LIBERTY & LAW
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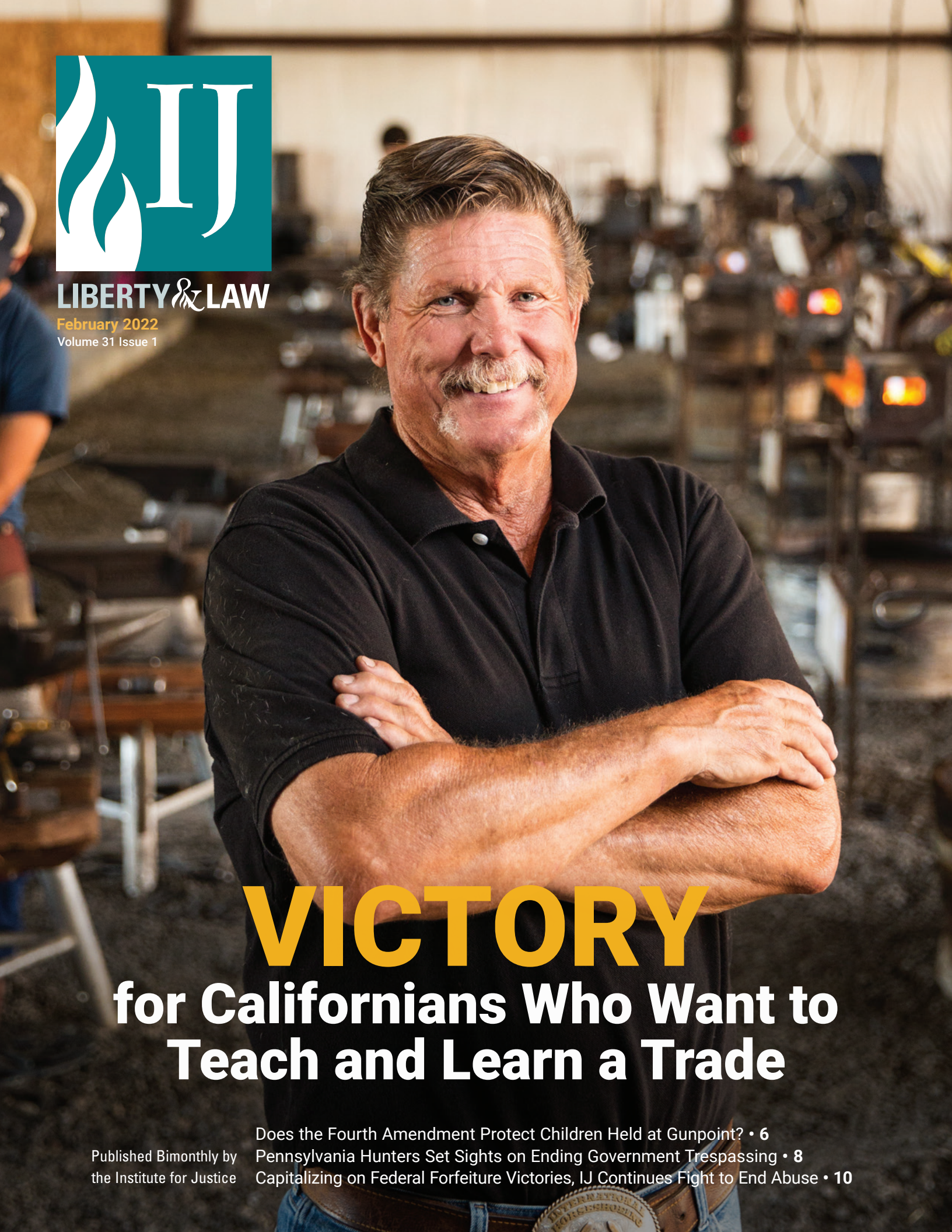

VICTORY
for Californians Who Want to Teach and Learn a Trade

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LIBERTY & LAW

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About the publication: *Liberty & Law* is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism, and research, advances a rule of law under which individuals can control their destinies as free and responsible members of society. IJ litigates to secure economic liberty, educational choice, private property rights, freedom of speech, and other vital individual liberties, and to restore constitutional limits on the power of government. In addition, IJ trains law students, lawyers, and activists in the tactics of public interest litigation. Through these activities, IJ challenges the ideology of the welfare state and illustrates and extends the benefits of freedom to those whose full enjoyment of liberty is denied by government.

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IJ client **Bob Smith** is free to teach horseshoeing to willing students after California eliminated an unconstitutional law banning the teaching of trade skills to those without high school degrees.

Will California Censor Horseshoeing Schools?

Neigh!

