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Anthony Sanders 00:04
Hello, and welcome to Short Circuit your podcast on the Federal Courts of Appeals. I'm your host Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. We're recording this on Wednesday, July 21, 2021. If you enjoy this podcast, you should check out our newsletter, an often-irreverent take on recent court of appeals opinions, which we publish every Friday. And please also check out our sister podcast, the documentary series, Bound by Oath. Even if you're not as libertarian as us at IJ, I'm sure you've all had libertarian moments when dealing with paperwork and bureaucracy. You've encountered rules that both don't make any sense and prevent government workers from doing something that seems extremely straightforward like reissuing a license or signing off on a permit. One extreme, yet poignant encapsulation of this mentality is Douglas Adams' description of the bureaucratic race of aliens, the "Vogons" in The Hitchhiker's Guide to the Galaxy, he said vogons wouldn't even lift a finger to save their own grandmothers from the ravenous bug bladder beast of trawl without orders, signed in triplicate, sent in, sent back, queried, lost, found, subjected to public inquiry, lost again, and finally buried in soft Pete for three months and recycled as firelighters. We're going to hear a story today that might not be as Kafka-esque as all that, but still was about a task as difficult to complete. It comes from a recent DC Circuit case. And here to tell us about it is IJ attorney Ben Field. It's Ben's first time on the podcast and I'd like to extend him a warm welcome. Thanks for coming on. Ben.

Ben Field 01:46
Thank you, longtime listener. First time caller. Very happy to be here.

Anthony Sanders 01:50
Fantastic. Well, something that's not fantastic. But the government does seem to do very well without a lot of bureaucratic snafues is issuing warrants for a search. Somehow all those stacks of forms and the need to vary for various notarized signatures and all that it gets so much more simple. When an officer just needs as the Fourth Amendment says probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. Yet, even then, law enforcement often does all kinds of things without bothering to obtain a warrant. Now, it can only do this if it's either what it's doing isn't a quote, "search," or if it is a search, it fits into an exception to the

warrant requirement and is quote, “reasonable.” We've looked at a few cases in recent episodes that turn on the search question, particularly a couple involving drones. Today, we look at a potential search that seems almost quaint or old fashioned in comparison, cameras stuck on a pole. Are three cameras put on a pole in a public place and pointed at your home for 18 months a search? The Seventh Circuit with some reluctance recently said “No, it's not.” But at the same time, it basically begged the Supreme Court for reform on the governing an often-circular standards. Well here to talk about that case, United States v. Tuggle is IJ’s Fourth Amendment guru, Rob Frommer. Rob, welcome back. And please explain what so reasonable about 18 months of continuous video surveillance of my home.

Robert Frommer 03:30

Pleasure to be back. And I have to be honest, there's nothing reasonable about it. But that didn't seem to stop the government here. So, this all started with meth distribution conspiracy in Central Illinois that the government was investigating. And they started focusing on this guy named Travis Tuggle. Now, to investigate Travis they installed as you mentioned, three cameras on utility poles. Two of the cameras pointed at the front of Tuggle’s home. And the third focused on a shed that was on by Tuggle’s coconspirator. And as you mentioned, these cameras were up for 18 months, but law enforcement never asked for or got a warrant. Still the cameras captured nearly 18 months of footage. They could see in low light, they could be manipulated by law enforcement agents, you know, pan and zoom. And they ran 24/7 recording everything that happened. Of course, by using those cameras agents were able to avoid deploying agents who would you know, do that traditional stakeout that we've all seen on you know, law and order or other kinds of physical surveillance. So, 18 months goes by they capture a wealth of material, and the government says okay, let's use this in trial and they start introducing it at the at Tuggle’s trial. Tuggle repeatedly tries to suppress this evidence but to no avail. So, he conditions pleads guilty, which means “Okay, I'll plead guilty. But I still want to have the right to challenge this, this camera issue on appeal.” So now Tuggle is up at the Seventh Circuit. And he argues that under the Fourth Amendment, this was a search because the cameras invaded what is known as his, quote, “reasonable expectation of privacy.” Now, that's a test that the United States Supreme Court came up with really a concurrence to the United States Supreme Court opinion came up with in the 60s from a case called Katz v. United States. The test simply stated, asked two things. One, did the government and governments action invade a place that Tuggle expected to be private, and two, whether Tuggle’s expectation of privacy is one that's objectively reasonable that society would say, yeah, that's a reasonable expectation. Now, if that test sounds circular, that's because it is. In fact, the Seventh Circuit, in this opinion, noted how the reasonable expectation of privacy tests, quote, “pave the way for a perilous circularity for new technology.” And the reason for that is pretty straightforward. We all

