

No. _____

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

CITY OF SANTA MARIA AND ANDY BRICE,
Petitioners,

v.

ADOLFO CARDENAS, INDIVIDUALLY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Heck v. Humphrey*, 512 U.S. 477 (1994), this Court held that a Section 1983 damages claim must be dismissed where a judgment in the plaintiff's favor would necessarily imply the invalidity of his criminal conviction. Here, the district court found application of the *Heck* bar "rather straightforward." App. 17a. Respondent pleaded no contest to resisting arrest after leading officers on a high-speed chase, fleeing on foot, and charging at an officer before being tased. But then he sued the City and one of its officers alleging use of the taser to take him into custody was excessive force. Under *Heck*, that claim cannot proceed. Yet a divided Ninth Circuit panel reversed. The majority first held that the record did not clearly establish the factual basis for respondent's no-contest plea—even though, as Judge Koh explained in her separate opinion, respondent repeatedly *conceded* that the entire police report, which included a detailed description of why and how the taser was employed, formed the factual basis for respondent's plea. In the alternative, the panel invoked the now-vacated decision in *King v. Villegas*, 156 F.4th 979 (9th Cir. 2025), *vacated*, 171 F.4th 1163 (9th Cir. 2026), which held that Rule 410(a) of the Federal Rules of Evidence categorically bars a defendant from ever invoking a plaintiff's no-contest plea as a basis for a *Heck* dismissal.

The question presented is whether a court may refuse to apply the *Heck* bar in such circumstances.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners (defendants-appellees below) are the City of Santa Maria and Andy Brice.

Respondent (plaintiff-appellant below) is Adolfo Cardenas.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Cardenas v. City of Santa Maria, No. 24-5457, United States Court of Appeals for the Ninth Circuit, judgment entered December 17, 2025 (unpublished).

Cardenas v. City of Santa Maria, No. 23-cv-10146-MRW, United States District Court for the Central District of California, judgment entered August 12, 2024 (unpublished).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners City of Santa Maria and Andy Brice respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals (App. 1a-8a) is not published, but is available at 2025 WL 3654675. The court of appeals' denial of panel rehearing en banc (App. 22a) is not reported. The decision of the district court granting defendants' motion for summary judgment (App. 9a-21a) is not reported.

JURISDICTION

The court of appeals entered its judgment on December 17, 2025 (App. 1a-8a), and denied rehearing on February 20, 2026 (App. 22a). On May 5, 2026, Justice Kagan extended the time to file a petition for a writ of certiorari through July 20, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL RULE OF EVIDENCE INVOLVED

Federal Rule of Evidence 410(a) provides:

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

INTRODUCTION

The Ninth Circuit’s decision in this case represents the latest example of a growing trend in the Circuit to ignore or circumvent the rule of *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, this Court held that a plaintiff cannot use a Section 1983 damages action to collaterally attack a criminal conviction. That rule serves several vital functions. It protects the finality of criminal judgments, preserves the integrity of plea bargaining, and prevents end-runs around the criminal process. Without it, every convicted defendant could repackage a challenge to his conviction as a civil suit for damages—undermining both the criminal justice system and the courts that administer it.

For years, however, the Ninth Circuit has been chipping away at, and simply ignoring, *Heck*’s bar. Its own judges have repeatedly sounded the alarm—warning of a “slow erosion of the *Heck* bar,” *Martell v. Cole*, 115 F.4th 1233, 1241 (9th Cir. 2024) (Lee, J., dissenting), judge-made “escape hatch[es]” to *Heck*, *Lemos v. County of Sonoma*, 40 F.4th 1002, 1009 (9th Cir.) (en banc) (Callahan, J., dissenting), *cert. denied*, 143 S. Ct. 429 (2022), and *Heck* holdings that “squarely contradict[] Supreme Court precedent,” *Roberts v. City of Fairbanks*, 947 F.3d 1191, 1206 (9th Cir. 2020) (Ikuta, J., dissenting), *cert. denied*, 141 S. Ct. 1515 (2021). This case underscores the degree to which the Ninth Circuit has gone to circumvent *Heck*.

Respondent Adolfo Cardenas pleaded no contest to resisting arrest after leading officers on a high-speed chase, fleeing on foot, and charging headlong at an officer before being tased. App. 10a-12a (¶¶ 3-4, 8). Cardenas and his attorney offered, and the criminal court accepted, a police report chronicling the entire encounter, including the tasing, as the factual basis for his plea. *Id.* at 17a (¶ 23). Cardenas literally checked a box offering the “[p]olice report” as “proof of the factual basis for [his] plea” and acknowledged that the court “‘may consider’ [it] as ‘proof of the factual basis for [his] plea.’” *Id.* at 4a, 11a (¶ 6) (alteration in original) (quoting Dkt. 13, Ex. C at 5).²

Yet, Cardenas then turned around and sued the City and one of the officers for damages, claiming the tasing that ended his flight was excessive force. The district court correctly recognized that application of the *Heck* bar here was “straightforward” and granted summary judgment to the City on Cardenas’s claims. App. 17a (¶ 22). As it explained, a civil judgment invalidating the tasing would necessarily imply the invalidity of Cardenas’s conviction—exactly what *Heck* prohibits. *Id.* at 21a (¶ 36). Yet a divided panel of the Ninth Circuit reversed. To reach that result, the panel relied on two extraordinary theories—each independently indefensible, and together emblematic of the Ninth Circuit’s “slow erosion of the *Heck* bar.” *Martell*, 115 F.4th at 1241 (Lee, J., dissenting).

First, the panel majority declared that the record did not “clearly identify which conduct formed the factual predicate for” Cardenas’s plea. App. 3a. But as Judge Koh explained in a separate opinion,

² “Dkt.” refers to documents filed below in *Cardenas v. City of Santa Maria*, No. 2:23-CV-10146 (C.D. Cal.).

Cardenas’s own counsel repeatedly conceded—before the district court, in appellate briefing, and at oral argument—that the *entire* police report formed the factual basis for the plea. *Id.* at 8a (Koh, J., concurring in part and concurring in the judgment). At oral argument, when asked point-blank whether all four acts of resistance—including charging down the stairs at the officer before being tased—formed the “factual basis” for the plea, he admitted that “it would be unethical for [him] to change [his] tune now.” *Id.* (quoting argument).³ The majority never once acknowledged, let alone tried to account for, Cardenas’s concessions, or Judge Koh’s separate opinion recounting them. The majority’s refusal to hold Cardenas to his own binding admissions is the kind of brazen violation of party-presentation principles that this Court has summarily reversed. *See, e.g., Margolin v. National Ass’n of Immigr. Judges*, 146 S. Ct. 1285 (2026) (per curiam); *Clark v. Sweeney*, 607 U.S. 7 (2025) (per curiam).

Second, in a footnote, the panel sought to insulate that obvious error by alternatively invoking the Ninth Circuit’s recent decision in *King v. Villegas*, 156 F.4th 979 (9th Cir. 2025), *vacated*, 171 F.4th 1163 (9th Cir. 2026), for the proposition that Federal Rule of Evidence 410(a) *categorically* bars a *Heck* defendant from ever relying on a plaintiff’s nolo contendere plea or the resulting conviction to establish the *Heck* bar. But the Ninth Circuit has since granted rehearing en banc in *King* and vacated that opinion. And at the en banc stage, the prevailing party has *abandoned* the

³ *See Cardenas Oral Arg.* at 29:36-30:00, 36:17-50 (Oct. 9, 2025), <https://www.ca9.uscourts.gov/cases/streams-videos/archive?case=24-5457&hearingDate=2025-10-09>.

Rule 410(a) theory, declining to defend it in briefing or at oral argument. *See, e.g., King* En Banc Oral Arg. at 29:34-35 (June 2, 2026), <https://www.ca9.uscourts.gov/cases/streams-videos/archive?case=23-1713&hearingDate=2026-06-02>; *see id.* at 7:16-28 (“[We] never pressed the [Rule] 410[(a)] argument”). That is unsurprising: The holding was plainly wrong, and it squarely conflicts with the decisions of the Third, Fifth, Sixth, and Eleventh Circuits, all of which permit *Heck* defenses in nolo-plea cases.

