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UNANIMOUS
SUPREME COURT VICTORY!
FOR VICTIMS OF FBI WRONG-HOUSE RAID

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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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UNANIMOUS SUPREME COURT VICTORY!

FOR VICTIMS OF FBI WRONG-HOUSE RAID

IJ clients **Toi Cliatt** (left), 14-year-old **Gabe** (center), and **Trina Martin** (right) can continue seeking justice for a wrongful FBI raid on their home after IJ's U.S. Supreme Court victory.

BY PATRICK JAICOMO

On June 12, the U.S. Supreme Court decided the FBI wrong-house raid case *Martin v. United States*, earning IJ our third high court victory since 2024. The unanimous decision, written by Justice Neil Gorsuch, holds that an innocent family—Toi Cliatt, Trina Martin, and Trina's now-14-year-old son, Gabe—can continue their fight to hold the FBI accountable for raiding their home.

When Gabe was just 7, an FBI SWAT team smashed in his family's door; detonated a grenade in their house; and held him, his mother, and her then-partner at gunpoint before realizing they were in the wrong place. The SWAT commander blamed the mistake on his personal GPS device but conveniently threw it away before it could be analyzed. Worse still, as Justice Gorsuch observed, "the agents neither noticed the street sign ... nor the house number, which was visible on the mailbox at the end of the driveway." If they had, the mistake would have been averted.

The Martin family sued the FBI under a statute called the Federal Tort Claims Act (FTCA), which is supposed to provide a remedy for these sorts of mistakes by federal agents and employees. Indeed, the act was amended in the 1970s specifically to address federal wrong-house raids. The lower courts nevertheless dismissed the family's claims, holding that the officers were exercising "discretionary functions" or were otherwise shielded by sovereign immunity supplied by the Constitution's Supremacy Clause.

To increase federal accountability, IJ teamed up with the Martin family and asked the Supreme Court to revive their FTCA claims. We won.

Siding with IJ over the federal government, the Court unanimously explained the Supremacy

Clause does not apply to the FTCA. The Court did not, however, reject the "discretionary function" argument. Instead, it did the next-best thing.

Underscoring the weight of IJ's arguments, the Supreme Court ordered the 11th Circuit to conduct a "careful reexamination of this case." Only then, the Supreme Court explained, could it address the discretionary-function exception and decide whether that "may ever foreclose a suit like this one." And Justices Sotomayor and Jackson concurred but wrote separately "to underscore that there is reason to think the discretionary-function exception may not apply to these claims."

When it comes to federal accountability, reforming the FTCA's discretionary-function exception has long been atop the list of priorities for our Project on Immunity and Accountability. Although intended to have limited effect, the exception has metastasized into one that swallows the rule of the FTCA. Rather than limit the exception to matters of policymaking, most courts have simply used it to shield all discretionary acts by government, which threatens nearly every FTCA case. That's wrong—and IJ is poised to explain why as the case proceeds in circuit court.

The Supreme Court's ruling in *Martin* gives us the opportunity to fix this important area of the law. It also marks the end of another great term for IJ at the high court. *Martin* joins our retaliatory arrest win in *Gonzalez v. Trevino* and our takings victory in *DeVillier v. Texas* as our third victory in just 14 months.◆

Patrick Jaicomo is an IJ senior attorney and co-leader of IJ's Project on Immunity and Accountability.

TO INCREASE FEDERAL ACCOUNTABILITY, IJ TEAMED UP WITH THE MARTIN FAMILY AND ASKED THE SUPREME COURT TO REVIVE THEIR FTCA CLAIMS. WE WON.

IJ's case team joined **Toi**, **Gabe**, and **Trina** (front row, left to right) outside the Supreme Court building after the argument that led to our 11th high court win.

Closing The Open Fields Doctrine
IN ALABAMA

Our case representing **Dalton Boley** and his three boys (top) and **Dale Liles** (bottom) joins similar IJ cases in Louisiana, Pennsylvania, Tennessee, and Virginia aimed at ensuring Americans can enjoy the peace and privacy of private land without warrantless government trespassing.