thankfully, live in a world where technology advances and we get to take advantage of it. Think of all the techno toys you have now that you didn't have when you're growing up. And that technology becomes ubiquitous. For instance, think about all the cameras out there. One camera or another captures pretty much every movement you make. On the internet as well, think about that, the same is true for your digital footprint. Your internet service provider and other websites know everywhere where you're going. So, under the reasonable expectation of privacy test, that's a real big problem. As the court stated that “the current Fourth Amendment jurisprudence amidst a precarious circularity, as cutting edge technologies, eventually inevitably permeate society, that means that our expectation of privacy is going to change.” They quote, “the expectation of privacy will change as citizens increasing rely on and expect these new technologies.” And what that means is that once those expectations of privacy change, that means the Fourth Amendment no longer would consider those to be a search, at least under the under the Katz’s reasonable expectation of privacy test. So as technology advances, privacy diminishes. Now, turning to Tuggle’s case, in particular, the court first rejected Tuggle’s argument that the use of the camera itself was a search. It concluded that because an officer used a commonplace technology, after all, we can all buy cameras. And the technology is placed where located where an officer was lawfully entitled to be, that utility pole. Now, I don't know about you, I think the government might have a problem if I put something on the utility pole to record my neighbor. But apparently, if the police do it, they are lawfully entitled to do that. Okay, whatever. And it captured events observable to any ordinary passerby. And because of that the camera was in a place that was okay. And it recorded things that people could walk in by could have seen government, or the court said no expectation of privacy, therefore, no search. But that's just the placement of the camera. What about the fact that that camera was up eighteen months? Doesn't that change the calculus somehow, somehow? Nope. Now, according to the Seventh Circuit, the court recognized that over the past about 10 years, some courts have held that that kind of long-term monitoring can infringe on reasonable expectation of privacy based on what's known as the mosaic theory, which is that if we take these little snippets of information on their own, they might not be searches. But when we give the government the ability to patch them all together, to stitch them all together, what unfolds is a complete mosaic of our lives. And that's the concern that the government's ability to stitch them together would infringe on your reasonable expectation of privacy. Now, this theory is shown up in some cases, but in a rather ad hoc manner. But in those cases, it was usually that people were out and about, going around the world going around walking about. And the concern was that these, the technology would be able to give you a complete picture of everywhere you went. But the Seventh Circuit said, “Oh, whoa, whoa, that's not what we have here. These cameras weren't monitoring everywhere Tuggle went. They were just monitoring everybody who came in or out of Tuggle’s house.” And so, the court said that neither the

Supreme Court, nor any federal appellate court had ever used the mosaic theory to hold that prolonged use of a pole camera like this would constitute a search. That said, it's not like the recent controversy on the subject. Last year, the Massachusetts High Court applied the mosaic theory under state constitution to hold that long term monitoring of the home via poll cameras was a search. And back in 2017, the South Dakota Supreme Court held the same. But the Seventh Circuit felt penned in by the lack of federal authority, stating that long term monitoring via pole camera infringes on someone's reasonable expectation of privacy. So, it said no search, somehow the government is looking at you for 18 months, but it's not a search. As you noted, Anthony, the court was clearly uncomfortable with this outcome. And it suggested that the Supreme Court that quote, “it might soon be time to revisit the reasonable expectation of privacy test” or it suggested that Congress could pass legislation to protect people against this kind of long term monitoring. But that's all no good for Tuggle. Tuggle was still convicted, those cameras are still up or not still up, but those cameras can still record, and the government doesn't need to get a warrant for any of it.