In light of these blatant errors, the decision below should not be allowed to stand. The panel majority’s plea-clarity holding warrants summary reversal—it squarely conflicts with bedrock party-presentation principles this Court has repeatedly stressed. And the Rule 410(a) holding warrants, at minimum, vacatur and remand in light of the en banc vacatur of *King* or forthcoming en banc decision. This Court routinely grants, vacates, and remands (GVRs) cases when the same circuit has changed its own law while a petition is pending. *See, e.g., Brown Grp., Inc. v. Hicks*, 499 U.S. 914 (1991) (mem.) (GVR in light of “en banc opinion to be filed”); *Newbold v. United States*, 571 U.S. 1119 (2014) (mem.) (GVR in light of intervening Fourth Circuit decision). There is no reason petitioners—and only petitioners—should remain a casualty of a flawed legal theory that even its beneficiary has disavowed.

The stakes in this case are real and immediate. Without this Court’s intervention, the City will be forced to bear the full costs of discovery and trial in a Section 1983 damages action that necessarily implies the invalidity of Cardenas’s conviction—precisely the “parallel litigation over the issues of probable cause and guilt” that *Heck* was designed to prevent. 512

U.S. at 484 (citation omitted). And the consequences extend beyond this case. Left standing, the decision below provides a roadmap for every plaintiff in the Ninth Circuit looking to evade *Heck*: Plead no contest, stipulate broadly to secure a favorable deal and the double-jeopardy protections that come along with it, and then disclaim those stipulations the moment a civil suit becomes advantageous. It is time for this Court to intervene, before the Ninth Circuit’s “slow erosion of the *Heck* bar” corrupts it beyond recognition. *Martell*, 115 F.4th at 1241 (Lee, J., dissenting).

STATEMENT OF THE CASE

A. Legal Background

Under the *Heck* doctrine, Section 1983 claims for damages are not cognizable where “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.” 512 U.S. at 487. That standard is met whenever a civil judgment would “negate an element of the offense of which [the plaintiff] has been convicted.” *Id.* at 486 n.6. Thus, for example, a criminal defendant who was convicted of resisting arrest cannot bring an action “against the arresting officer, seeking damages for violation of his Fourth Amendment right to be free from unreasonable seizures.” *Id.* The doctrine’s purpose is to ensure “finality and consistency” and to “avoid[] parallel litigation over the issues of probable cause and guilt . . . in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction.” *Id.* at 484-85 (citation omitted).

California Penal Code Section 148(a)(1) makes it a misdemeanor to “willfully resist[], delay[], or

obstruct[]” any law enforcement officer in the lawful discharge of his duties. Cal. Penal Code § 148(a)(1). Because lawful performance of the officer’s duties is an essential element of that offense, *Heck* bars a later Section 1983 claim challenging the force used during the conduct that supported the conviction. *See, e.g., Martell*, 115 F.4th at 1236.

When a conviction rests on a plea, courts applying *Heck* must “determine which acts formed the basis for the conviction.” App. 2a (quoting *Lemos*, 40 F.4th at 1006). In doing so, the court must look “at the record to see which acts formed the basis for the plea.” *Id.* at 2a-3a (quoting *Martell*, 115 F.4th at 1236).

A plea of *nolo contendere* (or no contest) is “a plea by which a defendant does not expressly admit his guilt, but nonetheless waives his right to a trial and authorizes the court for purposes of the case to treat him as if he were guilty.” *North Carolina v. Alford*, 400 U.S. 25, 35 (1970). Federal Rule of Evidence 410(a)(2) provides that “[i]n a civil or criminal case,” “evidence” of a “*nolo contendere* plea” “is not admissible against the defendant who made the plea or participated in the plea discussions.” Fed. R. Evid. 410(a)(2). The Rule’s purpose is to give “effect to the principal traditional characteristic of the *nolo* plea, i.e.,] avoiding the admission of guilt which is inherent in pleas of guilty.” Fed. R. Evid. 410 advisory committee’s note to 1972 proposed rules.

B. Factual And Procedural Background

1. On October 24, 2022, respondent Adolfo Cardenas crashed his pickup truck into a cemetery wall in Guadalupe, California, and led law enforcement officers on a high-speed chase. App. 10a (¶ 3); Dkt. 27, Ex. A at 4. After the initial pursuing

officer terminated his chase, petitioner Santa Maria Police Officer Andy Brice heard the broadcasts, took over the search, and located Cardenas's truck parked on a nearby street. App. 10a (¶ 3); Dkt. 27, Ex. A at 4-5. When Brice ordered Cardenas to put his hands up, Cardenas refused—screaming, scowling, and reaching around inside the cab. Dkt. 27, Ex. A at 5. He then abruptly exited the truck and advanced toward Brice, staggering and screaming, before breaking into a run across the street and into an apartment complex. *Id.*

Brice pursued on foot, giving repeated commands for Cardenas to get on the ground—all of which Cardenas ignored. *Id.* Cardenas ran up a staircase and began forcefully kicking an apartment door, apparently attempting to force entry. App. 10a-11a (¶¶ 4, 8(a)). When that effort failed, Cardenas turned toward Brice, clenched his fists, made a guttural sound, and then charged down the stairs directly at Brice. *Id.* at 11a (¶ 8(b)). As Cardenas rapidly closed the distance, Brice deployed his taser. *Id.* at 12a (¶ 8(c)). Cardenas was then taken into custody. *Id.* (¶ 8(d)).

Officer Brice memorialized the encounter in an eight-page police report. Dkt. 27, Ex. A at 1-8. As relevant here, that report described four acts of resistance by Cardenas: (1) refusing to comply with commands while seated in his truck; (2) exiting the vehicle and advancing toward Brice while ignoring repeated orders to get down; (3) breaking into a run across the street into an apartment complex; and (4) attempting to kick down an apartment door, turning toward Brice, clenching his fists, and charging down the stairs directly at the officer—prompting Brice to deploy his taser. *Id.* at 5-6.

2. On September 14, 2023, Cardenas pleaded no contest to three criminal charges, including a violation of California Penal Code Section 148(a)(1) for resisting, delaying, or obstructing Officer Brice in the performance of his duties. App. 10a (¶ 5). Although a factual basis is not independently required for a misdemeanor plea under Section 148, Cardenas’s charges were resolved together on a single felony plea form covering all three counts, including the felony charge of evading an officer under Vehicle Code Section 2800.2(a). *See id.* at 16a (¶ 21).

On that plea form, Cardenas checked a box offering the “[p]olice report” as “proof of the factual basis for [his] plea” and acknowledging that the court “‘may consider’ [it] as ‘proof of the factual basis for [his] plea.’” App. 4a, 11a (¶ 6) (alteration in original) (quoting Dkt. 13, Ex. C at 5). His attorney also 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.” Dkt. 13, Ex. C at 6. Neither the form nor the stipulation carved out any portion of the report. The Superior Court found a factual basis for the plea and convicted Cardenas for all three counts to which he pleaded.

3. Less than three months later, Cardenas filed this Section 1983 damages action against the City and Officer Brice, alleging that he had done nothing wrong and that Officer Brice had used excessive force in deploying the taser. Dkt. 2 at 4-5 (¶ 15). He then filed an amended complaint admitting that he engaged in a litany of criminal acts, but arguing that all of his criminal conduct suddenly ceased *just* before he was tased. Dkt. 22 at 4-12 (¶¶ 14-30).

The City moved for summary judgment on the ground that Cardenas's excessive force claim was "irreconcilable" with his Section 148 conviction, and therefore his claims were barred under *Heck*. Dkt. 25 at 12-18. As the City explained, because the police report forming the factual basis of Cardenas's plea "describes" the events leading up to the tasing "in detail," and because "it was only upon discharge of the [t]aser that Cardenas was taken into custody," a finding that the tasing was unlawful would necessarily invalidate the conviction. *Id.* at 17-18. In opposing summary judgment, Cardenas conceded that "Officer Brice's police report formed the factual bases for [his] criminal plea." Dkt. 32 at 1 (Mem. of Points and Authorities).