BY PAUL AVELAR

After more than four years of litigation, IJ client Bob Smith and his school, Pacific Coast Horseshoeing School (PCHS), are free to once again teach job skills to those who need them most.

Bob opened PCHS in 1991 to teach horseshoeing through mostly hands-on instruction in small groups. PCHS now has more than 2,000 graduates. Some of those students just wanted to know how to shoe their own horses. But hundreds of them are working as professional farriers.

In 2017, Bob was informed that he was breaking the law. His crime? Teaching horseshoeing to paying students who had not completed high school, a GED, or a government exam. Under California law, people without a high school diploma or GED could not enroll in a private vocational school without first taking and passing a government-approved "ability-to-benefit" examination.

Bob had taught people without a high school diploma or GED since day one. No state in the country prevents anyone from shoeing

Bob had taught people without a high school diploma or GED since day one. No state in the country prevents anyone from shoeing a horse, regardless of educational attainment.

In 2020, **Bob** and IJ won a First Amendment victory at the 9th U.S. Circuit Court of Appeals, paving the way for California to repeal its unjust ban.

a horse, regardless of educational attainment. Being a farrier does not require any particular educational background—as Bob likes to observe, "Horses don't read books or do math; you just have to be able to get under the horse and work the tools."

Because Bob did not require his students to have any educational background or pass any exams, California threatened to shut PCHS down. The state defended its law as "consumer protection," but the law hurt the very people it was intended to help. The law assumed that students without formal education were too dumb to spend their own money to acquire job skills. The result was that students with limited education were shut out of a traditional path to the middle class.

Both teaching and learning are protected by the First Amendment. That doesn't change just because vocational skills are being taught or someone pays tuition to learn or gets paid to teach. That's why Bob and PCHS partnered with IJ and challenged the law to protect their First Amendment right to teach, as well as the rights of their students to learn.

Now those rights have been vindicated.

Both teaching and learning are protected by the First Amendment. That doesn't change just because vocational skills are being taught or someone pays tuition to learn or gets paid to teach.

In September 2021, the California Legislature repealed the "ability-to-benefit" requirement. Going forward, vocational schools like PCHS can admit students regardless of their level of education or their score on a state exam. This will allow professionals like Bob to continue to earn a living by teaching students valuable job skills they can use to earn a living, too.

Although this case ended with a legislative victory, it also set important legal precedent. In June 2020, the 9th U.S. Circuit Court of Appeals ruled that California's law burdened the free speech rights to teach and to learn. That ruling set the stage not only for this legislative reform but also for other challenges to similar laws throughout the country.

Restrictions on vocational teaching are bad for teachers, bad for students, and bad for the economy. They are also contrary to the protections for free speech in our Constitution. More states should follow California's lead and eliminate these restrictions—or they too might have to answer to IJ and the First Amendment in court. ◆

Paul Avelar is managing attorney of IJ's Arizona office.

IJ ASKS THE U.S. SUPREME COURT TO REAFFIRM THE RIGHTS OF TWO ARKANSAS CHILDREN HANDCUFFED AND HELD AT GUNPOINT

BY ANYA BIDWELL

Late one evening in January 2018, two boys—Haden and Weston Young, aged 12 and 14—left their grandparents' house in Springdale, Arkansas. The football game they had been watching was at halftime, giving them the opportunity to walk several blocks to their home and finish the game there.

Instead, the boys ended up face down on a sidewalk, with a gun pointed at their backs, their hands in cuffs.

Their nightmarish encounter—all of which was captured on video—began when a police officer in pursuit of two adults decided that these young boys fit the bill. The officer yelled: "What's your name?" The older boy answered: "Haden Young." Though the voice unmistakably belonged to a child, the officer, with his gun drawn, ordered the boys to lie on the ground.

In the meantime, the boys' mother, Cassi Pollreis, walked out of the house to identify the boys as her own. Instead of listening to Cassi, who calmly told the officer that the boys were "12 and 14 years old," the officer pointed a taser at her and told her to get back into the house. Not wanting to escalate the situation, Cassi complied, reassuring the boys as she was leaving them: "You'll be all right . . . I promise."

Cassi Pollreis sought to hold a police officer accountable after he wrongly handcuffed and held at gunpoint her sons **Haden** (left) and **Weston** (right) **Young**—then aged 12 and 14—but an appeals court granted the officer immunity. Now IJ is asking the U.S. Supreme Court to take up the case.

Instead of listening to Cassi, who calmly told the officer that the boys were "12 and 14 years old," the officer pointed a taser at her and told her to get back into the house.

The officer then handcuffed the boys while keeping them on their stomachs. All this despite being told over the radio that one of the two fugitives he was looking for was a woman. The officer's sergeant arrived six minutes later and let the boys go. As generally happens in these situations, the officer faced no consequences.

