

No. 17-16756

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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MICAH JESSOP; BRITTAN ASHJIAN,  
*Plaintiffs-Appellants,*

v.

CITY OF FRESNO; DERIK KUMAGAI;  
CURT CHASTAIN; TOMAS CANTU,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Eastern District of California, Case No. 1:13-CV-00316-DAD-SAB  
The Honorable Dale A. Drozd

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*  
THE DKT LIBERTY PROJECT, REASON FOUNDATION,  
INDIVIDUAL RIGHTS FOUNDATION, PUBLIC JUSTICE,  
AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA,  
NATIONAL POLICE ACCOUNTABILITY PROJECT,  
LAW ENFORCEMENT ACTION PARTNERSHIP,  
INSTITUTE FOR JUSTICE, AND AMERICANS FOR PROSPERITY  
IN SUPPORT OF PETITION FOR REHEARING *EN BANC***

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## **MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE***

Pursuant to Federal Rule of Appellate Procedure 29(b) and Circuit Rules 29-2 and 29-3, the nine non-profit organizations listed below (“proposed *amici*”) move this Court for leave to participate as *amici curiae* in support of Plaintiffs-Appellants’ Petition for Rehearing *en banc*. A proposed brief has been filed in conjunction with this motion. Proposed *amici* have endeavored to obtain the consent of all parties to the filing of this brief. Only Plaintiffs-Appellants have consented.

### **INTEREST OF *AMICI CURIAE***

Proposed *amici* are nine nonprofit organizations: the DKT Liberty Project, Reason Foundation, the Individual Rights Foundation, Public Justice, the American Civil Liberties Union of Southern California, the National Police Accountability Project, the Law Enforcement Action Partnership, the Institute for Justice, and Americans for Prosperity.

Collectively, proposed *amici* are dedicated to the protection of individual liberties, and especially those liberties guaranteed by the Constitution of the United States, against all forms of government interference. Proposed *amici* are concerned about the expansion of qualified immunity—and that doctrine’s ability to shield egregious violations of individuals’ constitutional rights from any meaningful liability. These potential *amici* share a commitment to ensuring that government

actors who violate individuals' constitutional rights are held accountable. As a result, proposed *amici* have a particular interest in this case.

### **ARGUMENT AND SUMMARY OF PROPOSED BRIEF**

This Court “has broad discretion” to grant the participation of *amici curiae*. See *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). An *amicus* brief “should normally be allowed . . . when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (citing *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203 (9th Cir. 1982) (per curiam)); see also *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987) (granting “amicus status” in order to “avail[] ourselves of the benefit of . . . thorough” arguments from an official with an important perspective).

Consistent with “the classic role of *amicus curiae*”—“assisting in a case of general public interest,” *Miller-Wohl Co.*, 694 F.2d at 204—the proposed *amici* desire to submit the enclosed brief to inform the Court of several issues uniquely within their expertise. In particular, proposed *amici* seek to bring to the Court’s attention the robust scholarship demonstrating that the unjustified extension of qualified immunity harms the public, civil rights litigants, and even the law

enforcement officers that the doctrine is designed to protect. Given proposed *amici*'s experience participating in cases in which qualified immunity defenses are raised, proposed *amici* also wish to provide the Court with an understanding of qualified immunity's real-world impact. The scholarship proposed *amici* highlight and proposed *amici*'s experiences are particularly relevant to the facts and context of this case, in which Plaintiffs-Appellants allege that police officers stole their property while executing a search warrant. All of these issues are relevant to the Court's consideration of the Petition for rehearing *en banc*, and allowing amicus participation here would be desirable and help inform the Court as to matters relevant to the disposition of the case. *See* Fed. R. App. Proc. 29(a)(3)(B).

## CONCLUSION

Proposed *amici* believe that their input may be of assistance to the Court in resolving Plaintiffs-Appellants' Petition for rehearing *en banc*, and respectfully urge this Court to grant leave to submit the attached brief.

Dated: May 13, 2019

Respectfully submitted,

/s/ Jessica Ring Amunson

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 13, 2019. Service on registered parties will be accomplished via the Court's ECF system.

Dated: May 13, 2019

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