Ben Field 11:53
I think that's what most galling to me was, when I read this opinion, that the court says they are clearly uncomfortable with this, this seems like something that most people would find to be an invasion of their privacy. But because there's a lack of federal authority, the tie goes to the government, which just it seemed to me that, you know, the whole point of having a Fourth Amendment is that supposed to protect our rights. In this area of technology of you know, how the Fourth Amendment applies to evolving technology, as the court points out is a total mess. You know, in case there was a Supreme Court case a few years ago, where the question was, well, what happens when you put a GPS tracker on a car, and the majority answered as narrowly as possible, saying, well, because you touch the car, it's a trespass, and therefore, it violates the Fourth Amendment. But five justices said no, the problem is that you're tracking this person's whereabouts for their entire life while they're driving the car. That's the real problem, including in a concurrent written by Justice Alito, who you would think is about the most hostile person to the Fourth Amendment among the justices. So, I think there really was signals from the Supreme Court that there was space to adapt Katz to the modern era. And the Seventh Circuit just refuse to go there, because there was silence

Anthony Sanders 13:09
And they and they noted all these different ways that maybe they could have ruled for Tuggle like mosaic theory. And then there's other you know, there's other facts they could have picked out to distinguish the case, but instead, they say there's no expectation of privacy here.

Robert Frommer 13:25

Yeah. And I think what comes out loud and clear from this opinion, is the Seventh Circuit is screaming to the Supreme Court, that Katz is broken, the reasonable expectation of privacy test was, is fundamentally flawed. And I got to be honest, there's a way out of this mess. And that's just by taking words at face value. After all, think about the reasonable expectation of privacy test, just which is supposed to be in order to determine whether something's a search or not. But we all know what a search is. I mean, we can look in the dictionary, as Justice Scalia recognized in a case from about 20 years ago, Kyllo when the Fourth Amendment was adopted, just like now, the term search just meant, quote, “to look over or through for the purpose of finding something.” In other words, a deliberate investigative act. Another judge, Judge Thapar on the Sixth Circuit, endorsed that approach recently. In his recent opinion, he said when the framers used the word search, they meant something specific, investigating suspects property with a goal finding something. And that test, that test like is the government trying to find out information by looking at your persons or property. It's a lot simpler than the reasonable expectation of privacy test that is, that is tied the courts and knots for decades. After all, think about it here a fight here. Was this a search under that basic, “was the government trying to learn information?” And was it doing it by investigating Tuggle’s house? Yes, obviously.

Anthony Sanders 15:11

It's pretty absurd when you when you look at it that way.

Robert Frommer 15:14

Yeah, and another advantage of that, it's just a simple look at what the government was doing why it was doing it. It critically, unlike the reasonable expectations of privacy test doesn't put judges in the role of like philosopher kings of trying to say what society deems to be a reasonable expectation of privacy. Because after all, judges are people too. They respond to incentives, too. They want to get promoted, they might go to the next level up, they want to maintain their position. And what we see over and over again, particularly in lower courts, is that the courts will often bend the doctrine in a way to enable law enforcement efficiency, make it easier for the police. And of course, police don't like having to get warrants, it's a pain in the butt to get a warrant. So easier to say, oh, this isn't the search at all.