Outraged at what could have easily become a fatal encounter with police, Cassi and the boys sued for violations of their Fourth Amendment rights. The district court rejected the officer's argument that he was entitled to qualified immunity, writing that "handcuffing two boys laying [sic] facedown on the ground, at gunpoint," was "more intrusive than necessary." But the 8th U.S. Circuit Court of Appeals reversed, stating that the boys had never been "arrested" in the first place and instead had merely been subjected to an investigatory stop, which meant that Fourth Amendment protections did not apply.

But this can't be right. If pointing a gun at someone and handcuffing them does not count as an arrest, then nothing does. True, the U.S. Supreme Court has recognized a narrow exception to arrest, called a *Terry* stop. But the Court stated that this exception is extremely limited. It does not apply to highly intrusive law enforcement conduct like that the boys were subjected to.

That's why IJ teamed up with Cassi and her boys to ask the Supreme Court to grant review of this case and reverse the lower court's decision. The 8th Circuit's interpretation of the *Terry* exception is so broad it threatens to swallow the Fourth Amendment's guarantee against unreasonable searches and seizures. And although a victory for the Youngs can't undo the trauma of that January night, it can help protect vital constitutional rights. ◆

Anya Bidwell is an IJ attorney and the Elfie Gallun Fellow in Freedom and the Constitution.

As Congress Fails to End Qualified Immunity, State Activists Take Center Stage

In early 2021, bipartisan legislative efforts to end qualified immunity and hold government officials accountable for constitutional rights violations faced a major setback after Congress failed to advance legislation.

But the fight for reform goes on in the courts and at the state level. IJ developed model legislation for states, the Protecting Everyone's Constitutional Rights Act, that is designed to give those whose rights have been violated access to remedies in state courts. Meanwhile, we launched Americans Against Qualified Immunity (AAQI), a grassroots, nonpartisan coalition of Americans willing to stand up and ensure that if they must follow the law, then government workers must follow the Constitution.

The idea behind AAQI is simple but powerful: Ending qualified immunity is not a partisan or political issue but an American one. Our growing coalition of parents, religious leaders, veterans, police officers, teachers, students, coaches, and others come from different backgrounds, states, and points of view, but they are united in their belief that qualified immunity is an affront to the American idea of justice. And we are working together to convince lawmakers that they have the power to end qualified immunity in their states—without waiting for Congress to act.

IJ and AAQI won't stop pushing for a final, federal end to qualified immunity, but we also won't sit back and wait for that change when we can make justice and accountability a reality one state at a time. ◆

AMERICANS AGAINST
QUALIFIED IMMUNITY

Learn more about qualified immunity at
www.aaqi.org

The **Punxsutawney** and **Pitch Pine Hunting Clubs** are fed up with Pennsylvania game commission officers traipsing through their property without a warrant, so they've joined with IJ to protect their Fourth Amendment rights.

Pennsylvania Hunters Set Sights on Ending GOVERNMENT TRESPASSING

BY DANIEL NELSON

When landowners post "No Trespassing" signs on their property, they expect strangers to keep out. After all, owning land means getting to decide who comes onto it. But for two private hunting clubs in Pennsylvania, fences, markers, and signs offer zero protection from government officers freely snooping on private property.

Tucked away in the northern foothills of the Allegheny Mountains are the Punxsutawney and Pitch Pine Hunting Clubs. The members of these century-old clubs have long enjoyed peace, seclusion, and camaraderie on the private land their families have hunted on for generations.

Unfortunately, things changed once Pennsylvania Game Commission officers began making regular intrusions onto the clubs' property, looking for opportunities to issue citations. Even worse, these officers engaged in creepy, unsettling behavior. For instance, Pitch Pine member Jon Mikesell was rattled when he learned a state officer had hidden on Pitch Pine's land and used binoculars to spy on Jon's family for days.

Pitch Pine's neighbor, the Punxsutawney Hunting Club, has endured similar intrusions. When one member asked why an officer was on Punxsutawney's land so often, the officer responded that because Punxsutawney has more members than other clubs in the area, he had a better chance of catching a hunting violation there.

These intrusions would be surprising to most Americans, who might assume the government needs probable cause and a warrant before it invades their private property. But nearly a century ago, the U.S. Supreme Court created the "open fields" doctrine, carving a huge hole in the Constitution in the process. According to this doctrine, which was created during Prohibition and massively expanded during the War on Drugs, private property owners lack any Fourth Amendment protection for land beyond the home and its immediately surrounding yard. In 2007, in a close vote, Pennsylvania's high court adopted the open fields doctrine in a case called *Commonwealth v. Russo*.

