

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

YVETTE LUJANO, a Minor, etc.,

Plaintiff and Appellant,

v.

COUNTY OF SANTA BARBARA et al.,

Defendants and Respondents.

2d Civil No. B218145
(Super. Ct. No. 1244546)
(Santa Barbara County)

ORDER MODIFYING OPINION AND
DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on November 3, 2010, and modified on December 3, 2010, be modified as follows:

1. On page 3, at the end of the first full paragraph add as footnote 1 the following footnote, which will require renumbering of all subsequent footnotes:

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

2. On page 6, first full paragraph, delete all references to the phrase Welfare and Institutions Code.

3. On page 7, after the first full paragraph, insert:

In her petition for rehearing, Lujano asserts that under our analysis a juvenile who accepts informal probation under section 654 "could never prevail in a lawsuit claiming that excessive force was used to effectuate a lawful arrest." This conclusion posits three possible outcomes when management under section 654 is considered: (1) Proceed with section 654 management, (2) file a section 602

petition, or (3) close the investigation without further action. There is, however, a fourth option: The minor and the minor's "parent or guardian" may refuse to accept informal probation. (§ 654.) The probation officer would then determine whether to seek the filing of a petition or close the file.² (§ 653.5.)

Lujano accepted section 654 management. In doing so, she consented to participate in counseling or education programs as well as, inter alia, temporary placement in shelter care facilities should that be merited. (§ 654, subd. (a).) Moreover, successful completion of the specific program or programs delineated under section 654 would result in a bar to further prosecution for the offense. (§ 654.2, subd. (a); Cal. Rules of Court, rule 5.514(e)(2).) Having elected to proceed under section 654, having submitted to the power of the State and its programs for counseling and education, and having obtained a shield to further prosecution upon successful completion of the program, Lujano may not now complain that she is barred from seeking civil redress under section 1983. Her option was to deny her culpability and put the State to its proof. (*Yount v. City of Sacramento*, *supra*, 43 Cal.4th at p. 897.) What she may not do is take advantage of the leniency of the State and thereafter pursue a civil claim for damages.

[There is no change in the judgment.]

Appellant's petition for rehearing is denied.

² Lujano did not allege that any exception to the *Heck* rule applied and she did not request a *Heck* hearing to prove that the alleged excessive force was independent of the crime for which she was charged. (*Heck v. Humphrey* (1994) 512 U.S. 477; *Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 895-896.)