educ.*, 115 F.4th 955, 964 (9th Cir. 2024) (citation omitted).

Before the district court, Cardenas's counsel conceded that "Officer Brice's police report formed the factual bases for [Cardenas's] criminal plea." In his briefing before this Court, Cardenas's counsel again conceded that Officer Brice's police report "formed the factual bases for his criminal plea." At oral argument, Cardenas's counsel was specifically asked if he was conceding that by checking the police report box on the plea form, Cardenas was stipulating that all four acts of resistance in Officer Brice's police report were stipulated to as the basis for Cardenas's plea. Cardenas's counsel responded, "I did so in the lower court . . . and I think it would be unethical for me to change my tune now." Moreover, Cardenas could have excluded the fourth act of resistance in Officer Brice's police report from his factual basis, but chose not to do so. Given this decision as well as Cardenas's counsel's concessions, I respectfully disagree with the majority's conclusion that "Cardenas did not clearly stipulate that the factual basis for his conviction encompassed all the of the actions in Officer Brice's police report." Maj. Op. at 4. Again, however, I note that we need not resolve that issue because *King* bars consideration of Cardenas's no contest plea in the first instance.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 20 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADOLFO CARDENAS, individually,

Plaintiff - Appellant,

v.

CITY OF SANTA MARIA; et al.,

Defendants - Appellees.

No. 24-5457

D.C. No.

2:23-cv-10146-MRW

Central District of California,
Los Angeles

ORDER

Before: WARDLAW and KOH, Circuit Judges, and CHEN, District Judge.*

Judge Wardlaw and Judge Koh vote to deny the petition for rehearing en banc, and Judge Chen so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40. The petition for panel rehearing en banc, dkt. 46, is **DENIED**.

* The Honorable Edward M. Chen, United States District Judge for the Northern District of California, sitting by designation.