But *Russo* is wrong, especially when it comes to the Pennsylvania Constitution, which protects "persons, houses, papers and possessions" from warrantless intrusions. When those words were written, people plainly

No one can feel safe on their land with the specter of officers on the hunt for wrongdoing hiding in their bushes.

understood "possessions" to encompass all land that a person encloses and makes their own, something that Punxsutawney and Pitch Pine members have painstakingly done.

These protections for private possessions are vital—not just for hunters but for all landowners in Pennsylvania. No one can feel safe on their land with the specter of officers on the hunt for wrongdoing hiding in their bushes. And as government officers' capacity to search using advanced technology skyrockets, fighting against the government's warrantless intrusions onto private property is more important than ever—just ask IJ clients Terry Rainwaters and Hunter Hollingsworth, who found HD cameras that could monitor them 24/7 hidden on their Tennessee properties.

Members of Punxsutawney and Pitch Pine are fed up with these intrusions, so IJ filed suit on their behalf to take on *Russo* and the government officials who trespass with impunity. Setting proper precedent in the Keystone State would be a major victory in rolling back the open fields doctrine nationwide. This effort is also part of IJ's recently launched Project on the Fourth Amendment, through which we will protect all Americans' rights to be secure in their persons and property.

Respecting landowners means respecting their privacy and property rights. That rule goes for everyone—including nosy game commission officers. ◆

Daniel Nelson is an IJ Law & Liberty Fellow.

Orange City, Iowa, Tenants Make Winning First Impression in Court

IJ cases empower citizens to vindicate their rights by holding government accountable. In October, a district court in Iowa delivered that vindication to IJ's clients.

In February 2021, Orange City passed an inspection ordinance that permits code inspectors to enter family homes like that of IJ client Amanda Wink without residents' permission—and without a warrant supported by individualized probable cause. Because renters have property rights, too, Amanda wasted no time responding to this threat, and, in May 2021, IJ filed suit on her behalf under the Iowa Constitution. The government's dangerous response to this lawsuit was all too common in Fourth Amendment challenges: It claimed that tenants could not assert their privacy and property rights until *after* the government carried out its unconstitutional search.

Thankfully, this past October, following briefing and oral argument, the state court rejected this argument, writing that forcing people like our clients to wait until an inspection is in progress means "they will have little, or likely no, recourse to the Courts to prevent the injur[ies] they assert they will suffer to their privacy rights." This ruling put Amanda and our other clients back in the driver's seat. And IJ attorneys can now take discovery to find out how the city enforces its inspection regime.

The Iowa Constitution provides even greater protection for the right to be free from unreasonable searches than the Fourth Amendment does, but that right is meaningless unless citizens have a way to enforce it in court. Thanks to IJ, Iowans can stand taller knowing that when the government knocks at their door, they have a right to fight back. ◆

Orange City, Iowa, renters and IJ clients **Bryan Singer** and **Erika Nordyke** can proceed with their case against the town's unconstitutional rental inspections after an early court win.

Capitalizing on Federal Forfeiture Victories, IJ Continues Fight to End Abuse

BY DAN ALBAN

We have good news to report about IJ client Kermit Warren, who appeared on the cover of *Liberty & Law* last October. As readers may recall, Drug Enforcement Administration (DEA) agents seized more than $28,000 from the New Orleans grandfather at the Columbus, Ohio, airport while he was traveling to inspect a tow truck for his scrapping business. IJ stepped in to represent Kermit when the federal government filed suit to forfeit his life savings, despite never even charging him with any crime.

New Orleans grandfather **Kermit Warren** joined forces with IJ after DEA officials seized his life savings of almost $30,000 at the airport. Just three months later, the government returned his money.

Less than three months after IJ filed our case, federal prosecutors dismissed the forfeiture case against Kermit and agreed to clear his name and return his money—just in time for Thanksgiving. This was a great relief to Kermit, who had been left destitute for a year because federal agents treated him like a criminal for traveling with cash.

While Kermit's case is over, IJ's fight against federal forfeiture abuse continues. In fact, Kermit remains a member of the class in IJ's nationwide class action lawsuit challenging unlawful and unconstitutional seizures of cash from air travelers by the DEA and the Transportation Security Administration. We won a first-round victory in that case last spring, when we survived a government motion to dismiss our lawsuit.

Meanwhile, IJ is challenging the federal equitable sharing program, through which state and local law enforcement officials seize property and hand it over to federal agencies for forfeiture under federal law. Agencies then receive up to 80% of the proceeds from these forfeitures back from the federal government. The perverse financial incentive this creates encourages state and local police to circumvent state law protections for property rights.