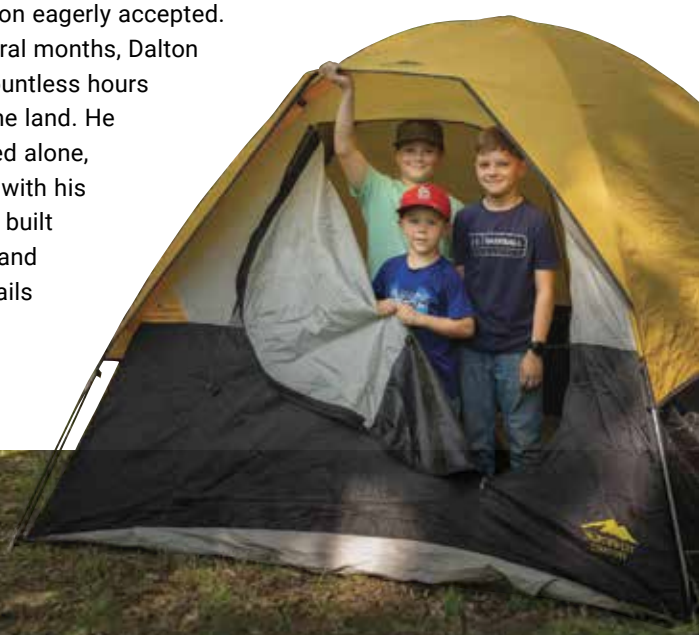
BY JOSHUA WINDHAM

Dalton Boley thought he had finally found a sanctuary. A combat veteran with PTSD and the father of three young boys, what Dalton needed more than anything else was nature—a place to play and to relax in peace. And until Alabama wildlife officers entered the picture, Dalton thought he had found it.

A couple years ago, Dalton moved to Killen, Alabama—a small town with lush forests and private, friendly people. He quickly became good friends with his neighbor Regina Williams, who had lived on the land next door all her life. As a little girl, Regina and her siblings used to play in the 10 acres of woods behind her house. Now in her 60s and facing health problems, Regina can't enjoy her land the way she once did.

But she wants *somebody* to. And that's where Dalton and his boys come in. After Dalton helped Regina with some work around her property, she granted him permission to use her land as he pleased as long as he maintained her "no trespassing" signs and helped keep intruders out.

Dalton eagerly accepted. For several months, Dalton spent countless hours out on the land. He meditated alone, camped with his children, built walking and biking trails



Whatever the Supreme Court thinks about the Fourth Amendment, every state has its own constitution with independent—often textually different—protections against unreasonable searches.

by hand, and allowed his boys to play unsupervised in the woods.

In February 2024, that all changed. For reasons currently unknown, two wildlife officers from the Alabama Department of Conservation and Natural Resources entered Regina's and Dalton's woods without permission, roamed around, and even tampered with one of Dalton's trail cameras. Dalton learned about the intrusion because another one of his cameras caught the officers in the act. And he later learned that the officers had been on the property several other times.

Officials did not have Dalton's consent, Regina's consent, or a warrant to enter the land at any point. Worse, Alabama has a statute that grants wildlife officers the power to "enter upon any land" *without* a warrant. So the officers can come back again and again for any reason they please. That threat has shattered the peace Dalton and his boys used to enjoy.

But is any of this constitutional?

No. In 1924, the U.S. Supreme Court held that the Fourth Amendment's protection for "persons, houses, papers, and effects" does not apply to so-called open fields, an odd term that a recent IJ study found describes nearly 96% of all private land in the country. But, whatever the Supreme Court thinks about the Fourth Amendment, every state has its own constitution with independent—often textually different—protections against unreasonable searches.

Alabama is a great example. The Alabama Constitution forbids "unreasonable" searches of "possessions." Although the Alabama Supreme Court has not yet decided what that means, courts in states with similar text have. Neighboring Mississippi's Supreme Court has long held that possessions include land. And just north in Tennessee, the court of appeals recently—in an IJ case—confirmed the same.

Because there is no reason why Alabamians deserve any less protection on their land than do their neighbors in Mississippi, Tennessee, and other states, Dalton and Regina have partnered with IJ to protect their land—both from Alabama's warrantless entry statute and from the open fields doctrine on which it rests. It's time to close the open fields doctrine in Alabama.◆

Joshua Windham is an IJ senior attorney and the co-leader of IJ's Project on the Fourth Amendment.

Watch the case video!
iam.ij.org/AL-fields

Hungry Customers Can Now Find Their Favorite Food Trucks

BY ROBERT FELLNER

Tony Proctor is a Marine veteran and pastor who relies on his food truck to earn a living. Tony operates his food truck in his hometown of Jacksonville, North Carolina, where his neighbors and fellow residents sometimes wait in line for hours just to get their hands on Tony's "good mood food." Although customers love Tony's food, the city government is less welcoming. In response to lobbying efforts by local restaurants, Jacksonville imposed a series of onerous regulations on food trucks, which has made it almost impossible for food trucks to operate.

One such burdensome regulation can be found in Jacksonville's decision to ban food trucks—and only food trucks—from using the same kind of signage the city otherwise allows for other commercial uses.

This signage ban was devastating for Tony, who, like all food truck operators, relies on effective signage to help customers find his truck. So this spring, IJ traveled to Jacksonville to ask a state court to enter an order that would allow Tony to use the same kinds of signs Jacksonville allows other businesses to use. Upon arrival, I explained all this to my Uber driver. After listening patiently, the driver responded, "I love going to food trucks, but the only problem is you never know where to find them." And that's exactly why they need to be able to use signs!

Thankfully, the court agreed and issued an order that allows Tony to use effective signage so that his customers know where to find him. The most remarkable part of the hearing is the fact that the city never even tried to justify its signage ban; it instead just argued that it has the power to ban signs, and the reason ultimately shouldn't matter.

