



LIBERTY & LAW

October 2022

Volume 31 Issue 5

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the Institute for Justice

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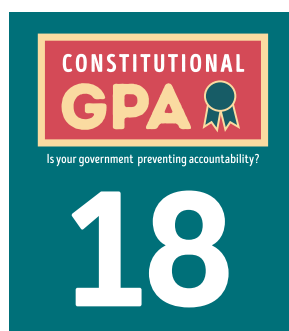
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About the publication:

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 illustrates and extends the benefits of freedom to those whose full enjoyment of liberty is denied by government.

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After William Fambrough campaigned publicly for a candidate running against his city's mayor, police harassed him at his home for months.

City Sends Police After Man Campaigning for Mayor's Opponent

BY BEN FIELD

William Fambrough and his wife have lived in East Cleveland, a small suburb of Cleveland, Ohio, for over 15 years. Despite its troubles, William loves East Cleveland and has long been involved in local politics to try to make it a better place. But when his advocacy ran up against the incumbent administration, he learned the hard way how easy it is for officials to weaponize laws to retaliate against their political enemies.

In the 2021 mayoral election, William supported his friend, a city councilwoman running on an anti-corruption platform against the incumbent. The centerpiece of the campaign was using William's step van—a former FedEx delivery truck outfitted with a speaker and a life-size campaign poster of the

candidate—to broadcast campaign audio messages around town. But the powers that be didn't appreciate the criticism. In fact, the police harassed





The many (often vague) laws in municipal, state, and federal codebooks make it easy for unscrupulous officials to find excuses to target anybody whose views they don't like.

The city fined **William** and eventually towed his campaign van—even though he had a permit for it—so he teamed up with IJ to hold the city accountable for its retaliation.

William at his home for months and eventually towed the van, damaging it so much that it was rendered inoperable for the crucial final weeks of the campaign.

If it weren't for the trampling of William's First Amendment rights, it would be comical how little city officials tried to hide their retaliatory motives. The police towed William's van even though he had parked it at his home for 15 years without incident—and nearly-identical trucks in the neighborhood weren't towed. City records show the decades-old ordinance used to seize the van is never enforced. The police also cited William for noise pollution even though he had a permit signed by the chief of police to broadcast campaign messages and had previously used his van as a sound truck for political campaigns without incident—that is, until he started campaigning against the mayor. And when William went to court to resolve the noise citation, the city attorney even told William and his lawyer that the enforcement was because of William's political activity and that he needed to "stand down."

Now William has teamed up with IJ to defend his First Amendment rights and to hold city officials accountable for targeting political speech. Cases like his are disappointingly common and show how

the many (often vague) laws in municipal, state, and federal codebooks make it easy for unscrupulous officials to find excuses to target anybody whose views they don't like.

When that happens, the victims often have a hard time getting accountability. Although courts generally protect political speech when legislatures write laws to restrict it, courts have invented a series of First Amendment doctrines that make it difficult to hold executive officials to account when they target speech for individual retaliation. On top of that, doctrines like qualified immunity and prosecutorial immunity can also stand in the way. Those doctrines don't just apply to on-the-spot police decisions; they also shield premeditated schemes to violate rights perpetrated by mayors, city attorneys, agents, or any other government officials.

That's why William's fight is so important. If government officials punish citizens for their political speech, there must be a price to pay. If East Cleveland officials have forgotten that vital principle, IJ is happy to remind them. ♦

Ben Field is an IJ attorney.



IJ IS UNTANGLING THE IMMUNITY KNOTS

BY PATRICK JAICOMO AND ANYA BIDWELL

Since IJ launched our Project on Immunity and Accountability in January 2020, a lot has happened. And as this issue of *Liberty & Law* shows, we have lots still going on. So it's worth surveying some of the many issues the Project is focusing on, what they have in common, and how they are different.

We start, where the Project did, with qualified immunity. The doctrine is the most well known of the judge-made immunity doctrines. It is also the most wide ranging, shielding all government workers—local, state, and federal—from constitutional accountability unless there is an earlier case involving the same facts to “clearly establish” that violating the Constitution is wrong.