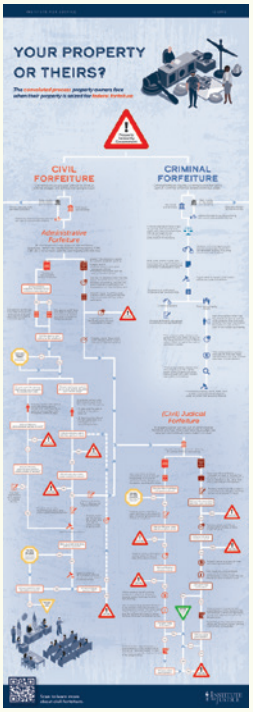
We are filing cases to end this program, and the video we produced about one recent case—that of U.S. Marine Corps combat veteran Stephen Lara, who was stopped by the Nevada Highway Patrol near Reno, Nevada—has become IJ's most-watched video ever, with more than 5 million views on YouTube. The video uses bodycam footage to illustrate just how an innocent person can lose everything in a roadside seizure: from when the officers compliment Stephen on his safe driving and admit they don't think he did anything wrong through the moment they walk away with tens of thousands of dollars of his hard-earned cash.

Finally, IJ continues to press Congress for legislative reform, including passage of the bipartisan Fifth Amendment Integrity Restoration Act. We testified about the urgent need for federal civil forfeiture reform at a hearing in December before the House Oversight Subcommittee on Civil Rights and Civil Liberties, where every representative who spoke, Democrats and Republicans alike, expressed concerns about forfeiture abuse and an interest in reform.

At that hearing, IJ also debuted our new infographic, "Your Property or Theirs?," a poster-size flowchart that illustrates the convoluted process property owners face when their property is seized for federal forfeiture. Rep. Jamie Raskin, the subcommittee chair, displayed IJ's work during his concluding statement, remarking, "You're really at the mercy of a rather merciless system as the Institute for Justice has documented in this excellent poster, which really demonstrates the byzantine complexity of this Orwellian and Kafkaesque system."

By fighting for change on multiple fronts, IJ will bring this unjust system to an end. ◆

Dan Alban is an IJ senior attorney.



View this infographic at **endforfeiture.com/federalforfeitureprocess**

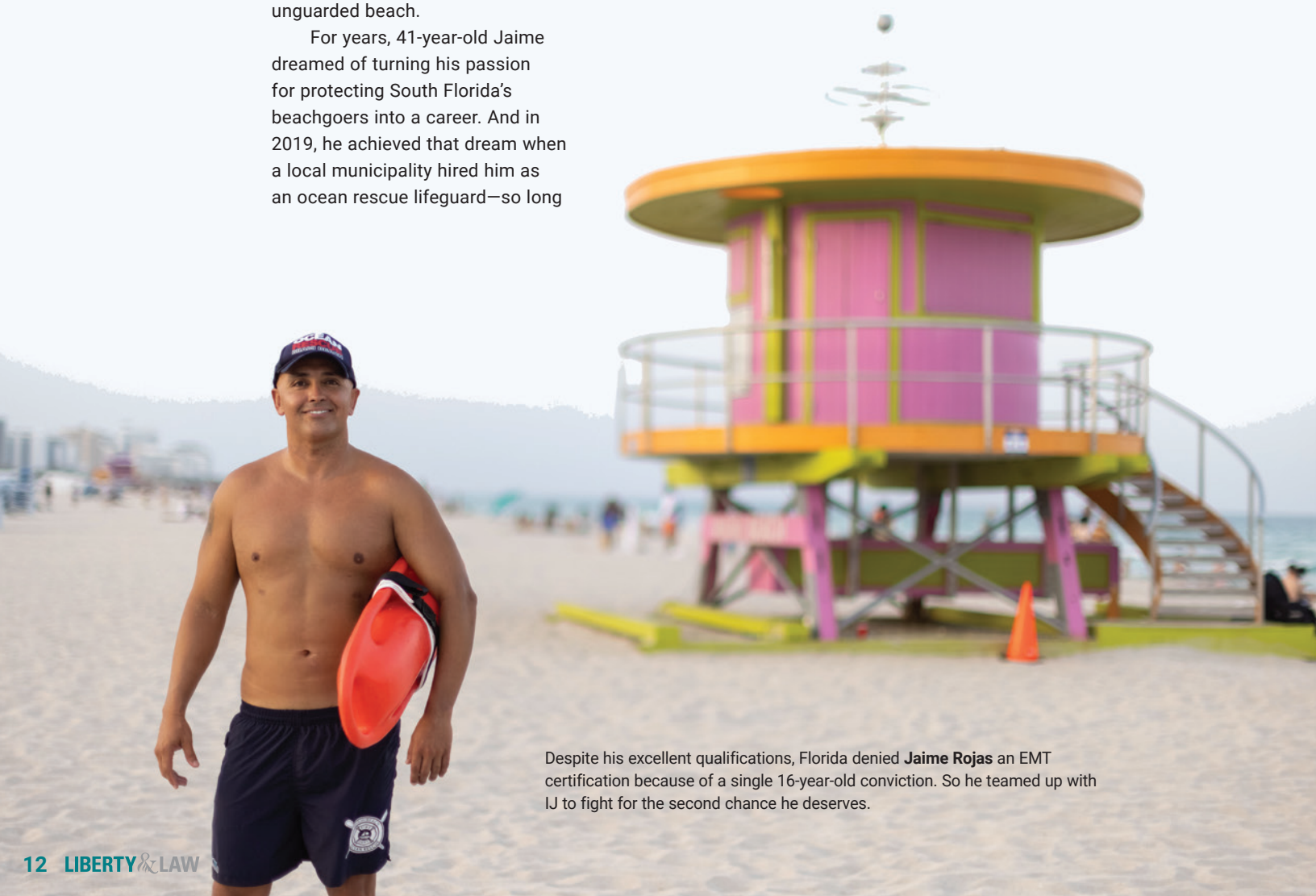
IJ STANDS GUARD OVER THE RIGHT TO A FRESH START