But that's just wrong. If the government is going to deny someone their constitutional rights, it needs a good reason for doing so. That is, after all, the whole point of having constitutional rights in the first place.◆

Robert Fellner is an IJ attorney.

Following IJ's win, customers will be better able to find **Tony Proctor**'s Florida-style seafood truck, The Spot, for some "good mood food."

IJ Saves Donut Mural,

Shows Town's Argument Was Full Of Holes

BY ROB FROMMER

Here's some tasty news from New Hampshire: Leavitt's Country Bakery just won its fight to keep its donut mural. And the town of Conway just got a First Amendment beatdown it won't soon forget.

At IJ, we regularly square off against crusty officials who think they can police speech or art based on what it depicts. But what happened in 2022 really took the cake. Sean Young, the bakery's owner, let local high school students paint a mural for their senior project. The students whipped up a colorful mountain landscape made of donuts and muffins, with sunbeams rising behind them.

Sean Young owns Leavitt's Country Bakery.

Customers ate it up. But the town's zoning officer? Not a fan.

He served up a citation, declaring the mural an illegal "sign." Why? Because, as the town explained, "what makes it a sign is the pastries." If the students had painted covered bridges and sunflowers, no problem. The officer even said they could've painted "The Town of Conway Hates High School Art Students." But painting baked goods—the very thing Leavitt's sells—meant the mural had to go.

Once IJ got involved, we learned this half-baked scheme had been going on for decades. The sign code was written so broadly that it covered everything, so officials had cooked up their own rule: If a mural "represented what was being sold inside," they'd call it a sign.

But as the town admitted, a mural's safety or appearance doesn't depend on whether it shows pastries or petunias.

We asked Conway to back off and leave the mural alone. The town refused. So we went to trial in February 2025. Three months later, the court served a scalding decision in our favor. Conway's enforcement, it held, "would not pass any level of scrutiny." In plain terms: Conway's censorship wasn't just unconstitutional—it was legally incoherent. The town's arguments crumbled under the record we built.

This victory means the kids' mural stays up. Permanently. And it's another victory in IJ's broader effort to ensure that officials can't cherry-pick who gets to speak and what messages are allowed.◆

Rob Frommer is an IJ senior attorney.

Don't Mess With Texas Parents

Yearslong Effort Culminates In Historic Educational Choice Victory

BY SYDNEY TRAVIS

Educational freedom is finally coming to the Lone Star State! Families in Texas will now be able to choose the best educational option for their children, regardless of income or ZIP code, thanks to the recent enactment of an Education Savings Account (ESA) program.

This momentous victory was made possible by a yearslong, boots-on-the-ground movement by IJ's activism team and our coalition of over 1,000 Texas parents fighting tirelessly on behalf of their children.

Texas' ESA will be the largest rollout of an educational choice program in the nation's history, with more families eligible to participate from day one than in any other state at the time of program creation—empowering thousands of families to take control of their children's education.

ESAs are a form of educational choice that provide funds for a wide variety of educational expenses. For families with means, the ability to pay for alternative education when their child's school is failing to meet their needs has always been available. But for low-income families, educational options often remain out of reach due to high costs. Now all Texas families will be eligible to apply for the program to cover costs like private school tuition, home-school materials, special-needs therapies, tutoring, trade programs, school supplies, and more. If demand exceeds supply, lower-income families and children with special needs will take priority.

Over the past four years, IJ helped turn scores of parents into educational choice activists; hosted 30 events and webinars across the state; shared powerful research and family stories with lawmakers; and brought families on over 20 trips to lawmakers' district offices and the Capitol in Austin to advocate on behalf of families across the state who need better educational options for their kids.

For Texas parent Shinara Morrison, the program will provide her son—whose learning needs were not met by his local public school—the opportunity to attend a private school where he can thrive under more personalized instruction. For Faithe Guerrero, the program

With the enactment of Texas' ESA, more than half of all children in the country now live in a state with an educational choice program.

IJ's activism team built a coalition of more than 1,000 Texas parents to push for more educational options for families.

will help offset the cost of home-school curriculum expenses and provide more learning opportunities for her children. And for father and veteran Hector Soto, the program will help cover tuition for his autistic son to attend a private school specifically tailored to students with special needs.

These are just three of the thousands of families who will now have access to the program. And this marks a milestone for educational freedom: With the enactment of Texas' ESA, more than half of all children in the country now live in a state with an educational choice program.

IJ's strong commitment to protecting the educational freedom of families throughout the nation helped make that possible. And when the program is undoubtedly challenged in court by opponents of choice, IJ and our partners at EdChoice will be there—alongside Shinara, Faithe, and Hector—to defend it every step of the way.◆

Sydney Travis is an IJ activism coordinator.

IJ's Education Innovation Work Heats Up

IJ has always defended two distinct bedrock rights: (1) families' right to direct their children's education in the setting most appropriate for them and (2) people's right to use their property free from arbitrary government restrictions. In a recent victory, we tackled encroachments on both of those rights—in record time.