IJ has been taking on qualified immunity since our very first Project cases, in which we represented an innocent Michigan college student who was beaten up

by federal task-force members and an Idaho woman whose home was destroyed by a police SWAT team even though she gave them a key to enter. Besides attacking qualified immunity head on in cases like our East Cleveland retaliation case (see p. 4), IJ is trying to expand exceptions to the doctrine and, as in our newly

launched cases in the 8th and 10th U.S. Circuit Courts of Appeals (see p. 12), stop the doctrine's expansion.

Next, there is federal immunity. This immunity comes in the form of courts making it very hard—or impossible—to sue federal officials simply because

they work for the federal government. Unlike qualified immunity, this doctrine is absolute. It doesn't matter if there is an earlier case; all that matters is a government worker's employer. This immunity actually laid the conceptual groundwork for the Project and was at play in our first Project case because the officers worked on a federal task force.

The key thing the Project on Immunity and Accountability aims to do is simple: ensure that every constitutional violation has a remedy in American courts.



Since launching our Project on Immunity and Accountability in January 2020, IJ has taken cases on behalf of a Michigan college student beaten by police, an Idaho woman whose home was destroyed by a SWAT team, an Ohio man facing retaliation for political speech, and many others.

PROJECT ON IMMUNITY AND ACCOUNTABILITY

Learn more at iam.ij.org/PIA

Since that initial case, we've challenged federal immunity on behalf of a 72-year-old veteran who was beaten by Veterans Affairs police for not handing them his ID quickly enough, a 16-year-old Somali refugee who was framed by a federal task-force member, and a Texas man who was threatened at gunpoint by a U.S. Department of Homeland Security agent after the man asked questions about the involvement of the agent's son in a drunken crash. And our work against federal immunity continues in our newly launched mask seizures case (see p. 10).

On top of these, there are different flavors of absolute immunity, including prosecutorial immunity and judicial immunity. These doctrines shield nearly every official act taken by a prosecutor or judge—no matter how obviously unconstitutional or intentionally malicious. We are challenging these doctrines by highlighting egregious abuses by prosecutors, as in our case against a Midland, Texas, prosecutor who moonlighted as an assistant to the judges in his

own cases for 20 years. We are also highlighting abuses by judges, as in a recent amicus brief we filed in a case in which a judge jailed two children during a custody dispute.

These immunities all interact and overlap. And there are, of course (and disappointingly), many other issues and immunities to fight. As we continue to expand our work in the Project, we will always keep you updated. The key thing the Project aims to do is simple: ensure that every constitutional violation has a remedy in American courts. We have come a long way in that fight in just a few years, but much more work must be done. Stay tuned. There are a lot of exciting things to announce in the coming months, and we will have a lot of victories to trumpet in the coming years.

Onward! ♦

Patrick Jaicomo
and Anya Bidwell are
IJ attorneys.



IJ is fighting back against all unjust government immunity doctrines, from the qualified immunity that protects all government workers to the absolute immunity that protects prosecutors and judges.



After the FBI raided a security deposit box company and seized the contents of hundreds of boxes, IJ stepped in to help innocent box renters get their property back. Now IJ has learned that the FBI planned long before the raid to permanently forfeit everything in the boxes.

IJ Uncovers Conspiracy by **Federal Cops** in California

BY MICHAEL GREENBERG

When it comes to civil forfeiture, we at IJ thought we had seen every kind of abuse. But the plot we exposed during our class action challenge to the FBI's raid of a California safe deposit box company astonished even us.

Devoted *Liberty & Law* readers will remember how this case began last year: When federal law enforcement suspected the company US Private Vaults of wrongdoing, it got a warrant to search its storefront and seize its business assets. But the FBI had no suspicion that any box renter had done anything wrong, which is why the warrant specified that it did "not authorize a criminal search or seizure of the contents of

the safety deposit boxes." In fact, the FBI promised that when its agents would open renters' safe deposit boxes, they would inspect them no more than needed to determine who the owner was to facilitate the contents' return.

But the FBI ignored that limitation. Instead, it rummaged through and seized the contents of every box even when the owner's name was printed on the outside of the box. It systematically ran cash found inside boxes past drug sniffing dogs. And rather than return property to many box renters, it moved to keep over \$100 million it seized in cash, precious metals, and jewelry through civil forfeiture.

