

No. 26-94

**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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Respondent no longer defends the Ninth Circuit's alternative Rule 410(a) holding. BIO2. So all that remains is the Ninth Circuit's holding that the record did not "clearly identify which conduct formed the factual predicate for" Cardenas's plea, Pet.App.3a—despite respondent's repeated concessions that all four acts described in Officer Brice's police report formed the factual basis for his plea. Respondent spends pages straining to recast his written concessions, but says nothing about the concession at the heart of this case: When asked point blank at oral argument whether he admitted that "all four acts" formed the basis of Cardenas's plea, Cardenas's counsel conceded that he "did so in the lower court" and that "it would be unethical for [him] to change [his] tune now." *Id.* at 8a (Koh, J., concurring in part and concurring in the judgment). Judge Koh took the majority to task for disregarding that—and other—concessions. *Id.* The Court should not ignore this obvious abuse of the adversary system.

Respondent's attempts to defend the decision below only underscore why it should not be allowed to stand. He tries to distinguish this Court's party-presentation cases on the ground that they involved legal theories no party had advanced, whereas the Ninth Circuit here simply "gave too little weight" to concessions. BIO12 (emphasis omitted). But if a court may not decide a case on a dispositive ground no party raised, surely it may not decide it on a dispositive premise the prevailing party expressly *conceded away*. Respondent's contrary position only reinforces the need for this Court to make clear that party-presentation principles forbid disregarding dispositive concessions too. Otherwise, the Ninth

Circuit’s decision provides a blueprint for evading *Heck v. Humphrey*, 512 U.S. 477 (1994): manufacture ambiguity about the conduct underlying a conviction when a police report has multiple acts, and litigate claims the conviction should foreclose.

For two decades, a growing chorus of Ninth Circuit judges has warned of a “slow erosion of the *Heck* bar” in that Circuit. Pet.2. This case takes that erosion to a new level. If judges can disregard a party’s own concessions on what acts a plea covers, then *Heck* no longer exists as a meaningful bar. Meanwhile, municipalities bear the brunt of *Heck*’s demise: They must “divert limited public resources from policing and other municipal services” to defending against baseless Section 1983 actions. Amici.IMLA.and.Cal.Cities.Br.4, 12-13.

This Court’s intervention is needed.

ARGUMENT

I. THE ONLY REMAINING BASIS FOR THE DECISION BELOW IS REFUTED BY RESPONDENT’S OWN CONCESSIONS

A. Respondent Abandons The Panel’s Alternative Rule 410(a) Holding

Respondent makes no effort to defend the panel’s alternative holding that Rule 410(a) bars a *Heck* defense based on a nolo contendere plea. Pet.App.3a n.1; Pet.21-26. To the contrary, he acknowledges (at 2, 16) that *King* has been “vacated,” is now a “dead letter,” and is thus “of no consequence to this analysis.” Respondent’s refusal to defend the panel’s Rule 410(a) holding is unsurprising: As explained, *King*’s own counsel disowned the Rule 410(a) theory at the en banc stage, stressing that King “never

pressed” it before the panel and was “not defending that portion of the court’s analysis.” Pet.13.

Respondent’s abandonment of the Rule 410(a) ground simplifies the disposition here. With the panel’s alternative Rule 410(a) holding abandoned, the judgment stands or falls on the majority’s plea-clarity rationale. Respondent offers no alternative basis for defending the decision below.

B. Party-Presentation Principles Foreclose The Panel’s Plea-Clarity Holding

The panel’s plea-clarity holding rests on a single premise: that “the record does not demonstrate that each of Cardenas’s acts, as described in the police report, was the factual basis for his conviction.” Pet.App.4a. But respondent repeatedly conceded the opposite below. Pet.15-19. The BIO now strains to recast some of those concessions. But it simply ignores what respondent said when the panel asked him point blank what his statements meant: He confirmed that he previously admitted “all four acts” formed the basis of the plea and “it would be unethical for [him] to change [his] tune now.” Pet.App.8a (Koh, J.). The BIO says *nothing* about that concession, even though it is at the heart of the petition. The fact that respondent ignores this key concession only confirms how extraordinary the panel’s departure from ordinary appellate process was—and why the decision cannot stand.