This spring, IJ met Denise Lever, founder of a rural Arizona microschool. Microschools are small learning communities that serve as a child's primary education or supplement their homeschooling. The microschool movement flourished in the wake of the COVID-19 pandemic—and especially so in Arizona following passage of a universal scholarship program.

Denise started Baker Creek Academy against that backdrop. With three other instructors, she serves about 50 students total. For three years, Baker Creek operated without issue. Until, that is, the state fire marshal's office threatened to crush Denise's model under regulations designed for traditional schools serving hundreds or thousands of students.

After an inspection in April, state fire deputies signaled that they would demand tens of thousands of dollars in building upgrades to match full-fledged public school requirements. All this even though *local* fire and building officials had long since approved Baker Creek's opening.

Enter IJ. We sent a letter questioning the basis for the inspection. The state quickly backed down, claiming the threats to Baker Creek were mere "confusion." A subsequent response to an IJ public records request revealed officials' worries that enforcement would trigger a lawsuit.

It would have.

As the leader in defending choice in education, we were prepared to sue on behalf of Baker Creek. And we'll remain the first line of defense for "edupreneurs" against outdated and ill-fitting regulations.◆

IJ FIGHTS ANOTHER BOGUS BLIGHT DESIGNATION

Honey Meerzon (far right) and **Luis Romero** (above) have joined with IJ to protect their properties—and the tenants and employees who depend on those properties.

BY BOBBI TAYLOR

The word "blight" conjures up images of dilapidated buildings or dangerous collapsing structures—not a few pieces of trash or a stray cat. But in Perth Amboy, New Jersey, the latter may be enough for the government to take your property. Because that's ridiculous, not to mention unconstitutional, two property owners have teamed up with IJ to fight back.

Honey Meerzon's family fled religious persecution in the Soviet Union. Almost a decade ago, after leaving a troubled relationship, Honey bought a four-family apartment building in Perth Amboy. Since then, Honey's apartments have been home to families who have come to rely on their affordable rent and proximity to their jobs. Honey has spent hundreds of thousands of dollars upgrading and maintaining the building over the years.

Next to Honey's property is Quick Tire & Auto, owned by Luis Romero. After fleeing communist Cuba at a young age with his family, Luis learned how

to fix cars. He has operated his business successfully for decades.

Honey and Luis see these properties as evidence of their hard work, their legacy for future generations, and their pieces of the American Dream. Their families escaped oppressive government regimes; they thought that surely in America their property rights would be respected.

But Perth Amboy has other plans. The city is threatening to take Honey's apartments and Luis' shop using eminent domain—not because there's anything wrong with them, but because it wants them as part of a new private development.

New Jersey law allows governments to take properties using eminent domain for private development as long as they are "blighted." So Perth Amboy simply designated these properties as such. But Honey's and Luis' properties aren't blighted. The city doesn't point to any evidence of actual blight. Instead, it relies on transitory conditions like minimal amounts of litter and the presence of a stray cat—or features common to the entire area like smaller driveways or setbacks. The city doesn't even assert that the properties themselves are dangerous or dilapidated.

This cannot be what New Jersey lawmakers had in mind when they sought to clean up blight.

If the city's land grab is successful, Honey's tenants will essentially be homeless; Luis' employees will be out of work; Honey and Luis will both lose their properties; and virtually any property in Perth Amboy will be at risk for taking by eminent domain.

IJ is no stranger to bogus blight. We successfully defeated Charlestown, Indiana's attempt to bulldoze dozens of homes in a working-class neighborhood, and we're currently fighting similar cases in Brentwood, Missouri, and Ocean Springs, Mississippi.

But this latest case in New Jersey has a special legacy in IJ litigation. We've twice prevailed against attempts to hand private homes in Atlantic City over to casino redevelopment authorities—and successfully challenged a blight designation in Long Branch. Perth Amboy is defying clear precedent.

Now we're back to finish what we started: to protect New Jersey property owners from eminent domain abuse. Together with Honey and Luis, we aim to get a New Jersey court to reject bogus blight designations once and for all.◆

Bobbi Taylor is an IJ attorney.

From Bogus Blight To Pretextual Parks:

Towns Try New Ways To Dodge Property Protections

Bogus blight designations aren't the only way governments try to get around protections against eminent domain abuse. Increasingly, IJ sees towns using parks as pretexts to stop disfavored development.

You may remember our case on behalf of the Brinkmann brothers, who wanted to open a new location of their small Long Island hardware store chain. When Southold's attempts to stop the Brinkmanns failed, the town turned to eminent domain, demanding the Brinkmanns' land for a "passive park"—in other words, a vacant wooded lot.

Another pretextual park is at the center of one of IJ's latest eminent domain cases, this time on James Island, South Carolina. Kyle Taylor is an Island native who bought a narrow strip of land and got sign off from the town's Planning Commission to turn it into a mixed residential and commercial property.

But the Town Council, prompted by residents who oppose development, vetoed Kyle's plan. After Kyle spent over $100,000 to address concerns, James Island started eminent domain proceedings to take his land for a park.