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 the police report formed the factual basis for his plea, and the actions leading to the taser deployment were described in that report. App. 17a (¶¶ 22-23). There was, the court observed, "no supportable reason in the record to believe that Plaintiff pled to the first three sequences of obstruction without admitting the fourth portion"—*i.e.*, the stairwell charge that ended in the tasing. *Id.* (¶ 24).

4. Cardenas appealed. In his opening brief, Cardenas again conceded that the "four corners of Brice's eight-page police report . . . formed the factual bases for his criminal plea." CA9 Opening Br. 5-6; *see also* App. 8a (Koh, J., concurring in part and concurring in the judgment). And at oral argument, when asked directly whether Cardenas was stipulating that all four acts of resistance in the

report formed the basis for his plea, counsel admitted “I did so in the lower court . . . and I think it would be unethical for me to change my tune now.” App. 8a (Koh, J., concurring in part and concurring in the judgment) (alteration in original).

The Ninth Circuit nonetheless reversed. First, the majority held that “the record of that conviction does not clearly demonstrate that the conviction is irreconcilable” with Cardenas’s claim because he had engaged in “multiple acts of resistance” before the tasing, “any one of which could, independently, form the basis for his conviction.” *Id.* at 3a. In the majority’s view, the record did not “clearly identify which conduct formed the factual predicate for [that] conviction.” *Id.* 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 th[e] *particular* act [on which the plaintiff’s suit is based] was the factual predicate” for the conviction. *Id.* (quoting *Martell*, 115 F.4th at 1237 (emphasis added)). Here, however, Cardenas had repeatedly conceded that *all* four acts in the police report formed the basis for his plea.

Second, in a footnote, the panel “[a]lternatively” invoked the Ninth Circuit’s then-recent decision in *King v. Villegas*, 156 F.4th 979, for the proposition 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*.” App. 3a n.1 (quoting *King*, 156 F.4th at 984). *King* had held that Rule 410(a) bars a *Heck* defendant from relying on either a *nolo*

contendere plea or the resulting conviction “to show that a § 1983 plaintiff committed the crimes to which he pleaded *nolo contendere*.” 156 F.4th at 984, 987. There was no other discussion of *King* in the panel’s decision.

Judge Koh concurred in the reversal based “solely” on the panel’s alternative footnote ruling that “*King* precludes consideration of Cardenas’s no contest plea.” App. 5a. But she disagreed with the majority’s conclusion that the record did not “clearly” establish the factual predicate for Cardenas’s conviction. *Id.* In her view, Cardenas had “clearly stipulate[d] that the factual basis for his conviction encompassed *all*” the actions in the police report. *Id.* at 8a (emphasis added) (quoting App. 4a). She catalogued the multiple times that Cardenas’s counsel had “conceded”—before the district court, in appellate briefing, and at oral argument—that the *entire* Brice police report formed the factual basis for his plea. *Id.* Judge Koh further observed that 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.” *Id.* The majority never acknowledged these concessions or responded to Judge Koh’s analysis in any way.

The City filed a timely petition for rehearing en banc, which was denied. *Id.* at 22a.

5. On April 3, 2026, the Ninth Circuit granted rehearing en banc in *King* and vacated the panel’s opinion in *King*. See *King v. Villegas*, 171 F.4th 1163 (9th Cir. 2026). In his supplemental en banc brief, King defended reversal of the district court’s order dismissing his complaint on *Heck* grounds on an alternate ground the panel had not reached—that his plea did not admit to the truth of any specific facts—

while devoting less than two pages to the panel’s Rule 410(a) holding, acknowledging that it was not “the position King advocated in his appellate briefing” at the panel stage. *King* Appellant En Banc Suppl. Br. 16-17, ECF No. 74. The government’s supplemental reply observed that King had “all but abandon[ed] the panel’s Rule 410[(a)] holding,” *King* Appellees En Banc Suppl. Reply Br. 1, ECF No. 85—the theory relied upon by the panel in its “alternative” footnote ruling below.

At the en banc oral argument, King’s counsel confirmed his retreat from the panel’s Rule 410(a) holding. She repeatedly stressed that King “never pressed the 410[(a)] argument” at the panel stage and is “not defending that portion of the court’s analysis” now. *King* En Banc Oral Arg. at 7:16-28, 7:34-47; *see also id.* at 29:34-35 (“[W]e never advocated for the [Rule 410(a)] position”). Instead, King’s counsel stated that the fact that his plea did not admit to any specific facts—not Rule 410(a)—would be the “preferred ground” for reversal. *Id.* at 28:25-28:49.

Several judges on the en banc court expressed skepticism toward the panel’s Rule 410(a) holding. Judges Christen and Collins, for example, asked whether the Rule 410(a) holding would immunize all nolo pleas from sentencing enhancements—and King’s counsel conceded that it would. *Id.* at 2:44-3:48. Judge Owens pointed out that if Rule 410(a) applied to the *Heck* analysis, then “[a]ll the rules of evidence” could apply, requiring courts to hold an “evidentiary hearing every time” they conduct a *Heck* analysis. *Id.* at 26:33-27:20. Judge Forrest noted that the Rule 410(a) theory “was brought up by the three-judge panel” on its own initiative. *Id.* at 7:16-7:36. And Judge Collins remarked that under *Heck*, “the

conviction is being considered not for the truth of the underlying matter, but for the *fact* of the conviction,” and thus, he explained, Rule 410(a) should have no role to play in the analysis. *Id.* at 32:34-32:54.

As of the filing of this petition, the en banc decision in *King* has yet to be issued.

REASONS FOR GRANTING THE WRIT

This case should have been a “straightforward” application of *Heck v. Humphrey*, 512 U.S. 477 (1994). App. 17a. Under ordinary *Heck* principles, a Section 1983 damages claim that necessarily implies the invalidity of an existing criminal conviction cannot proceed. *See* 512 U.S. at 486-87. Cardenas repeatedly conceded that Officer Brice’s police report supplied the factual basis for his nolo contendere plea. And that report describes the very acts leading to the tasing he is now challenging as excessive. A finding that the tasing was unlawful in his civil suit would thus necessarily imply the invalidity of his conviction. *Heck* bars the claim—full stop.

Remarkably, the panel nevertheless refused to apply *Heck*. To reach that result, it relied on two extreme—and extremely flawed—rationales. First, as Judge Koh explained, the majority disregarded Cardenas’s own repeated concessions concerning the factual basis for his plea and instead constructed its own account of the conviction record to manufacture ambiguity where none existed. This is the kind of obvious violation of party-presentation principles that this Court has repeatedly intervened to correct. Second, the panel alternatively relied on a Rule 410(a) theory derived from a Ninth Circuit decision that has since been vacated by the grant of rehearing en banc

and whose central premise is no longer being defended even by the prevailing party in that case.

Neither rationale can withstand scrutiny and, together, they make this case a poster child for the Ninth Circuit’s repeated refusal to follow *Heck*. The first holding warrants summary reversal. The second cannot stand in light of the Ninth Circuit’s vacatur of the *King* decision when it granted rehearing en banc and the fact that no party is defending *King*’s understanding of Rule 410(a) in the en banc proceeding. Especially against the backdrop of the Ninth Circuit’s serial efforts to erode and circumvent *Heck*, this Court’s intervention is warranted.

I. THE PANEL’S PLEA-CLARITY HOLDING IS AN OBVIOUS VIOLATION OF PARTY-PRESENTATION PRINCIPLES

A. The Decision Below Improperly Ignores Binding Party Concessions

The panel’s “plea-clarity” holding is an egregious violation of this Court’s precedents and basic party-presentation principles. It is the kind of departure from adversarial norms that this Court has summarily corrected in cases like *Margolin v. National Association of Immigration Judges*, 146 S. Ct. 1285 (2026) (per curiam) and *Clark v. Sweeney*, 607 U.S. 7 (2025) (per curiam). It should do so again here.