Once IJ sued, we got all our clients' property back after handing

If this case confirms anything,
it is that civil forfeiture turns
cops into robbers.

the government a series of early judicial bludgeonings.

But we weren't done. The FBI created various records during its dragnet search, including notes, photographs, and videos depicting the contents of every renter's box. So IJ asked the court to declare that the government's actions violated the Fourth Amendment and to order the government to destroy all records created from its wrongful intrusion.

In pressing that claim, we uncovered something shocking. When questioned under oath, FBI officials admitted that they planned to take box renters' property through forfeiture months before the raid. The head of the forfeiture unit at the FBI's Los Angeles office testified that, before ever applying for the warrant, the FBI had determined it would move to permanently forfeit everything inside the boxes worth more than \$5,000. It made that determination without even knowing who the box renters were or what (if anything) they'd done wrong. And it hid this plan from the magistrate in applying for its warrant, claiming instead that it simply wanted to reunite renters with their property.

And, you might ask, why \$5,000? It turns out \$5,000 is the FBI's minimum monetary threshold for forfeitures as moving through the forfeiture process costs about that much in labor and paperwork. In other words, the FBI planned to forfeit the contents of every box so long as it would profit from doing so.

If this case confirms anything, it is that civil forfeiture turns cops into robbers. With the case now fully briefed, we expect that the court's decision will also confirm that the FBI's actions egregiously violated the Constitution—and serve as a stark reminder of federal officials' duty to respect Americans' property rights. ♦

Michael Greenberg is
an IJ attorney.



Two Big Boosts for IJ's Fight Against Taxation by Citation in Alabama and Delaware

Loyal *Liberty & Law* readers will recall the class action lawsuit IJ filed this past spring against the town of Brookside, Alabama. Brookside burst into the national spotlight after its revenue spiked over 600% in two years, with fines and forfeitures accounting for nearly half the town's budget. That increase—hundreds of thousands of dollars—largely flowed back to the town officials and departments that generated the increase.

Representing four victims of Brookside's policing-for-profit scheme, IJ filed a class action lawsuit against the town in April. The suit challenges Brookside's law enforcement system, which treats citizens like ATMs by extracting payment from individuals at every turn—for example, by charging them hundreds of dollars to recover their vehicles when officers order them towed for no reason.

That challenge got a big boost in late July when the U.S. Department of Justice filed a statement of interest in the case. Much like an amicus brief (see p. 14), the federal government's statement of interest offers its perspective on litigation in which it is not a party—and that perspective is firmly on IJ's side. Noting that “courts, prosecutors, and police should be driven by justice—not revenue,” the statement urges the Alabama federal court to deny Brookside's motion to dismiss IJ's lawsuit.

Meanwhile, IJ has been enjoying similar good news in our lawsuit against Wilmington, Delaware's outrageous tow-and-impound racket, which pays private tow companies by letting them keep and scrap cars when owners are unable to pay exorbitant impound fees. After IJ filed that lawsuit in September of last year, the government moved to dismiss. When the court held argument on that motion in July, it wasted no time in informing the government's lawyer that “of course” this case was going to move forward. As a result, IJ clients Ameera Shaheed and Earl Dickerson will finally have the chance to prove the town's towing scheme violates the Constitution's Takings and Excessive Fines clauses.

These encouraging early signs are good news for our clients and for everyone who believes in holding governments and officials accountable for violating constitutional rights. By drawing the attention of the DOJ and defeating government attempts to dismiss our cases, not only do we get a step closer to final victory, we also raise the profile of these issues and set important precedent that will make it that much easier for others who have had their rights violated to get their day in court. ♦

In July, the U.S. Department of Justice filed a statement of interest in support of **Brittany Coleman** (left) and others challenging an outrageous fines and fees scheme in Brookside, Alabama. Also in July, IJ learned that **Ameera Shaheed** (middle) and **Earl Dickerson's** (right) case against Wilmington, Delaware's abusive towing practices will go forward.



OAKLAND ENTREPRENEUR AND ACTIVIST

Fights Federal Immunity

BY JABA TSITSUASHVILI

When the Founders gave Congress the power to “establish Post Offices,” they didn’t mean for those offices to become Constitution-free zones. The Fourth Amendment’s protection against unreasonable searches and seizures means that postal officials, like all government agents, need facts suggesting that our mail contains illegal or dangerous items before they can snatch it.