BY MICHAEL GREENBERG

Jaime Rojas is a dedicated community servant in South Florida. He's volunteered his time for all kinds of causes, from speaking to teenagers in juvenile detention to preventing animal cruelty. He's received countless certificates of appreciation for his efforts, including one from a local judge for his work with at-risk youth and one from the Miami Beach City Commission for rescuing drowning swimmers at an unguarded beach.

For years, 41-year-old Jaime dreamed of turning his passion for protecting South Florida's beachgoers into a career. And in 2019, he achieved that dream when a local municipality hired him as an ocean rescue lifeguard—so long as he could obtain Emergency Medical Technician (EMT) certification from the Florida Department of Health. An EMT certification is an entry-level credential indicating proficiency in basic, non-invasive life support techniques. EMT certification is required in a wide range of jobs.

But the department rejected Jaime in April 2020. Not because he was unqualified:



Despite his excellent qualifications, Florida denied **Jaime Rojas** an EMT certification because of a single 16-year-old conviction. So he teamed up with IJ to fight for the second chance he deserves.

Rather than making its decision based on who Jaime is today—a model citizen, by all accounts—the department denied him solely because of a youthful mistake of nearly 20 years ago.

He'd completed the nearly 200 hours of required coursework and passed the exam on his first try. Instead, using a statute authorizing it to deny EMT certification for any felony conviction, the state denied Jaime because of a single criminal conviction for drug distribution way back in 2004. Rather than making its decision based on who Jaime is today—a model citizen, by all accounts—the department denied him solely because of a youthful mistake of nearly 20 years ago.

Unwilling to watch his right to earn an honest living—and his dream job—be washed out to sea, Jaime teamed up with IJ. Prepared to appeal a denial to the highest levels of Florida's courts, Jaime and IJ submitted a new EMT application this past summer.

That complex, time-consuming effort required compiling nearly 100 pages of documents: court and probation records from decades ago; a state background check; and mounds of evidence of Jaime's good character, including nine letters of recommendation from co-workers and supervisors. Even then, the state demanded additional forms and records—some so old neither Jaime nor any government agency possessed them anymore. But eventually, rather than face the prospect of protracted litigation against IJ's army of public interest lawyers, the Department of Health reversed course and granted Jaime his EMT certification. His job was safe.

Although a big win for Jaime, it shouldn't have taken a battalion of lawyers for someone with a minor criminal record to exercise his right to earn an honest living. Indeed, Florida earned a woeful D+—in the bottom third of all states—in *Barred from Working*, IJ's nationwide survey of legal barriers people with criminal records face in obtaining occupational licenses.

So IJ's fight in Florida isn't over. Regular *Liberty & Law* readers will remember that IJ's first "fresh start" lawsuit, on behalf of aspiring cosmetologists in Pennsylvania, inspired the state legislature there to repeal "good moral character" requirements across dozens of occupational licenses. Now IJ is publicizing Jaime's story to advocate for broad legislative change in the Sunshine State, too—to ensure nobody else is denied the fresh start they deserve. ◆

With IJ's help, **Jaime** can now pursue his dream job of protecting Florida beachgoers.

Michael Greenberg is an IJ Law & Liberty Fellow.

Holding Out Hope (AND WAITING ON HOLD) for IJ Clinic Clients

BY PALMER GUNDERSON

To my surprise, one of my first assignments as a summer clerk at the IJ Clinic on Entrepreneurship at the University of Chicago Law School was assisting a client with parking tickets.