1. The panel held that *Heck* did not bar Cardenas’s suit because the record did not “clearly identify” which conduct formed the factual predicate for his Section 148(a)(1) conviction. App. 3a. As the majority saw it, Cardenas had engaged in “multiple acts of resistance” before he was tased—refusing commands at the truck, fleeing on foot, kicking at an

apartment door, and charging down the stairs at Officer Brice—“any one of which could, independently, form the basis for his conviction.” *Id.* Because “Cardenas did not clearly stipulate that the factual basis for his conviction encompassed *all* . . . of the actions in Officer Brice’s police report,” the *Heck* bar was inapplicable. *Id.* at 4a (emphasis added).

That holding blinks reality. As Judge Koh explained in her separate opinion, Cardenas’s counsel made several binding concessions—at the district court, in appellate briefing, and at oral argument—that the *entire* police report formed the factual basis for the plea. *Id.* at 8a (Koh, J., concurring in part and concurring in the judgment). In briefing before the district court, Cardenas’s counsel conceded that “Officer Brice’s police report ‘formed the factual bases for [Cardenas’s] criminal plea,’” without any further qualification. *Id.* (alteration in original); *see id.* at 17a (¶ 23) (order); Dkt. 32 at 1 (Mem. of Points and Authorities) (conceding that “Brice’s eight page police report . . . formed the factual bases for [Cardenas’s] criminal plea”). And in briefing before the Ninth Circuit, Cardenas’s counsel again conceded that the “four corners of Brice’s eight page police report . . . formed the factual bases for his criminal plea.” CA9 Opening Br. 5-6; App. 8a (Koh, J., concurring in part and concurring in the judgment).

At oral argument, Cardenas’s counsel went further. When he was specifically asked if he was conceding that all four acts of resistance in the police report were stipulated to as the “basis” for the plea, he admitted: “I did so in the lower court . . . and I think it would be unethical for me to change my tune now.” App. 8a (Koh, J., concurring in part and concurring in the judgment) (alteration in original)

(quoting argument); *see Cardenas* Oral Arg. at 29:54. He also stated that he could not “in good faith tell you that the Brice report”—which describes the stairwell charge and subsequent tasing—“didn’t have something to do with his plea.” *Cardenas* Oral Arg. at 30:32-30:42. And he multiple times conceded that Cardenas had “stipulate[d] that [the charging culminating in the tasing] was a factual basis” for the plea. *See id.* at 36:39-41; *see also id.* at 5:55-6:00 (“Yes, [Cardenas] has admitted to resisting throughout the entire interaction.”); *id.* at 7:12-7:25 (“The [*Yount*] Court concluded that [his] criminal conviction encompassed his admission that he was resisting the officers right up until the time that he was shot, just like my complaint did for Mr. Cardenas.”); *id.* at 30:24-26 (“[Cardenas] took a plea to 148, which encompassed everything . . .”). These concessions leave no ambiguity.

The majority ignored all of this. It never explained how the record could be “unclear” when the party himself had repeatedly told every court that it was clear. It never cited, let alone addressed, any of these concessions. And it never so much as acknowledged Judge Koh’s separate opinion, which laid out the concessions in detail. That silence speaks volumes.

2. The panel’s refusal to hold Cardenas to his own, repeated concessions flouts bedrock principles of adversarial adjudication. “[F]ederal courts are not ‘roving commissions.’” *Margolin*, 146 S. Ct. at 1288. Rather, “[i]n our adversarial system of adjudication, [federal courts must] follow the principle of party presentation.” *Clark*, 607 U.S. at 9 (citation omitted). This Court has taken as given for nearly 150 years that “any fact, bearing upon the issues involved, 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 (1881).

The rule that courts must honor concessions—including from oral argument—is uniform across every circuit and firmly established. *See, e.g., United States Tr. Co. of N.Y. v. Shapiro*, 835 F.2d 1007, 1009 (2d Cir. 1987) (remanding with “instructions to hold [counsel] to his concession” at oral argument); *Minter v. Wells Fargo Bank, N.A.*, 762 F.3d 339, 347 (4th Cir. 2014) (A “lawyer’s statements may constitute a binding admission of a party.” (citation omitted)); *Montano v. Orange County*, 842 F.3d 865, 882 (5th Cir. 2016) (“[A]n attorney’s remarks . . . constitute[] binding admissions against the party he represent[s].” (second alteration added) (citation omitted)); *McCaskill v. SCI Mgmt. Corp.*, 298 F.3d 677, 680 (7th Cir. 2002) (“The verbal admission by [a party’s] counsel at oral argument is a binding judicial admission, the same as any other formal concession made during the course of proceedings.”); *United States v. Wilmer*, 799 F.2d 495, 502 (9th Cir. 1986) (attorney’s statement during oral argument constitutes judicial admission), *cert. denied*, 481 U.S. 1004 (1987); *Crowe v. Coleman*, 113 F.3d 1536, 1542 (11th Cir. 1997) (“That concessions and admissions of counsel at oral argument in appellate courts can count against them is doubtlessly true.”).

The panel egregiously erred by flouting that bedrock principle here. Cardenas’s concessions resolved the only factual question the panel purported to find ambiguous: which acts formed the basis for the plea. The answer—given by Cardenas’s own counsel, three times over—was all of them. The panel’s refusal to accept that answer, and its substitution of

manufactured ambiguity for a party's binding admissions, warrants summary reversal. *See, e.g., Margolin*, 146 S. Ct. at 1288 (summarily reversing decision that violated party-presentation principles).

**B. Independently, The Decision Below
Cannot Be Reconciled With *Heck***

Even setting aside the litigation concessions, the panel's holding cannot be squared with *Heck*. The underlying record makes clear why counsel had no choice but to concede that the entire police report formed the factual basis for the plea.

Simply look at the plea form itself. Cardenas checked a box on his plea form expressly offering the entire “[p]olice report” “as the basis for [his] plea of . . . no contest” and acknowledging that the court “‘may consider’ [it] as ‘proof of the factual basis for [his] plea.’” App. 4a, 11a (¶ 6) (alteration in original) (quoting Dkt. 13, Ex. C at 5). His counsel signed a separate Attorney’s Statement stipulating to a factual basis and referring the court to the entire report—without carving out any portion of it. Dkt. 13, Ex. C at 6. The Superior Court accepted the plea on that basis.

That record—even apart from counsel’s later concessions that all of the acts were covered by the plea—establishes the factual basis for Cardenas’s conviction as a matter of state law. And it does so without ambiguity: Cardenas’s plea form does not parse the report act-by-act; it adopts the report in its entirety. Under its plain terms, Cardenas’s plea—and by extension, his conviction—rests on *every* act of resistance described in the report, including the stairwell encounter that ended in the tasing.

Because lawful police conduct is an element of a Section 148(a)(1) conviction, and because Cardenas’s conviction indisputably rests on the very conduct that led to the tasing he now challenges, a civil judgment finding the tasing unlawful would negate an element of the offense. *See Martell v. Cole*, 115 F.4th 1233, 1236 (9th Cir. 2024). Such a judgment would therefore “necessarily imply” the invalidity of Cardenas’s conviction. *Heck*, 512 U.S. at 487. As the district court put it, this is a “straightforward” application of *Heck*. App. 17a (¶¶ 22-23).

The panel’s contrary approach does not just misread the record—it provides criminal defendants with a roadmap to evade *Heck* altogether. Plead no contest to a broad factual basis to secure the benefits of a favorable deal and the resulting double-jeopardy protections, then disclaim the breadth of those stipulations as “unclear” in a later civil suit. The result transforms plea bargaining into a one-way ratchet. That is precisely the kind of gamesmanship *Heck* was designed to foreclose.

Nothing prevented Cardenas from narrowing his stipulation at the time of his plea (though, of course, the District Attorney could have reconsidered the deal and opted for a conviction at trial instead). He could have checked the box for “Specify facts” or “Other” on his plea form and written as narrow a factual basis as he desired. *See* Dkt. 13, Ex. C at 5. He could have referred to just one page of the police report, or just one paragraph. Or, as Judge Koh observed, “Cardenas could have excluded the fourth act of resistance in Officer Brice’s police report from his factual basis.” App. 8a (Koh, J., concurring in part and concurring in the judgment). He “*chose* not to do

so.” *Id.* (emphasis added). Having reaped the benefits of his broad stipulation, he cannot disclaim it now.