But that is only a pretext. In fact, the town's only plan for the proposed park was a pencil sketch it created *after* deciding to pursue eminent domain.

After the Supreme Court's reviled *Kelo v. New London* ruling, IJ spurred almost every state to enact protections against eminent domain abuse. Like bogus blight designations, pretextual parks give governments a way to bypass those protections. So IJ and Kyle are fighting back with a new lawsuit to stop pretextual parks from facilitating eminent domain abuse across the country.◆

From The Classroom TO THE COURTROOM

BY BEN FIELD

It would be tempting for IJ staff to focus solely on the pressing needs of active cases, strategic research projects, and legislative and activism priorities. But we understand that our goals are ambitious and long term, often accomplished on timelines that span decades. That steadfast approach requires constant cultivation of the next generation of IJers—as well as allies for liberty on the bench, in academia, and at times even in government.

That's why, every year, IJ runs a variety of in-depth student programs to identify and develop new waves of freedom-minded lawyers and advocates. Students can join IJ for either a full-time summer program or a (smaller) part-time program during the academic year. This summer, IJ hosted 41 clerks, interns, and other students—including law students exploring public-interest litigation and college students interested in entering the liberty movement.

The crown jewel among our programs is the Dave Kennedy Fellowship for law students, named in honor of IJ's former board chair and beloved champion for liberty. Through the fellowship, law students learn the ins and outs of IJ's approach to public interest law, both through formal training programs and by working side by side with IJ attorneys on our current cutting-edge initiatives.

In addition to IJ's clerkships and internships, IJ hosts several student-focused conferences each year to cast a wider net. The annual Law Student Conference at the beginning of each summer dates back to IJ's earliest days. It brings dozens of the most promising students from law schools across the country to our headquarters for a weekendlong crash course to learn directly from IJ attorneys and staff across our practice areas about how IJ litigates and the legal theories underlying each of our Four Pillars. Students,

The crown jewel among our programs is the Dave Kennedy Fellowship for law students, named in honor of IJ's former board chair and beloved champion for liberty.

This summer, dozens of top law students from across the country came to IJ's Arlington, Virginia headquarters for our annual Law Student Conference.

Participants in IJ's Law Student Conference hear directly from IJ clients, like **Trina Martin** and her son, **Gabe**, whose case you can read about in the cover article.

in turn, bring what they learn back to their schools to share with other students who may not otherwise hear IJ's perspective on the Constitution. We also host Legal Intensives each semester, bringing our programming to law school campuses across the country to teach students about a specific issue or area in greater depth.

Often, the payoff to these programs is obvious and direct. About half of IJ's current attorneys first came to us as a clerk or participant in one of our conferences—sometimes immediately after law school and sometimes later in their careers. In 2004, an especially auspicious summer clerk class included Senior Attorney Dan Alban, CFO and General Counsel Daniel Knepper, and Deputy Litigation Director Bob McNamara.

Though not every participant joins IJ's staff, the ripple effects resonate throughout the country. Some former IJ clerks are now prominent law professors, such as Will Baude at the University of Chicago. These academics create scholarship we can cite in our litigation or author amicus briefs supporting our clients. Others are leaders in major traditional law firms, providing pro bono support to IJ litigation or referring cases to us.

By instilling in students a passion for IJ-style litigation at the very beginning of their careers, IJ forges connections that last a lifetime and fosters the next generation of litigators for liberty.◆

Ben Field is an IJ attorney.

Daniel Knepper

Dan Alban

Bob McNamara

IJ Summer Clerks 2004

About half of IJ's current attorneys first came to us as a clerk or participant in one of our conferences.

In addition to three leading IJ attorneys, the 2004 clerk and intern class included **Emily Bremer** (back row, second from right), now a law professor at Notre Dame, and **Arpan Sura** (middle row, center), now senior counsel to the FCC chairman.

FIGHTING BACK AGAINST FEDERAL KIDNAPPING

BY MARIE MILLER

Chances are, at some point in your life, your first and last names matched a criminal suspect's name or alias. For Penny McCarthy, that was enough for federal law enforcement officers to—without warning—nab her off her own driveway at gunpoint, shackle her arms and legs, lock her up in a federal detention facility far from home, and strip search her three times.

This happened in Phoenix, Arizona, in March 2024. Before arresting Penny, U.S. Marshals did not let her show them her driver's license or any other documents. She wasn't allowed to lock her house, tend to her barking dog, retrieve her purse, or let anyone in her life know what was happening. The officers were in plain clothes and vests, were driving unmarked vehicles, and ordered her (on threat of being tased) not to look at them. And they took her behind a grocery store to swap vehicles before taking her to the U.S. Marshals office.

> The officers' errors and treatment of Penny are inexcusable and unconstitutional. But because federal officials rarely answer for their unlawful conduct, there is no incentive for them to behave differently–in Penny's case, to simply check the identity of the person they arrest.