The client, Yohance Lacour, designs and makes stylish leather shoes and handbags. But when the IJ Clinic worked with him to apply for his business license with the city of Chicago, the city emailed saying the license wouldn't be issued until Yohance satisfied outstanding debts with the city, attaching several cryptic notices of decades-old debts. Yohance was mystified.

I began calling the city. The hold music became the background music of my workdays. Different operators provided different information and followed different rules. Eventually, after a month of investigation, the pieces of the puzzle started coming together. The city had impounded a vehicle registered to Yohance. There was no record of what happened to the vehicle, but it was likely either sold or scrapped, and the city wanted Yohance to pay fines before starting his business.

Straightening things out took still more months of advocacy with the city, explaining that Yohance never received any notice of the tickets, the booting, towing, or eventual disposal of the vehicle. When the vehicle was impounded, he was in prison (where he first learned leather work, in fact).

Finally, we prevailed, and the city dismissed most of Yohance's debt. This relief will enable him to obtain his business license and invest his money in his business. It was also a stark illustration of the barriers and burdens to opportunity for previously incarcerated entrepreneurs like Yohance.

So what did I do last summer? I listened to a lot of hold music. I helped IJ fight the good fight to change the convoluted vehicle impound system in Chicago. I learned that it is far too common for cities to squeeze entrepreneurs like Yohance for old fines and fees as a condition of starting a business. Most importantly, I learned how to advocate the IJ Way, developing skills, experience, and tenacity that will help me continue to fight for Yohance and others trying for a fresh start. ◆

Palmer Gunderson is a law student working with the IJ Clinic on Entrepreneurship at the University of Chicago Law School.

Designer **Yohance Lacour** (second from right) can get his business license thanks to help cutting through red tape from the IJ Clinic on Entrepreneurship, including Clinic Director **Beth Kregor** (far right) and law students **Katie Karnosh** (left) and **Palmer Gunderson** (second to left).

The **Carson** family of Maine, including father **Dave** (second from right) and daughter **Olivia** (second from left) are fighting for parents' right to choose the school that best meets their children's needs. In December, IJ Senior Attorney **Michael Bindas** (center) argued their case before the U.S. Supreme Court, with help from co-counsels **Kirby West** (far left) and **Arif Panju** (far right).

EDUCATIONAL CHOICE—AND IJ—HAS A GOOD DAY AT THE U.S. SUPREME COURT

BY MICHAEL BINDAS

On December 8, 2021, for the 10th time, IJ argued at the U.S. Supreme Court. The case, *Carson v. Makin*, has direct consequences for programs that empower parents, rather than government, to direct their children's education.

Readers may remember that *Carson* is a follow-up to IJ's victory at the high court in 2020 in *Espinoza v. Montana Department of Revenue*. At issue is a Maine school choice program in which participating families can choose to send their kids to public or private schools, whether in state or out of state. But they cannot select any school that Maine deems "sectarian"—specifically, any school that provides religious instruction.

At a time when public dissatisfaction with the public education status quo is at an all-time high, giving parents a free and independent choice among an array of educational options should be a no-brainer for a state with an educational choice program.

At a time when public dissatisfaction with the public education status quo is at an all-time high, giving parents a free and independent choice among an array of educational options should be a no-brainer for a state with an educational choice program. However, Maine argued—and the 1st U.S. Circuit Court of Appeals held—that although IJ's *Espinoza* victory prohibits Maine from denying a parent's choice of school because the school is religious, Maine is still free to deny a parent's choice of school because of the religious things the school *does* (read: teach religion).

IJ argued that this is a distinction without a constitutional difference and—while it is always perilous to make predictions based on oral argument—we are cautiously optimistic that the justices will agree. As Justice Gorsuch pointedly asked counsel for the United States, which argued in support of Maine, "Does the government see a basis for distinguishing between a tax on persons who wear yarmulkes as opposed to a tax on Jewish persons?"

By the time the argument finished, we felt optimistic that, after 30 years, we had conquered what may be the last remaining significant constitutional impediment to educational choice. If the Court agrees with us, the result will not simply be more educational options for students in Maine. It will put to bed one of the final remaining legal barriers to educational choice programs nationwide. ◆

Michael Bindas is an IJ senior attorney.

PARKING REQUIREMENTS
THROW A WRENCH IN THIS MECHANIC'S AMERICAN DREAM

BY TORI CLARK

America is the land of opportunity. But Pasadena, Texas, is blocking opportunities for hardworking entrepreneurs like Azael Sepulveda by piling on arbitrary, unnecessary, and expensive requirements to open. In Azael's case? The city is demanding he build a parking lot with 23 spaces more than he needs.