1. Respondent’s lead argument is that *Clark v. Sweeney*, 607 U.S. 7, 9-10 (2025) (per curiam), and *Margolin v. National Association of Immigration Judges*, 608 U.S. 339, 342-43 (2026) (per curiam), involved courts deciding cases on legal theories no party had advanced, whereas the Ninth Circuit here

applied the City’s proposed *Heck* test while simply giving “too little weight” to (an interesting way of saying *ignored*) Cardenas’s concessions. BIO11-12 (emphasis omitted). That distinction is untenable. *Margolin* itself treated the respondent’s “conce[ssion]” as delimiting the dispute before the court. 608 U.S. at 343. But more fundamentally, this Court has repeatedly held parties to their concessions and judicial admissions—including concessions by counsel and at oral argument. See, e.g., *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592-93 (2013) (“Stipulations must be binding.”); *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 470 n.6 (2013) (party bound by concession); *Steagald v. United States*, 451 U.S. 204, 209-11 (1981) (government’s argument foreclosed by prior “assertions, concessions, and acquiescence”); *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953) (oral-argument concession “fatal” to State’s case); Pet.17-19 (collecting additional authorities holding parties to counsel’s concessions, including from oral argument).

If anything, the error here is more serious than in *Clark* and *Margolin*. It would be remarkable if party-presentation principles barred a court from deciding a case on a theory no party advanced, but permitted it to decide a case on a premise the prevailing party expressly *conceded away*. One could at least theorize that a party *might* have raised a particular argument, but a concession negates the argument. Respondent’s attempt to argue that courts can ignore on-point concessions only confirms the need for this Court to make clear that courts may no more resurrect an argument conceded away than one not pressed.

2. The BIO also invokes the familiar rule that a court “retains the independent power to identify and

apply the proper construction of governing law.” BIO14 (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991)). That principle is irrelevant here. As respondent repeatedly emphasizes (at 1, 8, 11-12), everyone—the parties and the court alike—agreed on the governing *Heck* standard. Respondent’s concession addressed a different, antecedent *factual* question: which acts formed the factual basis of his plea. Pet.16-17. The court remained free to decide what legal consequence followed from that factual predicate, but it was not free to treat the predicate fact itself as unresolved. Neither *Kamen* nor any of respondent’s other authorities allows a court to override a conceded fact, and the cases discussed above foreclose it. *Supra* 4.

Respondent’s contrary rule would drain concessions of much of their force and make litigation a meaningless exercise, where parties can say whatever they want in the moment and courts can disregard concessions to reach a desired result. Parties routinely concede predicate facts precisely to narrow the issues for decision while continuing to dispute the legal consequences. If courts remained free to reopen those predicates whenever the ultimate question is one of law, such concessions would narrow nothing and the whole point of the party-presentation process would be eviscerated. That cannot be the law.

3. Respondent’s attempts to undo his written concessions flunk the straight-face test.

First, respondent offers (at 13) a convoluted account of why he invoked Officer Brice’s police report below, suggesting he cited it only as a convenient source for narrating the incident, not as a description of his plea’s factual basis. But respondent did not merely say he was using Brice’s report as a convenient

narrative of what happened. He said, repeatedly, that the events in that report “formed the factual bases for his criminal plea.” Dkt.32.at.1; CA9.Opening.Br.5-6; Pet.10, 16; Pet.App.8a (Koh, J.).

Second, respondent argues (at 13-14) that even if he conceded that *something* in Officer Brice’s report formed the factual basis for his resisting-arrest plea, that is not the same thing as conceding that every act the report describes—including the stairwell charge—was the predicate. But that is not what he represented below. He stated in his district court brief, and again in the Ninth Circuit, that “the *entire incident* is analyzed herein based on the *four corners of Brice’s eight page police report* which formed the factual bases for his criminal plea.” Dkt.32.at.1 (emphasis added) (footnote omitted); CA9.Opening.Br.5-6; Pet.App.8a (Koh, J.); *id.* at 17a (¶23). “The entire incident” and “the four corners” naturally refer to the report as a whole—all four acts included. Respondent never carved out any acts, the stairwell encounter or anything else. Pet.App.8a.