II. THE RULE 410(a) HOLDING IS BASED ENTIRELY ON A SINCE VACATED AND ABANDONED RULING

The panel’s alternative ground for decision—that Rule 410(a) categorically bars any *Heck* analysis in nolo plea cases—is on even shakier ground. Indeed, that holding rested entirely on a decision—*King v. Villegas*, 156 F.4th 979 (9th Cir. 2025), *vacated*, 171 F.4th 1163 (9th Cir. 2026)—the Ninth Circuit has since vacated and taken en banc. And there is no realistic prospect *King*’s Rule 410(a) holding will survive en banc review, as no party is asking the en banc court to reinstate it. At minimum, this Court should allow the panel to reconsider its *King*-based Rule 410(a) holding on remand.

1. In *King*, the Ninth Circuit held that Rule 410(a) bars a *Heck* defendant from relying on either a nolo contendere plea or the resulting conviction “to show that a § 1983 plaintiff committed the crimes to which he pleaded nolo contendere.” 156 F.4th at 984, 987. The court 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. The upshot, as Judge Callahan explained in dissent, is that *Heck* simply does not apply when a conviction rests on a nolo plea—a result that “eviscerates the *Heck* bar” and “leads to the absurd result that federal courts will be unable to perform any *Heck* analysis in nolo contendere cases, which are commonplace.” *Id.* at 988, 992 (Callahan, J., dissenting).

That decision created a circuit conflict on whether Rule 410(a) bars a defendant from relying on either a nolo contendere plea or the resulting conviction to invoke the *Heck* bar, which would have warranted this Court’s review. But the decision is now a dead letter. On April 3, 2026, the Ninth Circuit granted rehearing en banc in *King* and vacated the panel opinion. *King v. Villegas*, 171 F.4th 1163 (9th Cir. 2026). Moreover, during briefing and oral argument in the en banc proceedings, no party defended the Rule 410(a) theory for affirmance.

King himself has abandoned it. In his supplemental en banc brief, King devoted less than two pages to the Rule 410(a) issue, acknowledging that it was not “the position King advocated in his appellate briefing” at the panel stage. *King* Appellant En Banc Suppl. Br. 16-17. Thus, as the government observed, King “all but abandon[ed] the panel’s Rule 410[(a)] holding.” *King* Appellees En Banc Suppl. Reply Br. 1.

At oral argument, King’s counsel went further, repeatedly stressing that she “never pressed the 410[(a)] argument” and is “not defending that portion of the court’s analysis.” *King* En Banc Oral Arg. at 7:16-47; *see also id.* at 29:08-35 (“[W]e never advocated for the [Rule 410(a)] position”). Indeed, as several en banc judges recognized, the *King* panel invented the now-vacated Rule 410(a) holding entirely on its own. *See, e.g., id.* at 7:16-7:36 (judges remarking that the Rule 410(a) theory “was brought up by the three-judge panel” on its own initiative). King’s counsel further stated that the fact that his plea did not admit to any specific facts—not Rule 410(a)—would be the “preferred ground” for reversal. *Id.* at 28:25-40.

In short, the *King* panel invented the Rule 410(a) theory on its own; the parties never asked for it; and now no one—not even its ostensible beneficiary—is willing to defend it. Because the decision below relied entirely on *King* for its Rule 410(a) holding—and because Judge Koh concurred solely because *King* was then controlling circuit precedent—the Rule 410(a) holding should be vacated and the case remanded for further consideration.

2. It is easy to see why no one is defending the Rule 410(a) holding. It is indefensible.

The *King* panel’s fundamental error was a category mistake: it treated the *Heck* analysis as though it were an evidentiary proceeding in which a plea is being “admi[tte]d” against a party. Fed. R. Evid. 410(a). But Rule 410(a) and *Heck* operate in entirely different domains. Rule 410(a) is a rule of evidence. As Judge Callahan explained, Rule 410(a) “only prevents the admission” of “a nolo contendere plea” itself, or of “statement[s] made” during a proceeding on such a plea. *King*, 156 F.4th at 991-92 (Callahan, J., dissenting). The purpose of Rule 410(a) is to protect defendants from having a nolo plea used as an “admission of guilt” at trial. *Id.* at 985 (quoting Fed. R. Evid. 410 advisory committee’s note to 1972 proposed rules).

Heck does something else entirely. It asks whether a civil claim is compatible with an outstanding criminal conviction. That threshold legal inquiry does not require “admitting” anything into evidence. It simply requires *examining* the fact of a conviction—or the underlying records that established the factual basis of it—to determine whether a civil judgment would necessarily imply its invalidity. It does not involve introducing a plea for

the purpose of proving guilt. As Judge Collins recognized during the *King* en banc oral argument, under *Heck* “the conviction is being considered not for the truth of the underlying matter, but for the *fact* of the conviction.” *King* En Banc Oral Arg. at 32:34-48 (emphasis added). When a no-contest plea conviction is considered solely for the *fact* that it exists—not to prove that the defendant actually committed the underlying offense—Rule 410(a) simply has no role to play.

That conclusion is further confirmed by a wall of authority. The Sixth Circuit in *Walker* expressly held that Rule 410(a) only prevents “the use of a nolo contendere plea against the pleader in a subsequent civil or criminal action *in which he is the defendant*”—and does not apply when the former defendant is now the plaintiff in a civil action. 854 F.2d at 143 (emphasis altered) (citation omitted); *see also Nicholson v. City of Westlake*, 20 F. App’x 400, 402 (6th Cir. 2001) (relying on *Walker* to hold that the *Heck* bar applies to nolo pleas).

The Third, Fifth, and Eleventh Circuits have likewise applied *Heck* to nolo pleas as a matter of course. *See, e.g., Hernandez v. Boles*, 184 F.3d 819, 1999 WL 500687, at *1 (5th Cir. 1999) (per curiam) (“The fact that Hernandez’s conviction was obtained after he pleaded no contest is of no importance under *Heck*.”); *Claunch v. Williams*, 508 F. App’x 358, 359 n.2 (5th Cir. 2013) (“[A] plea of *nolo contendere* . . . is enough . . . to trigger *Heck*.”); *Curry v. Yachera*, 835 F.3d 373, 378 (3d Cir. 2016) (similar); *Bradley v. Sayre*, No. 23-2854, 2024 WL 489281, at *2 (3d Cir. Feb. 8, 2024) (per curiam) (citing *Curry* and applying *Heck* to nolo plea); *Quinlan v. City of Pensacola*, 449 F. App’x 867, 870 (11th Cir. 2011) (applying *Heck* to

nolo plea); *Raymond v. Hillsborough County*, No. 24-14124, 2025 WL 2409096, at *4 (11th Cir. Aug. 20, 2025) (same). And this Court has done the same, as recently as last Term. *See Olivier v. City of Brandon*, 607 U.S. 552, 556 (2026) (analyzing *Heck* bar as applied to nolo plea, without mentioning Rule 410(a)). That longstanding practice speaks for itself.

Given that the Rule 410(a) holding was never advocated by any party, is being defended by no one, conflicts with every other court to have considered the question, and is plainly wrong on the merits, there is no realistic prospect it will be reinstated by the en banc court. Indeed, for the Ninth Circuit to reaffirm a holding that all parties have abandoned would *itself* violate party-presentation principles. *See Margolin*, 146 S. Ct. at 1288-89; *see also United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (reversing Ninth Circuit holding that rested on grounds the parties did not defend).

Yet petitioners remain bound by that holding in this case, because of the panel’s reliance on *King* as an alternative ground for side-stepping *Heck*. Unless this Court intervenes, petitioners will be stuck with a ruling premised on a legal theory that the Ninth Circuit itself has vacated and will likely soon repudiate—one that stripped the City of its *Heck* defense entirely. That cannot stand. This is precisely the inequity the GVR practice exists to correct.