Anthony Sanders 16:12

I don't want to have to, you know, fill out paperwork or anything. So, there's just no search here. Well, so question for you on that, Rob, that I think some people are probably wondering, is okay, say, it's a

search. And, and we just have a common sense, you know, view of searches, we're going to have a lot more searches, of course, does that mean that in all these cases, that police will have to get warrants or they're going to be cases like say, say it wasn't cameras on a pole for 18 months, but it was a stakeout for a couple hours by a couple cops? Would they have to get a warrant for that? Or could it be an exception to the warrant requirement? And so, the question would be, is it reasonable? And then how do we do that reasonable in this analysis, I assume it's not a reasonable expectation of privacy analysis for the reasonableness test. But like, how do you put all that together?

Robert Frommer 17:06
Well, let's take your stakeout point of view. Okay. So, it's a stakeout. There, they they're sitting there in the car looking at the house for a couple hours, that's definitely a search. Question is, at that point, do they need to get a warrant for that. And there's one exception to the warrant requirement for what's known as "plain view." And plain view exceptions are usually like if you're just walking down the street, or if you just happen to be in a room and you see something where it's immediately apparent that something is illegal, then we're not going to say that you need to get a warrant for that. So, two cops sitting in a car for a couple hours, it's not something beyond the can of really any ordinary person. So, I would, it seems to me at least that would be okay, as a warrantless search under the plain view exception. The problem is, is when you start amassing dozens of officers to conduct an around the clock stakeout, or you do the technological equivalent, which is sticking a camera up on a pole, so it can do all the monitoring 24/7. That's going beyond the abilities of any individual person. And at that point, the government should have to go get a warrant in order to conduct that kind of investigation.

Anthony Sanders 18:28
One final detail, I don't, that the court could have easily seized upon it, maybe it wasn't relevant to his prosecution, but the fact that these cameras could zoom. I mean, that sounds just like Kyllo and the heat imagery that was an issue in that case, because that's just, you know, not a technology from the time of the Fourth Amendment adoption, essentially, was the court's reasoning, that there's no, you know, none of our eyes can do zoom, like I'm sure that these cameras could do. So how the heck wasn't? Weren't they thrown out on that basis? I guess we won't know. But the court just kind of threw it out there. And there was no analysis.

Robert Frommer 19:07

I think what the court ultimately it comes down to is, look, these cameras are commonplace. Nowadays, I have cameras that I can pan and zoom. And they're saying, since these are commonplace pieces of technology, you can't really complain when the government uses them against you.

Anthony Sanders 19:25
Well, and I wonder today, if he you know, I'm sure heat imagery, I don't have it myself. But heat imagery photography is probably much easier now than it was 20 years ago when Kyllo came out. And so maybe it would come out differently now under that test.

Robert Frommer 19:38
Exactly. And that's exactly what the Seventh Circuit is worrying about here that technologies because they keep getting better and better. They keep advancing. And we don't want our privacy rights, our rights under the Fourth Amendment to keep diminishing as a result. So, I think something is going to happen in short order.

Anthony Sanders 19:57
Well, we'll look forward to that. We'll keep you abreast here on Short Circuit and of course, Rob Frommer will keep us all abreast on the latest developments in Fourth Amendment law. But you know, one thing what technology apparently has not been able to improve is expropriating yourself from United States Citizenship, that's still done the old-fashioned way. And Ben is going to tell us about if you need to expropriate yourself from United States Citizenship, what you need to do. And apparently, it's a good idea to not be in prison when you try and do it. And we're going to discuss the case of Farrell v. Blinken from the DC Circuit. Ben.

Ben Field 20:36
So, the plaintiff here is Gerald Farrell, and he doesn't want to be an American anymore, even though he was born here. And when you hear the facts of the case, you might feel sympathy for that desire to expatriate yourself. So, he was born in the United States, but moved to Switzerland in 1994, became a Swiss citizen in 2004. And under a federal statute called the Immigration and Nationality Act, which governs who is citizens and who can move here and things like that, one way to lose your U.S. citizenship is to become a citizen of another country with the intent of giving up your American citizenship. And so, Farrell said that he did that, and he just wants the government to recognize that. Now as the dissent here says, after he obtained his Swiss naturalization, his only contact with the United States has been involuntary. So, as he pointed out, he was in federal prison for a while, he was

caught in Spain and extradited to the United States. And he wanted to be able to serve part of his term in Switzerland. But that required giving up his American citizenship.