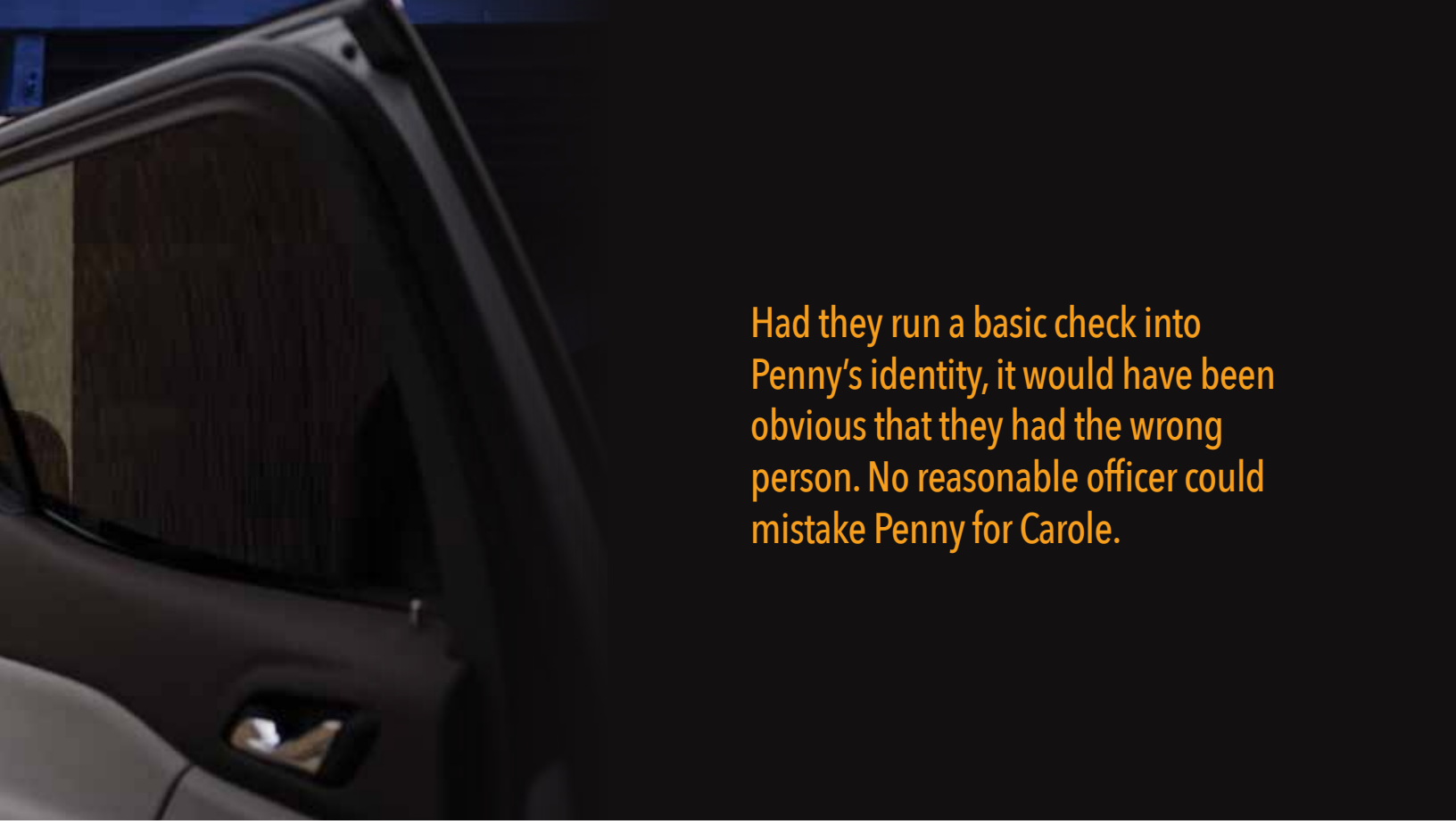
Penny understandably thought she was being kidnapped.

The officers were after Carole Anne Rozak, not Penny Lynn McCarthy. Carole Rozak was wanted on a 25-year-old warrant out of Oklahoma for failing to check in with a probation officer after being released from prison in Texas for nonviolent crimes.

The only connection between the two women was Rozak's alleged use of the name Penny Burns for some time. Burns was Penny's maiden name for the first 17 years of her life. (Hundreds of other people in the United States are named Penny Burns, and about 165,000 people have the last name Burns.)

Had they run a basic check into Penny's identity, it would have been obvious that they had the wrong person. No reasonable officer could mistake Penny for Carole.

But the marshals had no interest in confirming Penny's identity. They ignored Penny's insistence that she was not that person. To make matters worse, an



Had they run a basic check into Penny's identity, it would have been obvious that they had the wrong person. No reasonable officer could mistake Penny for Carole.

A traumatic arrest has had lasting effects on IJ client **Penny McCarthy**. Fear that law enforcement could again mistake her for someone else caused her to sell her home and move out of state.

officer who was not qualified to compare fingerprints claimed that Penny's fingerprints matched Rozak's. That was simply false, as the government later admitted.