This Court has routinely vacated and remanded judgments that rest on holdings that have been undermined by subsequent developments—including grants of rehearing en banc and intervening court of appeals decisions. *See, e.g., Brown Grp., Inc. v. Hicks*, 499 U.S. 914 (1991) (mem.) (GVR in light of “en banc opinion to be filed”); *Metropolitan Life Ins. Co. v.*

Hawkins-Dean, 549 U.S. 1048 (2006) (GVR in light of Ninth Circuit’s intervening en banc decision); *Lee v. United States*, 562 U.S. 801 (2010) (mem.) (GVR in light of en banc decision); *Ryals v. United States*, 561 U.S. 1003 (2010) (mem.) (same); *Welton v. United States*, 559 U.S. 1034 (2010) (mem.) (same); *Brown v. United States*, 584 U.S. 928 (2018) (same); *Baker v. Berryhill*, 586 U.S. 1189 (2019) (GVR in light of new circuit decision); *Newbold v. United States*, 571 U.S. 1119 (2014) (mem.) (same).

The same course is warranted here. The panel’s alternative Rule 410(a) holding rested entirely on *King*—which has been vacated. There is no reason petitioners should remain the sole casualty of a legal theory that even its beneficiary has disowned.

* * * * *

In short, the Ninth Circuit’s alternative holdings are both fundamentally flawed. Neither can stand. And, together, they are hard to explain, except as an effort to thwart *Heck*’s bar. This Court should summarily reverse the panel’s plea-clarity holding and, in that same disposition, remand for the Ninth Circuit to reconsider the Rule 410(a) holding in light of the Ninth Circuit’s vacatur of *King* in granting rehearing en banc or forthcoming en banc decision.⁴

⁴ If the en banc court somehow affirms the Rule 410(a) holding in *King*—even though no one is defending that holding—the Court should grant certiorari to resolve the Rule 410(a) question. As explained, if *King* is reinstated by the en banc court, there is a clear circuit split on the Rule 410(a) issue and the Ninth Circuit’s decision is plainly wrong. *See supra* at 23-26. The plea-clarity holding presents no obstacle to such review because it is obviously incorrect, too. *See id.* at 15-21.

III. THIS COURT'S INTERVENTION IS WARRANTED

The consequences of inaction here are concrete and severe. Without this Court's intervention, a small municipality will be forced to bear the costs of full discovery and trial to defend against claims that are plainly barred by *Heck*—precisely the burden *Heck* was designed to prevent. And the City will face potential liability for compensatory damages, medical expenses, and attorney's fees. Dkt. 22 at 21.

But the harms extend well beyond this one case. Left standing, the decision below provides a roadmap for every plaintiff in the Ninth Circuit looking to circumvent *Heck*: Plead no contest, stipulate broadly to secure a favorable deal and the double-jeopardy protections that come with it, and then disclaim those stipulations the moment a civil suit becomes advantageous. That turns *Heck* on its head, undermining the “finality and consistency” the doctrine exists to protect. 512 U.S. at 484-85. And it is a one-way ratchet this Court should not tolerate.

This Court's intervention is particularly warranted because the decision below is not an isolated error. It is “just another step” in the Ninth Circuit's “slow erosion of the *Heck* bar” over the past two decades. *Martell*, 115 F.4th at 1241 (Lee, J., dissenting). Judge after judge within the Ninth Circuit has sounded the alarm over the Circuit's treatment of *Heck*—to no avail. In *Smith v. City of Hemet*, the dissenters warned that “[b]y analyzing separately every single second of the approximately five-minute encounter” between the criminal defendant and the officers, “the majority misse[d] the forest for the trees” and misapplied *Heck*. 394 F.3d

689, 707 (9th Cir.) (en banc) (Silverman, J., dissenting), *cert. denied*, 545 U.S. 1128 (2005). In *Roberts v. City of Fairbanks*, Judge Ikuta accused the court of “squarely contradict[ing] Supreme Court precedent” and “cast[ing] aside the favorable-termination rule articulated by *Heck*.” 947 F.3d 1191, 1206, 1215 (9th Cir. 2020) (dissenting), *cert. denied*, 141 S. Ct. 1515 (2021). Next, in *Lemos v. County of Sonoma*, Judge Callahan warned that the majority’s ostensibly fact-bound ruling “creates an escape hatch to *Heck*.” 40 F.4th 1002, 1009 (9th Cir.) (en banc) (Callahan, J., joined by Lee, J., dissenting), *cert. denied*, 143 S. Ct. 429 (2022). And just two years ago, in *Martell*, Judge Lee criticized the court for slicing up a criminal defendant’s “brief scuffle with the deputies into several seconds-long intervals,” concluding that “if we can find different factual contexts from second to second[] then the exception swallows the rule, and the *Heck* bar is no bar at all.” 115 F.4th at 1241, 1243 (dissenting).

It is time to heed those warnings. This Court has not hesitated to summarily reverse the Ninth Circuit when it has strayed from this Court’s precedents, including in the qualified-immunity and excessive-force contexts. *See, e.g., County of Los Angeles v. Mendez*, 581 U.S. 420, 431-32 (2017) (reversing Ninth Circuit’s “provocation” rule in the excessive-force context); *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 8 (2021) (per curiam) (summarily reversing Ninth Circuit’s denial of qualified immunity); *Mullenix v. Luna*, 577 U.S. 7, 19 (2015) (per curiam) (same). The same vigilance is needed here. Left unchecked, the Ninth Circuit will continue whittling down the *Heck* bar until nothing remains, eroding the finality of

criminal convictions and imposing enormous costs on local governments.

The decision below should not stand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 20, 2026

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[2025 WL 3654675]

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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

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

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. 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

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

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

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

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 “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

(9th Cir. 2025). No case in our circuit had previously addressed this issue.

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.

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

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).

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.

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.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 23-10146 MRW Date August 12, 2024

Title Cardenas v. City of Santa Maria

Present: Hon. Michael R. Wilner, U.S. Magistrate
Judge

<u>Eddie Ramirez</u>	<u>n/a</u>
Deputy Clerk	Court Reporter/ Recorder

Attorneys for Plaintiff:	Attorneys for Defendant:
n/a	n/a

Proceedings: ORDER GRANTING SUMMARY
JUDGMENT

SUMMARY OF DECISION

1. This is a civil rights case alleging the use of excessive force in violation of 42 U.S.C. § 1983. Plaintiff asserts that he was injured by a police officer's use of a taser in the course of a lengthy chase and arrest. The defense contends that Plaintiff is precluded from advancing this action because of his conviction on a related criminal charge.

2. For the reasons stated at the hearing and as summarized below, the Court concludes that Plaintiff's claims are Heck-barred as a result of his criminal plea. Defendants are entitled to summary judgment as a matter of law.

FACTS AND PROCEDURAL HISTORY

The Chase and the Arrest

3. According to the First Amended Complaint (Docket # 22), Plaintiff drove his pickup truck into a wall. He then led law enforcement officers on a chase through northern Santa Barbara County. Guadalupe Police Officer Miller started the pursuit, then Santa Maria Police Officer Brice took over. (*Id.* at ¶ 14-15.) Plaintiff eventually stopped driving, got out of his car, and ran away from Officer Brice on foot. (*Id.* at ¶¶ 15, 21, 25.)

4. Brice followed Plaintiff into an apartment building. After Plaintiff climbed a flight of stairs, Officer Brice shot Plaintiff with his taser. (*Id.* at ¶ 28.) In the FAC, Plaintiff contends that he suffered significant injuries when he fell down the stairs after Brice used the taser.

The Criminal Case

5. In subsequent criminal proceedings, prosecutors charged Plaintiff with a charge of evading a police officer, and misdemeanor offenses of hit and run driving and, as relevant to the present action, “resisting, delaying, or obstructing a [] peace officer” – specifically, Officer Brice, as pled in the charging document – in violation of California Penal Code section 148(a)(1). (Docket # 28 at 4-5.) Plaintiff ultimately pled “no contest” to all three charges.¹

¹ For purposes of the *Heck* analysis discussed in this order, “a plea of nolo contendere [no contest] in a California criminal action has the same effect as a guilty plea or jury verdict of guilty.” *Nuno v. County of San Bernardino*, 58 F. Supp. 2d 1127, 1135 (C.D. Cal. 1999).