Anthony Sanders 21:50
And what he was put in prison for right was stuff that happened before he became a Swiss citizen. But it happened in the United States. That's how they could extradite him?

Ben Field 21:57
Yes, yeah. So, before he was a Swiss citizen, but he's in prison here, he doesn't want to be an American anymore. And so, he starts a series of communications with the State Department to try to, for them to recognize that he's not an American citizen anymore. And so, he first sends some letters to the United States Embassy in Switzerland. And they tell him, well, first, they respond that he needs to fill out another form for a completely different type of basis of expatriation that he wasn't applying for. He tells them "No, it's not that I'm expatriate, I'm already expatriated, because I'm already a Swiss citizen with my intent to give up citizenship." And they say, "Oh, well, you actually have to come to the embassy in Bern in order to effectuate that." Difficult to do when you're in federal prison in the United States. So, he then, you know, sends a letter back and then gets a new story from them, which is that he actually has to fill out two forms, and appear for an in-person interview in Switzerland in order to establish that he did, in fact, knowingly give up his US citizenship. So, after this, you know, rigamarole, he gives up and goes to district court and sues the government to demand that they recognize that he is, in fact, no longer a citizen. So, the most of this case is about whether or not he even has standing to do that, but I'll just skip ahead to the result. And then we'll get back to the standing issue. So, he eventually, on the merits, the majority in the DC Circuit said, "Well, this seems wrong. The government is allowed to put restrictions on how you expatriate yourself, but the procedures here were clearly inadequate, and the government acted arbitrarily and capriciously, because it kept changing its story. And never gave this guy a straight answer on how he was actually supposed to get the certificate saying that he was expatriated." The remedy he got probably not too great for him, though it was simply a remand to the Department of State to better explain how he can expatriate himself. So, he gets a new layer of bureau bureaucracy before he actually gets a certificate saying he's no longer a citizen. But the real fireworks here are on the standing question. And standing is a doctrine that the idea of it is that you can't just come into court, because you're unhappy with something the government is doing in this vague, abstract way, it has to affect you personally, and so you have some personal interest in the case. And so, there was a two to one split in the DC Circuit on whether he had standing. The majority's analysis was pretty straightforward. They said, "Look, the guy doesn't want to be a US citizen anymore.

The Immigration Nationality Act recognizes his right to expatriate the Administrative Procedure Act gives you a cause of action to sue when the government is acting arbitrarily to you and bada bing bada boom, he's got an injury, he should be able to come in and have that injury redressed." The dissent, however, is much more demanding. They say, well, while all this litigation was dragging on, he actually got out of prison and went back to Switzerland then, so he doesn't really have a reason that he needs to the certificate thing. He's expatriated anymore. And so, he doesn't have standing. And the dissent applies a bunch of more recent Supreme Court cases that have, you know, added a bunch of bells and whistles to what standing requires. And the same goes through Judge Katsas writing the dissent, says, "Well, he hasn't pointed to any specific thing that he needs. Now. Sure, you know, he really wanted to be expatriated before, but he can't prove that he's going to need some specific, the government is going to do something to him in the future. And therefore, he doesn't have any particular eyes or concrete injury that that's a result of his lack of expatriation." And, I think also somewhat interestingly, the dissent also. So, one of the issues is, you know, he's saying "I want to be expatriated" and the State Department keeps telling me it does. It's not official until I get this certificate from them. And the dissent actually does. And the government has agreed with that this entire litigation, the government didn't challenge standing, everybody thinks he has standing except for Judge Katsas, and he actually disagrees with the United States and says, well, the way I read the IMA, he's actually already been expatriated. And this certificate is just, you know, a piece of paperwork for him. So, in a bizarre way, he actually gets more, if Judge Katsas had been in the majority, he might have actually gotten what he wanted, because it would have involved the declaration that he was no longer a US citizen, which I think is what this discussion proves is just how absurd the modern standing doctrine has gotten. And it's built on this very slender read, Article Three of the Constitution, which is the part that sets out what the judiciary does, simply says that they shall decide cases and controversies. And from those two words, this edifice has been created that you need an injury in fact, that is particularized and concrete, that is fairly traceable to government action, and that would be re-addressable. So essentially, all of those words are the length of article three, and have been read into these words, cases or controversies. And I think that this is a really interesting illustration of a battle that's happening right now. So traditionally, you think like liberal judges want very loose standing so that plaintiffs can come into court and vindicate their rights. And conservative judges don't like the judiciary messing around, and so they're restricted on standing. But the three judges on the DC Circuit panel are the three Trump appointees to the DC circuit. And I think this reflects a broader debate within the conservative legal movement over, you know, are these two words really able to provide a basis for standing? And so, in recent cases, you've had Justice Thomas joining with the liberals to say no, a case is Congress's, you know, Congress has said you have a right, they've given you a cause of action to vindicate that right, as