But IJ client René Quiñonez came to learn how easily postal officials can violate our right to privacy in our mail—and how hard it is to seek accountability when they do. That’s because the U.S. Supreme Court has cloaked federal officials with near-absolute immunity from constitutional lawsuits, no matter how egregiously they violate our rights.

René and his family have spent years building Movement Ink, a small screen-printing business well known in California’s Bay Area for its commitments to providing high-quality products and promoting social causes. They print logos and slogans on everything from hoodies to onesies. So when national protests arose in the summer of 2020, over the police killings of George Floyd, Breonna Taylor, and others, René’s reputation resulted in orders from protesters around the country for thousands of COVID-protective masks emblazoned with protest speech.

For days, René, his employees, his family, his community, and even his competitors worked around the

clock to cut, print, press, and pack nearly 10,000 masks bearing messages like “Stop Killing Black People.” René barely slept. But these weren’t typical orders. They were a labor of love—René’s way of standing up and speaking out.

He shipped the packages express; they were supposed to arrive within a day. But instead of delivery notices, René and his clients received a cryptic alert: “Seized by Law Enforcement.” No one explained why these cloth masks were in the hands of federal police instead of on the

faces of political protesters. It took an official inquiry from René’s congresswoman and a monthslong Freedom of Information Act process to get any answers. And those answers confirmed that the plain brown boxes were seized for no reason—there was no basis to suspect René, Movement Ink, or his clients of any wrongdoing.

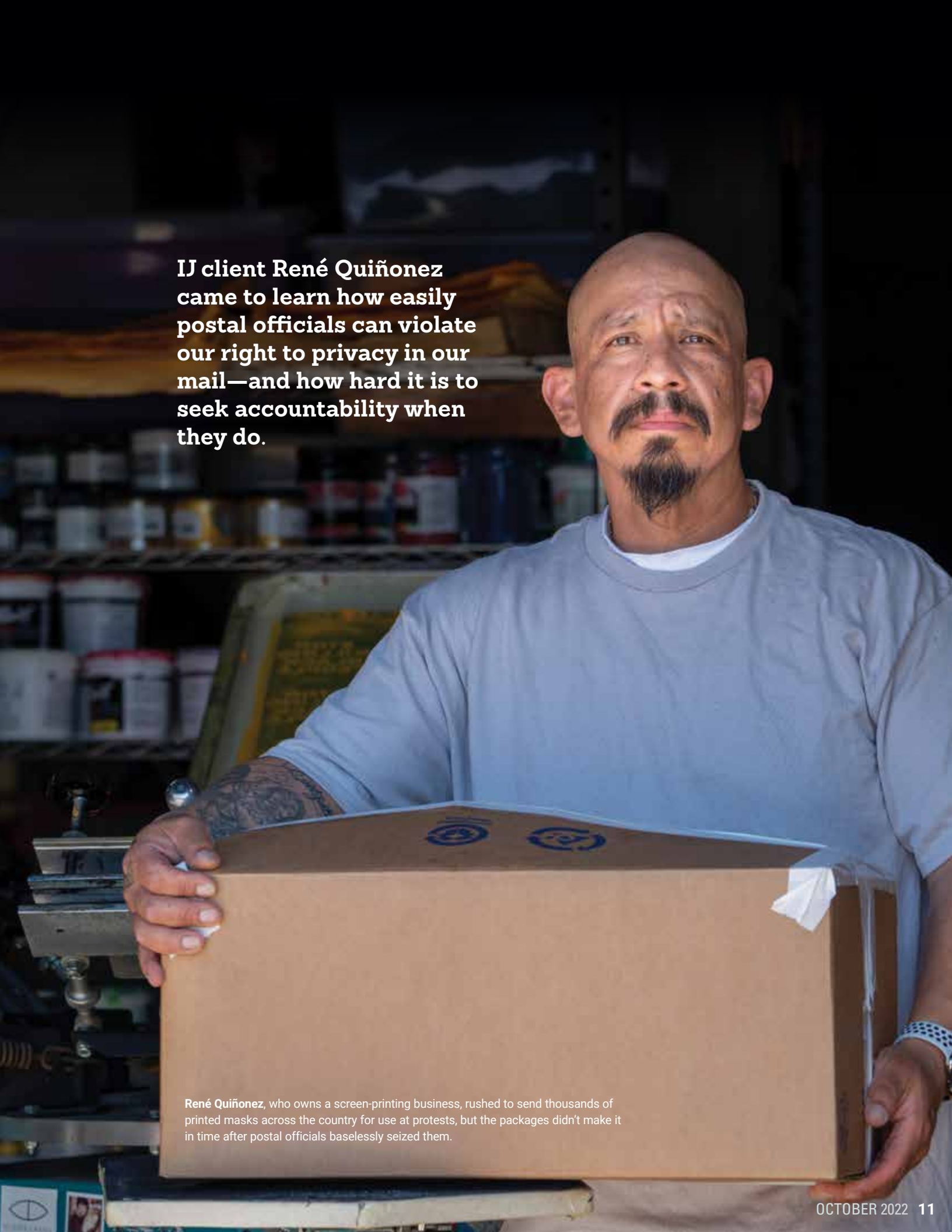
But the damage was done.