Nor does it help that respondent separately argued that the first through third acts each independently satisfied the elements of his resisting-arrest conviction. BIO13. That argument concerned what conduct *could* sustain the conviction, not what conduct the plea *actually* rested on. And under the very cases respondent invokes, only the latter matters in this case: the “could, independently” rule applies only where “the record does not show” which act was the factual predicate. Pet.App.3a (quoting *Martell v. Cole*, 115 F.4th 1233, 1237 (9th Cir. 2024)).

In any event, any conceivable ambiguity in respondent’s written concessions evaporated at oral argument. The panel asked counsel directly whether

Cardenas had conceded that “all four acts” were “stipulated to as a basis for the plea.” Oral.Arg.29:42-53, <https://www.ca9.uscourts.gov/cases/streams-videos/archive?case=24-5457&hearingDate=2025-10-09>. And counsel, to his credit, candidly answered that he “did so in the lower court” and that “it would be unethical for [him] to change [his] tune now.” *Id.* at 29:54-59; Pet.App.8a. There was no ambiguity there. And he said it again and again: Cardenas “has admitted to resisting throughout the entire interaction”; his conviction “encompassed his admission that he was resisting . . . right up until the time” force was used; he “took a plea [to] 148 which encompassed everything”; and he “stipulate[d] that [the charge culminating in the tasing] was a factual basis” for the plea. *Id.* at 5:55-6:00, 7:12-25, 30:23-42, 36:39-41; Pet.17. As Judge Koh’s separate opinion underscores, those statements confirm the natural reading of the written concessions and foreclose respondent’s new gloss. Pet.App.8a.*

* Counsel’s concessions were no slip. By oral argument, his theory was not that the stairwell encounter fell outside the plea, but that—“notwithstanding” the plea’s admission of every act of resistance—the tasing could still have been *excessive* under *Yount v. City of Sacramento*, 43 Cal. 4th 885 (2008), *cert. denied*, 555 U.S. 1099 (2009). See Oral.Arg.0:12-59, 2:35-3:12, 5:22-6:23, 7:12-57, 8:10-10:19, 10:35-11:02; see also *id.* at 29:54-30:32 (arguing that the plea “encompassed everything,” but that “part of [the officer’s conduct] was lawful and part of it was unlawful”). The district court rejected that theory, Pet.App.15a n.2; the panel declined to adopt it; and respondent no longer defends it here. Understandably so: A single, non-lethal taser deployment to stop a suspect who, after a high-speed chase and flight on foot, “charged down the stairs directly at” the officer is plainly not excessive force. Pet.App.11a.

Tellingly, the BIO completely ignores those oral-argument concessions—even though the petition put them front and center. Pet.4, 10-11, 16-18. The panel majority likewise just ignored them, along with the other concessions Judge Koh catalogued. See Pet.App.8a. And that silence is deafening.

4. The BIO’s fallback arguments (at 15-16) are no more persuasive. Respondent claims (at 15) that the plea record does not “make[] clear” that the stairwell encounter was the factual predicate for his resisting-arrest conviction. But, again, his concessions foreclose that contention. *Supra* 6-7. And even setting those concessions aside, the plea record independently shows that all four acts formed the factual basis of respondent’s plea.

Respondent first argues (at 15) that the plea form says only that the court “may consider” a police report as proof of the factual basis, so the report never actually became the basis for his plea. But respondent himself evidently recognized the problems with that theory below. When the district court invited supplemental briefing on it, he dropped it in favor of “entirely new arguments.” Pet.App.18a (¶¶27-28). That retreat makes sense: the form says much more. Respondent did not simply acknowledge that the court “may consider” a police report; he also “offer[ed] to the court” the report “as the basis for [his] plea . . . and any admissions,” and his counsel “stipulate[d] that there is a factual basis for the plea and refer[red] the court” to the police report. Dkt.13, Ex.C.at.5-6; Pet.App.4a, 11a (¶6).

The BIO’s next two fallback arguments (at 15)—that a different police report may have supported the plea and that no factual basis was legally required for a misdemeanor conviction—are the “entirely new

arguments” the district court treated as waived, a ruling respondent did not challenge on appeal, and so waived again. Pet.App.18a (¶28). But they fail on the merits too. There is no mystery about which report supported which count: The resisting-arrest count named Officer Brice, BIO4, and only Brice’s report addresses that offense, Pet.App.10a-11a, 19a-21a (¶¶5, 7, 31-35). And whether respondent was legally required to provide a factual basis, BIO15, is immaterial: He *did* provide one, and the court accepted it. *See id.* at 21a (¶36).