Azael is the picture of the American Dream. Born in Mexico, he moved to Pasadena as a child and is now an American citizen. He loves everything about cars and opened his own auto repair shop in 2013.

Now that he and his wife are expecting their first child and expanding their family, Azael wants to expand his business, too. His shop has been in a rented space for years, but he recently bought his own storefront in Pasadena. He used all his personal savings and put his home up for collateral to make the purchase.

Auto mechanic **Azael Sepulveda** bought a storefront in Pasadena, Texas, to grow his thriving business, but the town is demanding he add 23 parking places before he can open. Azael doesn't need and can't afford that, so he's joined with IJ to challenge the town's unconstitutional parking requirements.

IT WOULD COST AZAEL AT LEAST $40,000 TO COMPLY—NEARLY HALF OF WHAT HE PAID FOR THE STOREFRONT. THAT'S MONEY HE DOESN'T HAVE, PARTICULARLY FOR SOMETHING HE DOESN'T NEED.

But when Azael asked the city for permission to open his new storefront, Pasadena said no. Instead, it demanded that he provide a total of 28 outdoor parking spaces at his new location. A city ordinance sets the minimum number of parking spaces most property owners are required to provide, yet the city has much less stringent requirements for other businesses that need parking for customers, including auto dealers, banks, and gyms.

Adding the spaces is a non-starter for Azael for two reasons. First, he doesn't need 28 spaces. He is the only employee at his shop and takes cars by appointment only, averaging about two customer cars at his shop at any given time. The five existing outdoor spaces at the new shop are more than enough for his needs. Second, adding more spaces is prohibitively expensive for Azael's small business. It would cost him at least $40,000 to comply—nearly half of what he paid for the storefront. That's money he doesn't have, particularly for something he doesn't need.

Because of the city's demands, Azael is paying the mortgage at his still-empty storefront while continuing to pay rent at his shop's current location so he can keep his business open. And although he tried to follow Pasadena's procedures for requesting an exception from the parking ordinance, the city refused to even consider his request.

The good news is that the Texas Constitution protects small-business and property owners, like Azael, from being crushed by unreasonable government demands. In IJ's landmark 2015 economic liberty victory, *Patel v. Texas Department of Licensing and Regulation*, the Texas Supreme Court held that the state constitution demands that courts weigh both the government's justification for a law and the burden the law imposes upon those individuals who are being regulated. Pasadena's ordinance clearly fails this test.

Armed with the *Patel* precedent, IJ filed a lawsuit on Azael's behalf to vindicate in court what common sense already tells us: It should be up to business owners to decide how best to serve their customers, not the government. ◆

Tori Clark is an IJ Law & Liberty Fellow.

First-Round Victory in Challenge to Texas SWAT Team's Home Destruction

BY SURANJAN SEN

Late in 2021, IJ scored a major victory in the fight to secure compensation for Vicki Baker, an innocent bystander whose home was destroyed by Texas police trying to apprehend a fugitive who had hidden inside. Denying the government's motion to dismiss, a federal district court in Texas held that Vicki's claim could proceed. And—in an important ruling for both property rights and police accountability—the court acknowledged that the Constitution's protections for private property apply against police officers, too.

A SWAT team destroyed IJ client **Vicki Baker**'s Texas home. Now a federal court has ruled her quest for compensation can proceed.

Under the Constitution's Takings Clause, the government may not take private property for public use without paying for it. This applies without controversy to eminent domain, where the government actually acquires property. But property owners may also be owed compensation when the government "takes" property by destroying it for a public use, such as in a controlled flooding.

In Vicki's case, IJ seeks to establish that the Takings Clause applies to the activities of police officers as well. But though the idea that people should be compensated when the government makes their property unusable is now nearly a century old, no federal court has ever found a taking where police have destroyed property, and some federal courts of appeal have suggested that the Takings Clause categorically does not apply to police actions.

Fortunately, the court in Vicki's case agreed with IJ. After providing a detailed history of the applicable doctrine, it noted that the U.S. Supreme Court has at least "alluded that a taking could result from destructive police power." That doesn't mean that the government must pay every time the police damage property, but it does mean that Vicki will have the chance to prove that she is owed compensation.

Although IJ's fight to secure just compensation for Vicki is just beginning, this first-round victory is great news for anyone who supports property rights and government accountability. To be sure, the police here may have simply been doing their jobs, but when a governmental officer of any kind deprives an innocent person of their property for the greater good—whether it's to build a road or to catch a criminal—the government is rightfully obligated to make that property owner whole. ◆

Suranjan Sen is an IJ Law & Liberty Fellow.

IJ MAKES HEADLINES

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