6. The abbreviated transcript of the plea hearing reveals that Plaintiff verbally admitted no facts regarding any of the charged crimes. (Id. at 18-24.) However, the accompanying plea form and rights waiver form – covering all of the charges – included a series of check-box statements. A plain reading of the signed form reveals that Plaintiff checked the statements in which he cumulatively made the following statement: “I offer to the court the following as the basis for my plea of [] no contest and any admissions: Police report.” (Id. at 14.)

7. Officers Miller and Brice each prepared a police report regarding the criminal case. The Miller report discussed the pickup-driven-into-wall portion of the incident plus the beginning of the chase. It has no reference to or discussion of the obstruction charge. (Docket # 26 at 4.) The Brice report takes up the story from the second part of the chase through Plaintiff’s arrest. The Brice report expressly addresses the obstruction charge. (Docket # 27 at 5.)

8. Notably, the Brice report augments the statements in the FAC regarding Plaintiff’s conduct at the time of the taser discharge and subsequent arrest. Officer Brice’s report states that, when Plaintiff got to the top of the stairwell in the apartment after the foot chase:

- a. Plaintiff forcefully kicked an apartment door, attempted to gain entry, and refused to comply with Officer Brice’s command to “get down”;
- b. Plaintiff “clenched his fists[,] flexed his upper body[, and] made a guttural growling sound.” Plaintiff then “charged down the stairs directly at” Officer Brice;

- c. Officer Brice was unable to get out of the stairwell. As Plaintiff “rapidly closed to within about 15 ft.” of Officer Brice, the officer fired his taser. Plaintiff fell forward and down the rest of the steps;
- d. After Plaintiff fell, Officer Brice handcuffed him, arrested him, and waited for paramedics to arrive.

(Id. at 8-9.)

Procedural History

9. Plaintiff filed this civil rights action against Officer Brice and the City of Santa Maria. Plaintiff contends that the officer used excessive force against him by using the taser against Plaintiff in the stairwell.

10. The defense moved to dismiss the original complaint under Federal Rule of Civil Procedure 12 as Heck-barred based on Plaintiff’s plea to a criminal charge of resisting an officer. (Docket # 12.) That motion was denied as premature and unsupported based on the limited materials presented to the Court. (Docket # 18.)

11. Plaintiff then filed the FAC. (Docket # 22.) The parties also exchanged additional materials regarding Plaintiff’s arrest and criminal proceedings. The defense moved for summary judgment on the same Heck-bar ground. (Docket # 25.) Following full briefing and a lengthy oral argument, the parties submitted concise post-hearing supplemental briefs. (Docket # 36, 40.)

RELEVANT LAW AND ANALYSIS

Summary Judgment

12. Under Federal Rule of Civil Procedure 56(c), summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A “genuine issue” exists only if there is a sufficient evidentiary basis upon which a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

13. The party seeking summary judgment bears the burden of demonstrating a right to judgment under Rule 56. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Ricci v. DeStefano, 557 U.S. 557, 586 (2009) (quotation and citation omitted).

14. The Court views the inferences drawn from the underlying facts in a light most favorable to the nonmoving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). To defeat a summary judgment motion, the nonmoving party must present more than “a mere ‘scintilla’ of evidence[;] rather, the nonmoving party must introduce some ‘significant probative evidence tending to support the complaint.’” Summers v. Teichert & Son, Inc., 127 F.3d 1150, 1152 (9th Cir. 1997) (quoting Anderson, emphasis added); Rivera v. National R.R. Passenger Corp., 331 F.3d 1074, 1078 (9th Cir. 2003) (same).

Heck Bar

15. A civil rights claim against a law enforcement officer or agency is barred where “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.” Heck v. Humphrey, 512 U.S. 477, 487 (1994); Lyall v. City of Los Angeles, 807 F.3d 1178, 1190 (9th Cir. 2015) (same). If a criminal conviction “is fundamentally inconsistent with the unlawful behavior for which section 1983 damages are sought, the 1983 action must be dismissed.” Beets v. County of Los Angeles, 669 F.3d 1038, 1042 (9th Cir. 2012).

16. Under California law, a person violates Penal Code section 148(a)(1) where she or he “resists, delays, or obstructs a police officer in the lawful exercise of his or her duties. The lawfulness of the officer’s conduct is an essential element of the offense.” Hooper v. County of San Diego, 629 F.3d 1127, 1130 (9th Cir. 2011) (cleaned up).

17. An individual “can’t be convicted under § 148(a)(1) if an officer used excessive force at the time of the acts resulting in the conviction.” Sanders v. City of Pittsburg, 14 F.4th 968, 971 (9th Cir. 2021). The lawfulness of the police conduct “is necessarily established as a result of the conviction under § 148(a)(1).” Id. (citing Hooper). “Consequently, an excessive force claim can’t survive the Heck bar if it’s predicated on allegedly unlawful actions by the officer at the same time as the plaintiff’s conduct that resulted in his § 148(a)(1) conviction.” Id. (emphasis in original).

18. However, a civil rights plaintiff may, consistent with Heck, recover under Section 1983 when an excessive force claim and the obstruction

conviction “are based on different actions during one continuous transaction.” Hooper, 629 F.3d at 1134; Lemos v. County of Sonoma, 5 F.4th 979, 983 (9th Cir. 2021) (“allegation of excessive force by a police officer is not barred by Heck if the officer’s conduct is distinct temporally or spatially from the factual basis for the plaintiff’s conviction”) (cleaned up); Smith v. City of Hemet, 394 F.3d 689, 696 (9th Cir. 2005) (“excessive force used after a defendant has been arrested may properly be the subject of a § 1983 action notwithstanding the defendant’s conviction on a charge of resisting an arrest that was itself lawfully conducted” (emphasis in original).)²

19. In post-conviction civil litigation, a court must determine whether there is a legitimate analytical way to parse out the individual’s obstructive acts from the officer’s use of force. Statements made in the course of a criminal defendant’s guilty / no contest plea may establish facts sufficient to warrant imposition of the Heck bar. “[S]o long as evidentiary support for the § 148(a)(1) conviction exists in the record, plea agreements [] may establish the criminal defendant’s resistance toward the officers and the officer’s lawful conduct in response.” Lemos v. County

² In his opposition papers, Plaintiff emphasizes the state supreme court’s ruling in Yount v. City of Sacramento, 43 Cal. 4th 885 (2008). (Docket # 32 at 18-20.) To be clear, the court concluded that plaintiff’s section 1983 claim of the use of excessive force was Heck-barred in that action based on a plea similar to that entered in the present action. The Yount Court permitted plaintiff to proceed with a claim alleging that the officer’s “use of deadly force was an unjustified and excessive response” to plaintiff’s actions, and was not barred. Id., 43 Cal. 4th at 898 (emphasis in original). Mr. Cardenas makes no allegation that the taser deployment in this lawsuit constituted the use of deadly force.

of Sonoma, 5 F.4th 979, 985 (9th Cir. 2021); Briseno v. City of West Covina, No. CV 20-2986 MRW, 2021 WL 6690564, at *2 (C.D. Cal. 2021), affirmed, 2023 WL 2400833 (9th Cir. 2023).

20. Heck precludes “any § 1983 claim alleging excessive force based on an act or acts constituting any part of the factual basis of a § 148(a)(1) conviction.” Sanders, 14 F.4th at 972. A court may not “slice up the factual basis of a § 148(a)(1) conviction to avoid the Heck bar.” Id. (emphasis in original). Moreover, a criminal defendant “cannot stipulate to the lawfulness” of police conduct “as part of his § 148(a)(1) guilty plea and then use the ‘very same act’ to allege an excessive force under § 1983.” Id. (quoting Smith). In that circumstance, “the factual basis of a § 148(a)(1) conviction encompassing multiple acts is indivisible for purposes of avoiding a Heck bar.” Id. (citing Yount, 43 Cal. 4th at 895-96).