Nor does respondent gain anything from observing (at 15) that he never specified “which portions” of Officer Brice’s report he was adopting. That omission cuts against him: He offered the report without limitation, declined the form’s invitation to “[s]pecify facts,” Dkt.13, Ex.C.at.5, and thus, in Judge Koh’s words, “chose not” to exclude the stairwell encounter, Pet.App.8a. A plea that adopts every act of resistance necessarily includes the one that ended in the tasing.

Respondent’s final argument is a distraction. He contends (at 16) that the district court relied in part on a categorical rule that, when a plea incorporates a police report, the report must be treated as an “indivisible” factual basis in its entirety. But petitioners do not rely on any such categorical rule here, and neither did Judge Koh. Their point is that, whatever rule governs an otherwise ambiguous plea record, there was no ambiguity here because respondent expressly conceded that all four acts formed the factual basis of his plea. *Supra* 6-7. The validity of the broader rule has no bearing on whether the panel was free to disregard respondent’s repeated, express concessions. It was not.

II. THIS COURT’S INTERVENTION IS WARRANTED

Respondent’s remaining vehicle and prudential objections add nothing. Respondent principally argues that this Court has declined to review Ninth Circuit *Heck* decisions before. But that proves nothing about the need for review in this case. And the continued erosion of the *Heck* doctrine in that Circuit—now to the point of disregarding a plaintiff’s own concessions—shows why this Court should step in now. Meantime, respondent offers no answer to the recurring concerns and concrete costs and burdens identified by both petitioners and amici.

1. The BIO argues (at 9-10) that review is unwarranted because the petition echoes “serial” calls for this Court to correct the Ninth Circuit’s *Heck* jurisprudence—calls the Court previously declined. But that history cuts the other way. For two decades, Ninth Circuit judges have warned that the court’s approach is eroding *Heck*. Pet.2-3, 27-28. Those warnings have gone unheeded. The decision below shows just how far that erosion has progressed—and this case offers an excellent opportunity for the Court to take the first step toward correcting course.

Nor does *Olivier* counsel restraint. BIO10, 17 (citing *Olivier v. City of Brandon*, 607 U.S. 552 (2026)). *Olivier* held only that *Heck* does not reach suits for purely prospective relief—a holding that has no bearing on this damages action. More important, *Olivier* reaffirmed *Heck*’s core purpose: preventing “parallel litigation” that risks “conflicting” judgments about the same conduct.” 607 U.S. at 562. That is this case. See Amici.Br.8. Respondent remains convicted for resisting Officer Brice during

conduct he conceded formed the basis of his plea, yet the decision below permits him to seek damages on the theory that the same encounter was unlawful. In short, *Olivier* confirms why *Heck* does apply here.

2. As the petition and amici explained, the Ninth Circuit’s erosion of *Heck* imposes concrete costs in this case and recurring costs on municipalities and taxpayers more broadly: the expense of discovery and trial, exposure to damages and fee awards, and the diversion of scarce public resources to relitigating encounters the criminal process already resolved. Pet.5-6, 27-29; Amici.Br.2-4, 11-14. The BIO does not dispute those consequences. Its only response (at 9) is that an unpublished memorandum “is not a roadmap for anyone.” But unpublished decisions are just as widely available as other decisions. And the concern is not whether the decision formally binds future panels on these facts; it is that the Ninth Circuit’s aversion to *Heck* keeps producing the same result, and municipalities must bear the costs each time it does. And they bear those costs for plea records they had “no authority to negotiate” and “no ability to” make more detailed. Amici.Br.11.

* * *

Judicial process matters. In this case, the majority below improperly disregarded respondent’s express concessions on the critical issue at the heart of the *Heck* inquiry. To make matters worse, its decision is just the latest in a series of cases in which the Ninth Circuit has eroded *Heck*. As amici explain, this trend has enormous costs for municipalities in the Nation’s largest circuit. Amici.Br.4, 11-14. Whether this Court grants plenary review or summarily reverses, the decision below should not be allowed to stand as a blueprint for further abuse.

CONCLUSION

The petition should be granted.

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