The seizures cast a pall of uncertainty around René. In one day, the postal officials’ suspicionless seizures dashed years of his reputation-building—and put the kibosh on plans for ongoing nationwide distribution of protest apparel.

To ensure that no other small-business owner—or anyone else—endures what René has, he’s teamed up with IJ to sue the officials responsible for unconstitutionally seizing his property, tarnishing his reputation, and harming his business. But because the officials work for the federal government, they’re cloaked by the Supreme Court’s



Mail Seizure continued on page 18

A man with a goatee and tattoos, wearing a light blue t-shirt, holds a large cardboard box in front of him. He is in a workshop or warehouse setting with shelves of supplies in the background. The lighting is dramatic, with strong highlights and shadows.

IJ client René Quiñonez came to learn how easily postal officials can violate our right to privacy in our mail—and how hard it is to seek accountability when they do.

René Quiñonez, who owns a screen-printing business, rushed to send thousands of printed masks across the country for use at protests, but the packages didn't make it in time after postal officials baselessly seized them.

IJ Fights Underhanded Expansion of QUALIFIED IMMUNITY

BY ANYA BIDWELL AND PATRICK JAICOMO

When the U.S. Supreme Court created qualified immunity in 1982, it was making policy, not law. And the policy it was trying to enact through its decision in *Harlow v. Fitzgerald* was intended to fix what the Court perceived to be a threat—officials being reluctant to do their jobs because of the fear of lawsuits. The Justices acknowledged that they were fundamentally grappling with “two evils.” On the one hand, they would be denying a remedy to victims of unconstitutional conduct. On the other hand, they were worried about deterring government workers from doing the government’s business.

To balance those concerns, the Supreme Court created qualified immunity to protect government officials from lawsuits, but it limited the defense to officials acting within the scope of their duties. In other words, qualified immunity was not supposed to be available simply because you worked for the government. It was supposed to be available only

when you were doing your work for the government—within the limits of your job description. Until now.

Over the past four years, two federal courts of appeals—the 8th and 10th Circuits, which control the law in 13 states between Minnesota and New

Mexico—have unbalanced the Supreme Court’s scale. These courts now apply qualified immunity to government officials just because they happen to work for the government. Even those officials who are off duty or doing something that is not their job are now protected.

Being IJ, we dove enthusiastically into the mess these two circuits created so that we could start the important work of cleaning it up. This summer, we launched cases challenging this expansion of qualified immunity in both circuits.

In the 10th Circuit, we brought a challenge against an off-duty police officer who was granted qualified immunity in New Mexico after a road rage incident that ended with the officer pointing a gun at



An off-duty New Mexico police officer threatened **Mario Rosales** with a gun in a fit of road rage, but a court granted the officer qualified immunity. Now IJ is helping Mario fight back in the 10th U.S. Circuit Court of Appeals.