has happened here, you should be able to go into court, that's a case, Bada Bing, Bada boom, that's easy. And in the lower courts, several judges, including Judge Thapar, who Rob mentioned earlier, Judge Newsom in the 11th Circuit have written very long concurrences saying that, you know, we have destroyed the ideas of textualism and originalism by looking at these two tiny words in building on this edifice, which precludes Congress or other legends or other state legislatures from being able to create rights that can then be vindicated in federal court.

Robert Frommer 28:39
That is fascinating, because I, you wouldn't think between two cases, one about the Fourth Amendment, what about some guy trying to like, leave the United States forever and become a Swiss citizen, that you would see that commonality, that issue of like, the words in the constitution are simple, but yet, over time, courts have just created layer upon layer of additional tests, additional qualifications that appear nowhere in the text of the Constitution, or in the original understanding of what it was supposed to allow?

Anthony Sanders 29:18
And I love how also, both of the writers here are our former clerks of Justice Thomas so Judge Rao, who is in the majority and then Judge Katsas, you know, I think one signing more with their former boss than the other it seems from that recent opinion you discussed, Ben, but I guess it's not super obvious like it seems to me, that this guy, of course has standing because there's going to be some impact on not being a US citizen in the future. One, one small thing. Maybe your thoughts on this, I don't get how it doesn't come up. One small detail is US expats around the world know all too well, that a peculiar part of US law that most countries don't have is that a US citizen has to pay income tax, no matter where they live, they can't just, you know, go live in Monaco, like a lot of other citizens can and then, you know, avoid because they're not a resident avoid paying tax. So, I would, I don't know, this guy's income, I'm sure it's not what it was, having spent a number of months in federal prison, number of years, but the chance he's going to have to pay us income tax in the future, I think would affect whether or not he's a citizen, but um, that maybe it just wasn't needed for the majority. But I was confused how that that didn't come up. But there's other things like, what if he ever went back to the United States? It's harder without a US passport? Like, I don't get the idea that there is no, there's nothing in his way for the rest of his life that would affect giving up his US citizenship?

