

In the Supreme Court of the United States

MICAH JESSOP & BRITTAN ASHJIAN,
Petitioners

v.

CITY OF FRESNO, DERIK KUMAGAI,
CURT CHASTAIN & TOMAS CANTU,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**RESPONDENTS' OBJECTION TO MOTION FOR LEAVE
TO FILE AND BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS**

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TO THE HONORABLE COURT:

In accordance with Supreme Court Rule 37.5, Defendants and Respondents City of Fresno, Curt Chastain, Tomas Cantu, and Derik Kumagai object to The New Civil Liberties Alliance's motion to file an amicus curiae brief in this matter, on the ground that the Alliance's proposed amicus brief includes misstates the record on appeal. The Alliance asserts, as a fact, that after executing their search warrant, the defendant police officers entered plaintiff Micah Jessop's house without a warrant, and seized or stole Jessop's rare coin collection. (Proposed Brief, pp. 5, 15.) The City and defendant officers categorically deny that they stole anything. But even taking the facts set forth by plaintiffs as true for purposes of qualified immunity analysis, nothing in the record supports the "fact" the Alliance asserts.

On page 5 of the proposed amicus brief, the Alliance writes:

In fact, some of the Respondents returned to the site of the "search" a second time to steal more of the Petitioners' property.

The proposed brief does not cite any source for this “fact.”

On page 15 of the proposed brief, at n. 2, the Alliance writes:

It is worth noting that the police officers’ theft of Jessop’s rare coin collection did not occur when the police executed the search warrant. Pet. for Writ of Cert. at 6. The police did not seize the rare coin collection until later that day during a second visit, without applying for a new search warrant. *Ibid.*

Page 6 of the Petition for Writ of Certiorari does not support the Alliance’s statement of facts. It does not state that police officers seized Jessop’s rare coin collection in an unauthorized “second visit” to the house without a search warrant.

Page 6 instead recounts Kristine Jessop’s declaration at 2ER:43-44. In that declaration, Kristine Jessop declares that during the period where the officers were at the Jessop residence executing the search warrant (but, she believes, “the officers were basically done with the search of our home”), one of the officers, Detective Kumagai entered the rear of the house alone, and then returned after several minutes. (2ER:43-44.) The rear was where the bedrooms were located. (2ER:44.) The declaration then states that after the officers left, plaintiff Micah Jessop could not find the rare coin collection kept in a closet in the master bedroom. (2ER:44.)

Amicus Curiae briefs assist the Court only if they correctly state the facts. An amicus brief that states “facts” that contradict the record does not help the Court.

Respondents therefore object to the proposed brief, and respectfully ask the Court to deny the Alliance leave to file the brief.

Respectfully submitted,

DATED: March 17, 2020

POLLAK, VIDA & BARER

By: s/Daniel P. Barer

Daniel P. Barer

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CITY OF FRESNO, DERIK KUMAGAI,
CURT CHASTAIN & TOMAS CANTU