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NCLA Amicus Brief Asks Supreme Court to Summarily Reverse Decision Granting Qualified Immunity to Police Officers Who Stole Money While Executing Search Warrant

Micah Jessop, et al. v. City of Fresno, Derik Kumagai, Curt Chastain, and Tomas Cantu

Washington, DC (March 11, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights organization, today filed an [amicus curiae](#) brief in support of Micah Jessop and Brittan Ashjian’s request for a Writ of Certiorari from the U.S. Supreme Court in *Jessop v. City of Fresno, et al.* The two Fresno businessmen are asking the justices to decide that it violates their Fourth Amendment right to be free from unreasonable searches and seizures for police officers to steal from them while executing a search warrant. They are appealing from a Ninth Circuit Court of Appeals decision that granted the officers qualified immunity from being sued on the theory that the officers may not have known that their conduct was unconstitutional.

Jessop and Ashjian, who operated an automated teller machine business, sued the City of Fresno and officers Derik Kumagai, Curt Chastain, and Tomas Cantu under 42 U.S. Code § 1983—which allows Americans to sue government officials civilly for the deprivation of their constitutional rights. The business partners claimed the officers took more than \$275,000 in cash and a rare coin collection from them during a 2013 raid of their business and Jessop’s home, but only logged \$50,000 in seized currency into evidence.

NCLA believes the Ninth Circuit misapplied the Supreme Court’s *Saucier* standard for analyzing the qualified immunity defense, which follows a two-step process. First, the court is supposed to ask whether the victim has alleged a harm to his or her actual constitutional rights. Second, the court should ask whether the right was “clearly established” such that the police officer (or other state actor) knew that his or her conduct would violate constitutional rights. In 2009, though, the Supreme Court changed course in the case of *Pearson v. Callahan*, where it held that a court may skip the first step in rare circumstances and grant immunity to the state actor by just finding that the right in question was not clearly established.

In this case, the Ninth Circuit skipped the first step. But the *Pearson* Court said that where the development of constitutional law needs a court to decide something—such as whether the police violated a constitutional right—a court *must* decide that issue. By instead refusing to resolve whether the theft of property seized pursuant to a warrant is unreasonable under the Fourth Amendment, the Ninth Circuit decision effectively granted immunity to all officers throughout the Ninth Circuit accused of theft in the future.

NCLA’s brief said that the Supreme Court should summarily reverse the Ninth Circuit’s decision in *Jessop*, or else revisit *Pearson* to clarify and limit when courts may skip deciding whether plaintiffs have alleged a deprivation of their civil rights.

NCLA released the following statements upon filing its amicus brief:

“It should be *blatantly obvious* to police that using a search warrant as a Trojan Horse to steal \$225,000 was—and always will be—an unreasonable seizure under the Fourth Amendment. But it should be equally obvious to the Ninth Circuit that if that right is *not* clearly established, it’s the Ninth Circuit’s duty to establish it clearly for future application.”

—**Michael P. DeGrandis, Senior Litigation Counsel, NCLA**

“By missing the obvious, the *Jessop* judges created a giant mess under which police officers throughout the Ninth Circuit will enjoy qualified immunity to steal from suspects. The Supreme Court justices do not like to stoop to error correction, but the consequences here are just too dire. This case cries out for summary reversal.”
—**Mark Chenoweth, General Counsel, NCLA**

ABOUT NCLA

The New Civil Liberties Alliance is a nonpartisan, nonprofit civil rights organization founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other *pro bono* advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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