Qualified immunity is not needed to shield
well-meaning, duty-enforcing officials.
There are other robust protections to do just that.

our innocent client, Mario Rosales. After Mario legally passed the off-duty officer on a highway, the officer chased Mario to his home. Wearing flip-flops, and with a child in his passenger seat, the officer blocked Mario's driveway with his truck, shouted profanities at him, and pointed his gun in Mario's face. Although the officer was ultimately fired and convicted of two felonies, the lower court granted him qualified immunity from Mario's constitutional claims.

In the 8th Circuit, we're fighting a grant of qualified immunity to a Minnesota county engineer who acted like a traffic cop when he stopped two trucks traveling on a highway because he had a personal grudge against the trucks' owner. The engineer even admitted that he had no authority

to perform traffic stops, but the court of appeals granted him qualified immunity anyhow. We are now challenging this decision at the U.S. Supreme Court.

Harlow v. Fitzgerald is a bad decision. Qualified immunity is not needed to shield well-meaning, duty-enforcing officials. There are other robust protections to do just that. So the last thing the courts should be doing is expanding qualified immunity beyond what it was ever intended to do. IJ's Project on Immunity and Accountability is here to ensure they don't. ♦

Anya Bidwell and Patrick Jaicomo are IJ attorneys.



In Minnesota, IJ has teamed up with **Allan Minnerath** and his trucking company to challenge qualified immunity for a rogue county traffic engineer who pulled over and detained Allan's truck drivers without any authority to do so.



IJ's “Friendly” Oral Arguments

BY ROB JOHNSON

Earlier this year, I traveled to Richmond, Virginia, to present oral argument on IJ's behalf in a federal appellate court—the 4th U.S. Court of Appeals—even though IJ was not representing any of the actual parties in the case. I was there with the court's approval as what is called an “amicus curiae,” or “friend of the court.”

That's not a typical experience. While some

organizations are frequent amicus filers, at IJ we generally litigate our own cases. Doing so allows us to select the best clients with the best facts, and it helps ensure that judges actually listen to our arguments. We know that judges often ignore amicus briefs, so we are careful to put ourselves forward as an amicus only when we believe it will make a real difference.

My experience was also unusual in another sense. Even organizations that file reams of amicus briefs are rarely invited to participate at oral argument. Typically, argument is reserved for the parties.

Yet, perhaps because IJ is selective about when to appear as an amicus, several of our recent amicus filings have garnered argument time. Around the time

that I made my trip to Richmond, IJ Attorney Ben Field argued as an amicus in the Nevada Supreme Court, in a case about whether courts should allow victims of constitutional violations to sue for damages (we argued that they should). And IJ Attorney Josh House argued as an amicus in the Michigan Supreme

Court, in a case about whether courts violate the Constitution by self-funding through costs imposed on criminal

defendants (we argued that they do).

These “friendly” oral arguments are a sign of IJ's reputation, both with judges and with other lawyers. In the Richmond case, the lawyer for one of the parties agreed to give IJ half her time at the podium. The government then opposed our participation, arguing that “it is hard to fathom why the Amicus believes its participation is necessary.” The judges evidently disagreed as they granted IJ's motion to participate over the government's objection.

To paraphrase the government, we “believed our participation was necessary” because we had something important to say. The case involved the government's attempt to use civil forfeiture against

Even organizations that file reams of amicus briefs are rarely invited to participate at oral argument. Typically, argument is reserved for the parties.

These “friendly” oral arguments
are a sign of IJ’s reputation,
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and with other lawyers.

a man who was found passed out in his car with a bottle of Hennessy by his side and over \$69,000 in his trunk. Not exactly an “I am IJ” poster. And yet the case nevertheless raised an important issue—specifically, whether the government should be required to come forward with actual evidence of wrongdoing in a civil forfeiture case. You can guess our position.

And the 4th Circuit agreed. Echoing IJ’s arguments, the court rejected the government’s contention “that lawful citizens do not carry around large amounts of cash that are rubber-banded and bundled.” Rather, “not using a bank does not necessarily make one a criminal.” That holding is one we will be citing in IJ’s own forfeiture cases, and it will help to better secure all Americans’ property rights.

That is precisely the kind of real, tangible difference IJ aims to make with its amicus work. ♦

Rob Johnson is an
IJ senior attorney.