Ben Field 31:00

Well, I think that this points to the absurdity of, you know, springing this, like hyper technical standing decision at or Judge Katsas is attempting to do so at the end of years of administrative process and the lawsuit, because Judge Katsas essentially just says, “Well, he didn't tell us what concrete things would injure him,” and the majority swats that way. It says, you know, if the government thinks you're a citizen, there are all sorts of obligations that might attempt to impose upon you and we're not going to parse which ones they are. And as I point out, you know, this guy just spent eight years in a federal penitentiary, even though he was a Swiss citizen, clearly there are some potential consequences here. It just, you know, don't get into it. And then to a point that you were making, you know, just whether or not you even have an interest in being expatriated. You know, Judge Katsas dissent set, you know, goes back to this line of authority from when the United States didn't exist and was a British colony, and these legal principles from when there was a king, and you weren't allowed to expatriate yourself, because you owed allegiance to the king. But of course, we live in a republic now. And this Judge Rao majority points out at length, the founding fathers rejected that. And so, she has quotations from Madison and Jefferson, in early Justices of the Supreme Court saying, you know, the whole point of a social contract and the being in a Republic is that you choose to associate with the government. And then, you know, we shouldn't be relying on this, this, you know, regime vision of owing undying allegiance to the king, especially when Congress has created a right to expatriate that's been in place since the mid-19th century.

Robert Frommer 32:45
What do you think, Ben, since you've looked at this opinion closely, what do you think the dissents end game is here? Like, why is it Why is it erecting? Why is it putting up these standing roadblocks and trying to demand for a much more well demanding standing test? Like, is it just about this case? Or do you think this is something that the judge is trying to set up for more broadly?

Ben Field 33:15
My guess is it's both. So, I think narrowly, that Judge Katsas was just frustrated that, you know, this guy is now in Switzerland. As he reads the statute, he's already expatriated. But it's probably not that big a deal for him now that he's no longer in federal prison to go to Bern and actually do this. So, he probably doesn't think that this deserves to be in federal court. But I think that the broader issue, and this is kind of the theoretical defense of standing is that, you know, to the extent possible, we want thorny issues of policy, or, you know, this viewpoint would be we want thorny issues of policy to be decided by the politically accountable branches, you know, whether in Congress or in the executive branch. And so, if there's, if it's not necessary for the courts to get involved to vindicate a specific, right, they're going to

get, they're going to step aside. But of course, when you're getting so in the weeds and going to such lengths to parse what actually counts as a specific right, you're actually interfering with the political branches' ability to create invest rights and causes of actions in individuals to be able to go to court. And so, you know, this was the point that that Justice Thomas was making in his dissent in his recent dissent I was talking about, like this is actually placing substantive limitations on the political branches. If you're just saying there are wide swaths of injuries that just seem too theoretical for us to deal with.

Anthony Sanders 34:40
Yeah, and this is a right that's been recognized, not just in statutes, been recognized by the Supreme Court, as you know, a right that everyone had an unenumerated, right, you might say, of, of citizenship, and it seems like if it's recognized that way, and you in and so you have a right to ask for, you know, the government to release you essentially from the bonds of citizenship. Seems really weird that that there's no standing for that. One final thing I wanted to say about just the bureaucratic weirdness of all this is, this isn't like, you know, he's somewhere out there, the government doesn't know where he is and he's communicating, you know, via emails and saying, well, I wanted to stop being a US citizen, I think it might be a fraudster, this guy is in the government's possession in federal prison, they could have a prison guard go to his cell, and like, have him fill out the form and you would think there would be some comedy or, you know, line of command between that prison official, and then the State Department, but it's like, you know, he's in a different country. No idea, you know, who he might be? And so no, you have to go to Bern the fill this form out.

Ben Field 36:03
Right. And the government's, the purported interest the government has is they want to be sure that people understand that they're trying to give up their citizenship. I cannot imagine a more clear fact pattern for somebody who knows very well what it means to give up his American citizenship and wants nothing more than the for that to happen.

Robert Frommer 36:23
Ah, Douglas Adams is right. Well,

Anthony Sanders 36:29
I hope all of our listeners don't have to go through a bureaucratic adventure like this man had, or like, the vogons apparently enjoy doing. But we want to thank you for listening today. Thank Rob and Ben for coming on and discussing some fascinating cases. We'll be back soon with more fascinating cases.

We're going to have a special next week on a state constitutional law that I hope you'll all stay tuned for. And in the meantime, I will hope that all of you get engaged.