Penny was entirely innocent. Yet she spent more than 24 hours in federal custody. In addition to being shackled, fingerprinted, and repeatedly searched, her mug shot and a DNA sample were taken, and she was forced to take a pregnancy test—at 66 years of age—before being locked in a cold cell without a blanket.

The officers' errors and treatment of Penny are inexcusable and unconstitutional—and they violate several Arizona laws. But because federal officials rarely answer for their unlawful conduct, there is no incentive for them to behave differently—in Penny's case, to simply check the identity of the person they arrest. Penny joins a host of other IJ clients who aim to hold government officials accountable for egregious and preventable mistakes, with the hope that no one else will fall subject to the same terrifying experience. Whether involving a mistaken arrest or a wrong-house raid, the courthouse doors should not be closed to an innocent victim of officers' brazen disregard for civil liberties.◆

Watch the case video!
iam.ij.org/AZ-ID

Marie Miller is an IJ attorney.

SEATTLE THINKS IT CAN MAKE HOUSING CHEAPER BY MAKING IT More Expensive To Build

BY SURANJAN SEN

In response to skyrocketing housing prices, the Seattle City Council passed a "Mandatory Housing Affordability" (MHA) program, which prevents people from building a home on their own property unless they agree to operate public housing or pay the city exorbitant "affordable housing" fees. Like virtually all attempts to mandate lower prices, the MHA program has been a colossal failure—resulting in fewer homes and higher rents.

Just as importantly, MHA's extortionate scheme violates the constitutional rights of property owners across Seattle.

As longtime readers may recall, IJ filed a challenge against MHA in late 2022 representing Anita Adams. Anita wants to build a home for her own adult children, on her own property, behind her own home. Seattle's zoning allows for that project—but MHA requires that Anita pay nearly $100,000 in "affordable housing" fees, in addition to other permitting fees, before she can receive a permit. Because Anita cannot (and should not have to) afford that, IJ filed a case challenging the MHA scheme.

Unfortunately, the district court refused to hear Anita's case on procedural grounds, finding that she must first undergo a labyrinthine administrative process before she can challenge MHA as fundamentally unconstitutional.

That decision was wrong. We are appealing, and Seattle has already conceded to the appellate court that the district court's reasoning was incorrect (while still insisting it should win for other reasons). Although we are confident in Anita's appeal, her case is still going to take time. Meanwhile, Seattle is enforcing MHA every day, extorting people while making housing less affordable for everyone else in the process.

Anita Adams (center) joined with IJ to challenge Seattle's imposition of nearly $100,000 in "affordable housing" fees before she can build more housing for her family behind her current home.

Seattle charged **Mehrit Teshome** and **Rocco Volker** $35,000 so that they could downsize their home and add an additional unit. They've joined IJ's challenge to this nonsensical fee.

So we doubled down on our challenge against MHA—this time representing married couple Mehrit Teshome and Rocco Volker, as well as local small-scale developer James Vert. These new clients have already paid the MHA fees and are seeking compensation—meaning that their case will not raise the procedural issues that have complicated Anita's case.

Like Anita's, their situations illustrate the folly of restrictions like MHA. Mehrit and Rocco want to downsize their home to allow for more housing on their property. James is building a four-unit townhouse on what was previously an empty parcel. During a housing shortage, Seattle—if anything—should be thanking these people for adding to the housing supply. Instead, the city slapped them, respectively, with $35,000 and $124,000 in "affordable housing" fees, in addition to other permitting fees. Somehow, Seattle thinks it can mandate "affordable" housing by making housing more expensive.

IJ has partnered with these new clients to demonstrate our commitment to advancing liberty in the face of all obstacles. The district court's refusal to address the substance of Anita's case was, unfortunately, not unusual; many judges prefer to kick the can down the road rather than hold the government to the Constitution's commands. However, for our Constitution to have any meaning, government must not be allowed to evade court review through procedural escape hatches.

Together with Mehrit, Rocco, and James, we are sending the message that IJ will not give up. Through either Anita's appeal or our supplemental challenges, we will force Seattle to justify the MHA program in court—and we will win.◆

Suranjan Sen is an IJ attorney.

SOMEHOW, SEATTLE THINKS IT CAN MANDATE "AFFORDABLE" HOUSING BY MAKING HOUSING MORE EXPENSIVE.

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If you or your broker have any additional questions on how to donate stocks or mutual funds, do not hesitate to reach out to J.R. Goetz directly at jgoetz@ij.org or (703) 682-9320, ext. 119.◆

NEW CASE CHALLENGES UNRELIABLE WARRANTS

BY ANYA BIDWELL

Warrants used to be a bulwark against government abuse. But since the 1960s, this bulwark has been steadily eroding. As a recent study concluded, it takes a magistrate under three minutes to read through a warrant application—and 98% of those applications get approved.

The consequences of such a light judicial touch can be devastating. Breonna Taylor was killed during a raid on her home pursuant to a warrant application that purported to rely on testimony of a postal inspector who claimed that Breonna was receiving packages from a drug dealer. The postal inspector was never examined by the magistrate who signed the warrant and later denied ever making such claims.