ENGINEERING A FREE SPEECH VICTORY in the Grand Canyon State

The first step to getting a court to protect your rights is getting a court to hear your case. A recent decision from the Arizona Supreme Court in our engineering case there makes it easier for people to get into court and frees us to continue our challenge.

Almost three years ago, IJ sued the Arizona Board of Technical Registration, the administrative agency that regulates “engineering,” because it was threatening Greg Mills’ constitutional rights to truthfully call himself an engineer and continue his engineering work at his own company.

But the Board said Greg wasn’t allowed to sue it, not now and maybe not ever. Instead, invoking “administrative exhaustion,” the Board argued Greg had to wait until the Board followed through on its threats. Only *if* the Board, which acts as both prosecutor and judge, chose to find Greg guilty *might* he then be allowed “to appeal” the decision to the courts. The lower courts went along, meaning Greg had no guarantee that a court would ever hear his constitutional challenge.

But the Arizona Supreme Court reversed, holding that forcing Greg to wait for the Board to finish prosecuting him “would be pointless because the Board is powerless” to determine Greg’s constitutional rights—that is what real courts are for. Moreover, because the Board’s threats gave Greg a “real and present need to know whether” the laws he challenged were unconstitutional, most of Greg’s claims were also “ripe” for judicial review.

The ruling makes it harder for agencies to prevent people from going to court when their rights are threatened. And we will shortly return to the trial court to defend Greg’s constitutional rights from the Board’s threats. ♦

IJ client **Greg Mills’** recent Arizona Supreme Court win will make it easier for Arizonans to challenge unjust licensing board decisions.





A Long-Overdue Victory Celebration in Charlestown, Indiana!

BY JEFF ROWES

Every case has its defining moments. An epic launch covered by national media. Finding a rare smoking gun among thousands of documents. A heartbreaking setback you vow to reverse on appeal. Answering a key question at oral argument that sways the court to your side. And then there's the sweetest of all: The victory party with your clients.

In June, we had our too-long-delayed victory party in Charlestown, Indiana. You may remember our five-year fight to save dozens of client homes from the developer's bulldozer after the mayor promised to use eminent domain to demolish a historic WWII-era neighborhood. Our clients—the most we've ever represented in one case—were low-income folks, many of them senior citizens on a fixed income. We pulled out all

the stops: filing a lawsuit, running commercials on local TV, protesting the developer at the stadium where his pro soccer team plays, and even intervening in a separate federal case in which the town's insurer was suing the town so it didn't have to pay for the illegal shenanigans we'd uncovered.

The case ended in late 2019, but our original victory party was canceled because of the pandemic. But it was worth the wait when, in June, we finally gathered at the American Legion hall to enjoy a hearty dinner of Chick-fil-A and potluck dishes. It was wonderful to experience the joy and gratitude of so many people who'd become more than clients—they are our friends for life. We reminisced, joking about kids now in college who were in elementary school when IJ first came to town in 2014. We also remembered those who passed away

Charlestown residents gathered for a pandemic-delayed party to celebrate saving their neighborhood from eminent domain abuse. Pictured below are IJ clients **Tina Barnes** (left), **Ellen Keith** (middle), and **Missy Crawford** (right).



David and Ellen Keith in front of their home, which still stands after IJ helped shut down the mayor and a developer's plan to bulldoze their neighborhood.



during the fight, taking some comfort in knowing that they were where they belonged until the end: in the homes they loved.

Perhaps the most poignant moment was heading to David and Ellen Keith's home after the party. In our case launch video, Ellen said, "We're going to be on this hill when this battle is over, in this yard." There is nothing quite so satisfying as a cold beer on a hot summer night, standing on top of the hill in your clients' yard, victorious, after the battle is over. ♦

Jeff Rowes is an IJ senior attorney.



Missy Crawford (left) and Nancy Ennis (right) enjoyed a celebration with their neighbors after defeating a scheme by the town mayor and a developer to destroy their neighborhood.



New Elfie Gallun Fellow in Freedom and the Constitution: Attorney Josh Windham



IJ is proud to announce our newest Elfie Gallun Fellow in Freedom and the Constitution. In July, Attorney Josh Windham succeeded Attorney Anya Bidwell to become IJ's fourth Elfie Gallun Fellow.