21. But there’s not always a detailed plea agreement, factual allocution, or preliminary hearing transcript for a court to look to in post-conviction civil litigation. Under California law, “a misdemeanor” offense (such as Section 148) “does not require the court to know what the factual basis is for the plea, or to make an independent assessment of its adequacy.” Bates v. Rezentes, ___ F. Supp. 3d ___, 2024 WL 1846392 at *6 (N.D. Cal. 2024) (citing In re Gross, 33 Cal. 3d 561 (1983)). To that end, a civil court must closely consider whether a defendant has made it “clear from the record” that a successful claim under Section 1983 would “necessarily imply” that the underlying conviction was invalid. Smith, 394 F.3d at 699 (emphasis in original); Bates, 2024 WL 1846392 at *5.

Analysis

22. On first review, the analysis about whether Plaintiff's civil rights claim is Heck-barred is rather straightforward. Plaintiff's FAC and summary judgment papers make a great effort to divide the chase-and-arrest into four discrete events of obstruction. The fourth, significantly, was the portion during which Officer Brice tased Plaintiff before arresting him.

23. Moreover, during motion proceedings, Plaintiff conceded that Officer Brice's police report "formed the factual bases for [Plaintiff's] criminal plea." (Docket # 32 at 7.) This means that Brice's statements about Plaintiff's actions leading to the use of the taser – the growling at the top of the stairs, the fist-clenching, the charging at the officer – were among the acts of obstruction and delay alleged and admitted under Section 148.

24. There's no supportable reason in the record to believe that Plaintiff pled to the first three sequences of obstruction without admitting the fourth portion. Or, in the words of the Ninth Circuit, this Court can't fairly "slice up" the Brice report to allow Plaintiff to have acknowledged a lesser factual basis for his nolo plea. Sanders, 14 F.4th at 972. Rather, the Brice report is "indivisible" in determining whether the Heck bar applies. Id.; Yount, 43 Cal. 4th at 895-96.

25. On that "clear record," Plaintiff's admission that he resisted Brice (and the stairway growling, etc. surely fall within the scope of the state crime) is therefore fatal to his claim of excessive force. Smith, 394 F.3d at 699. Given the acknowledgement that Brice used the taser on Plaintiff while Plaintiff was obstructing the officer, he conceded the

reasonableness of the use of that force when he admitted criminal liability under Section 148. Hooper, 629 F.3d at 1130.

26. Additionally, Plaintiff offers no straight-faced claim that the officer's use of force was temporally or spatially removed from the facts to which he pled. The civil complaint and police report can only be read one way; Brice tased Plaintiff in order to arrest him, not after securing Plaintiff. Lemos, 5 F.4th at 983; Smith, 394 F.3d at 696. Plaintiff's damages claim is barred as a matter of law under Heck. Beets, 669 F.3d at 1042; Sanders, 14 F.4th at 972; Briseno, 2023 WL 2400833. The defense is entitled to summary judgment under Rule 56. Anderson, 477 U.S. at 249; Celotex Corp., 477 U.S. at 323; Summers, 127 F.3d at 1152.

* * *

27. So, what to make of the flurry of post-hearing briefing? I certainly was intrigued by Mr. Dunn's observation at oral argument that the plea form had a potential ambiguity in it by stating that the state criminal court "may consider" the police report "as proof of the factual basis" for Plaintiff's plea. (Docket # 28 at 14.) On that basis, I invited further submissions on the topic.

28. But what neither I nor the defense expected was a presentation of entirely new arguments. It was only in the post-hearing briefing (and after I tipped my hand regarding my skepticism about the viability of Plaintiff's claim) that Plaintiff first argued that (a) he pled to the Miller plea report (not the Brice statement) (b) which the defense failed to disclose to the Court (c) because Plaintiff wasn't legally required

to admit any facts to support his misdemeanor obstruction plea. (Docket # 36.)

29. A fundamental component of federal litigation practice is that a party may not raise an issue “for the first time in a reply brief” or later submission. Gadda v. State Bar of Calif., 511 F.3d 933, 937 n.2 (9th Cir. 2007). As the defense rightly notes, the basic premise of Local Rule 7 is that the parties meet in advance of motion practice “to discuss thoroughly, preferably in person, the substance of the contemplated motion.” That enables both sides to explore their factual and legal arguments and potentially avoid unnecessary judicial involvement ahead of time. It also ensures that the parties know of their obligation to present their positions in writing to the Court before the noticed hearing date.

30. By bringing up new theories well after the briefing was concluded (or, in the semi-snarky tone of Mr. Dippell, as his “latest late argument” (Docket # 40 at 6)), Plaintiff failed to comply with the local rule. In the absence of a showing of good cause, the late-offered arguments are waived and cannot save Plaintiff’s claim. Gadda, 511 F.3d at 937 n.2.

31. Even if the Court were to engage with Plaintiff’s current arguments, they just don’t hold water. It’s pretty perplexing for Plaintiff to claim that the Miller police report governed his guilty plea rather than the Brice report. Plaintiff admitted in the current litigation that the Brice statement was relevant and controlling as to his obstruction charge. (Docket # 32 at 7.) The post-hearing brief suggests that Plaintiff was “under the mistaken assumption” that the Brice report was “the only relevant police report concerning the pleas entered into by Plaintiff Cardenas.” (Docket # 36 at 7.)

32. Yet, the defense apparently received the Miller report from Plaintiff's lawyer. (Docket # 26 at 2.) That strongly suggests that Plaintiff possessed the paperwork long before the summary judgment proceedings began, but chose not to analyze it in responding to the motion.

33. Compounding Plaintiff's illogical position, Mr. Dunn stated that, "Perhaps not surprisingly [more snark?], Defendants have failed to submit the thirteen-page report of Guadalupe Police Department Officer H. Miller" to the Court. (Docket # 36 at 8-9.) Plaintiff then attached the report to his post-hearing brief, implying that the City withheld the Miller report from the Court's consideration. (Id. at 11.) Not correct. In truth, the defense submitted both the Miller and Brice reports with their initial summary judgment filings. (Docket # 25-28.) There was no understandable or provable "mistaken assumption" regarding the paperwork underlying Plaintiff's plea.

34. Finally, I understand and accept the legal principle stated in the Bates decision; it's not necessary for a trial court to find a factual basis in accepting a misdemeanor's plea. I also agree with the Bates Court that a civil court can and should closely review the proceedings to determine whether the statements of a criminal defendant or lawyer fairly give rise to a Heck bar. Bates, 2024 WL 1846392 at *6 (criminal counsel "confirmed that a factual basis exists" for plea after reviewing police reports, instead of "stipulat[ing] to the police reports" themselves).

35. But how does that help Mr. Cardenas? He affirmatively acknowledged that there was a factual basis for his plea to all of the charges on his plea form. He also clearly offered the police reports – obviously

Miller's for the moving violations and Brice's for the obstruction offense – as the factual basis for the pleas.³ (Docket # 28 at 14.) Although Plaintiff may not have been required to acknowledge certain facts when entering his plea to the section 148 count, he actually did do so in the superior court. The Bates decision gets Plaintiff no closer to a live civil rights claim after the summary judgment hearing than if it had been considered before then.

CONCLUSION

36. Plaintiff clearly admitted – at the time of his criminal plea, and in these federal proceedings – that he violated the law by obstructing the officer at the time of the tasing. His plea necessarily invokes the Heck principle that eliminates his civil claim. The motion for summary judgment is granted. The Court will separately enter judgment in favor of the defense.

³ I find no significance in the observation that the superior court plea form (CR-101) refers to a singular police “report” rather than plural “reports.” (Id.) Most of the listed items (preliminary hearing transcript, welfare investigator’s decision, etc.) are listed in the singular. While the court form could plausibly be drafted to allow a lawyer or clerk to “fill in the blank” to identify multiple relevant documents more specifically, that doesn’t make the current form ambiguous or deficient. The criminal justice authorities need not take actions superfluous to their case merely to ease future derivative civil litigation.

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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.