Longtime IJ supporters Elfie and Ned Gallun established this prestigious fellowship in 2014. Elfie's early life story, a grim tale of the horrors of totalitarian rule, greatly influenced her deep appreciation for freedom and inspired her to launch the Fellowship. Having already suffered in Hitler's Germany, she narrowly escaped imprisonment in Stalin's East Germany at age 19 by fleeing to West Berlin—crossing a river in the dark of night to reach freedom.

"Most Americans have always known freedom," says Josh. "Elfie's story offers a crucial reminder, both of how fragile liberty truly is and of the moral courage needed to preserve it."

Since starting at IJ in 2016, Josh has worked to defend economic liberty and property rights. In 2020, he secured a major Pennsylvania Supreme Court victory holding that the Commonwealth's constitution demands greater protection for economic liberty than the U.S. Constitution. Josh is also a leader of IJ's Project on the Fourth Amendment. As IJ's Elfie Gallun Fellow, Josh will publish and speak about vital constitutional rights that protect our most essential freedoms.

Elfie passed away on January 22, 2019, in Hartland, Wisconsin—where she made her home for 50 years. We are honored to carry on her legacy of courage and unwavering commitment to freedom through the Elfie Gallun Fellowship. ♦

New IJ Civil Rights Tool Tips the Scales Toward Government Accountability

BY LISA BERGSTROM

Readers of *Liberty & Law* know all too well that if you sue a government official for violating your rights, you'll often need to overcome qualified immunity—a judge-made legal doctrine that shields officials of all kinds from accountability—as well as other barriers to accountability under state laws. These doctrines rig the system in favor of government agents and, when combined with the already formidable resources of the government, mean many victims of government abuse never even get their day in court.

Enter Constitutional GPA: IJ's new interactive online tool aimed at leveling the playing field between the government and those seeking to vindicate constitutional rights. Constitutional GPA grades state courts and federal courts of appeals on their immunity practices and is a powerful, first-of-its-kind tool that ordinary people and attorneys can use to identify the clearly established law necessary to defeat qualified immunity in their case. For example, if a government agent in Nevada searches a person's car without justification, the person or their attorney can, by answering just a few simple questions, easily search our database of more than 2,300 cases to find 11 legal decisions clearly establishing a range of relevant constitutional violations.

After a year and a half of research and analysis, IJ unveiled Constitutional GPA with a special event at the UCLA School of Law in July. Participants enjoyed a walkthrough of the tool and its findings as well as a Q&A with one of IJ's newest clients seeking to overcome government immunity: René Quiñonez, who is suing five postal inspection workers for baselessly seizing and searching packages he shipped to fulfill orders for his busy screen-printing business (see p.10). The launch ended with a live taping of IJ's Short Circuit podcast featuring a panel of civil rights lawyers and law professors.

Constitutional GPA is part of IJ's Project on Immunity and Accountability, which is dedicated to overturning qualified immunity and other legal doctrines that place government workers above the law. You can access Constitutional GPA at ij.org/gpa. ♦

Lisa Bergstrom is IJ's digital communications manager.



Is your government preventing accountability?

Mail Seizure continued from page 10

ever-expanding grant of near-absolute immunity from accountability. Just this summer, the Court made it even harder to sue federal officials and then proceeded to deny IJ's efforts to seek accountability on behalf of Hamdi Mohamud (who spent two years of her youth imprisoned because of an officer's lies) and Kevin Byrd (who was nearly killed by an off-duty officer).

The Court insists this is Congress' problem to solve. We think a provision of federal law known as the Westfall Act already provides for constitutional remedies against federal officials, and we will be pressing that argument in René's case. Otherwise, the Court's grants of immunity embolden federal officials to act with impunity. So, despite setbacks, IJ and René remain committed to reviving the bedrock principles that where there is a constitutional wrong there must be a remedy and that no government official is above the law. ♦

Jaba Tsitsuashvili is an IJ attorney.



IJ and René are fighting against the expansion of immunity for more and more officials.



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I started my health coaching business to share my love
of fitness and nutrition with others.

But when I moved to Florida, the state told me
that giving unlicensed advice is a crime.

I am standing up for my
First Amendment rights.

I am IJ.