The burden on police officers is so low that they don't even need to identify anything suspicious taking place to receive a warrant. In 2016, IJ's civil forfeiture client Eh Wah was subjected to an arrest warrant based on a five-sentence affidavit that described a traffic stop with no suspicious activity. Still, a judge signed the warrant for felony possession of drug proceeds. As longtime readers of this publication may remember, those "drug proceeds" were money that Eh Wah's band had raised to fund an orphanage in Thailand.

Despite all the evidence that warrants have become a shortcut to constitutional violations, the justice system continues to operate as though they are a meaningful check that absolves officials of all wrongdoing.

In *Gonzalez v. Trevino*, for example, the government based most of its U.S. Supreme Court argument on the fact that a magistrate signed a warrant for Sylvia Gonzalez's arrest—conveniently ignoring evidence that the mayor jailed Sylvia not because she "misplaced a government document" but because she was critical of local officials. And the Supreme Court itself has stated that where a constitutional violation "involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner."

In other words, once a warrant exists—no matter how anemic—courts can treat it as proof that all related government behavior was legitimate, undermining other constitutional claims.

As things stand now, the Court's faith in the warrant process is misplaced. But warrants can still become a meaningful check if the courts enforce the text of the Fourth Amendment in its entirety.

The Fourth Amendment says that "no warrants shall issue, but [1] upon probable cause, [2] supported by oath or affirmation, and [3] particularly describing the place to be searched, and the persons or things to be seized." While courts at least nod to the first and third requirements, a Supreme Court case called *Jones v. United States* allows judges to completely ignore the second one.

"Oath or affirmation" means that before signing a warrant, a magistrate must personally examine a witness to the crime and have them swear to the truth of what they are saying.

IJ clients **Eh Wah** and **Sylvia Gonzalez** were both subject to flimsy arrest warrants. One of IJ's newest cases seeks to ensure the Constitution's warrant requirement is more than a rubber stamp.

Watch the case video!
iam.ij.org/Mendenhall

That's where one of IJ's newest cases, *Mendenhall v. Denver*, comes in. Michael Mendenhall was arrested and his office searched after a dodgy witness told a police officer that Michael threatened to hit him with a baseball bat. Michael insists he simply asked the man—who was sitting on Michael's stoop and yelling at passing women—to leave. Yet the warrant was based on a game of telephone: A police officer relayed the story to a detective, who relayed the story to a judge, who then signed the warrant. Michael spent a night in jail before the charges were dropped.

The oath and affirmation requirement is not difficult to satisfy, especially in modern times. A magistrate can take witness testimony confidentially in chambers (or by Zoom), seal the individual's testimony, conceal their identity through a pseudonym, or redact compromising information as needed. In Michael's case, a signed affidavit would have sufficed.

We are now in the 10th Circuit after taking the case over from the University of Denver's Civil Rights Clinic. Because *Jones* allows magistrates to issue warrants based on unsubstantiated hearsay, we know this issue can only be resolved by the high court. But we are hoping some members of the panel will urge the Supreme Court to overturn the precedent and require courts to again enforce the text of the Fourth Amendment's warrant requirement.

Until now, IJ's Fourth Amendment cases have focused on whether the government needs a warrant to conduct certain invasions of your property or privacy. But even when officials are required to get one, a warrant is no longer the robust line of defense against overreaching government that the Founders intended. So this case is the next step in a logical progression: The government must get a warrant—and that warrant must be more than a rubber stamp.◆

Anya Bidwell is an IJ senior attorney and co-leader of IJ's Project on Immunity and Accountability.

Michael Mendenhall was arrested and his property searched under a warrant based on unverified, third-hand information. The Constitution demands better.

Civil rights litigator **Daniel Horwitz** is free to publicly discuss his cases against Tennessee's privately run prisons after a federal court changed its rules in response to an IJ lawsuit.

IJ WIN
Ungags Tennessee Civil Rights Lawyer

BY JARED MCCLAIN

This magazine publishes lawyers talking about their cases. It's a core component of what IJ does because public interest litigation requires public discussion.

A federal court in Nashville saw things differently. It presumed almost anything attorneys said publicly about their cases would prejudice the opposing parties' right to a fair trial—and promulgated a local rule that effectively banned attorneys from discussing their cases in public.

Although the First Amendment requires courts to presume that speech is free, this rule did the opposite: An attorney had to prove their speech was *not* prejudicial or else face sanctions.

Back in 2022, the court used this rule to gag civil rights attorney Daniel Horwitz from discussing his cases against Tennessee's privately run prisons.

Daniel's cases are not just about compensating individual victims; they are also about changing how the state's prisons are run. So Daniel spoke to the media—just as IJ does—to ensure the issue got the coverage he thought it deserved.

The court made Daniel delete all his public statements and threatened him with contempt if he discussed his litigation again.

Readers may be familiar with gag orders arising from some high-profile criminal proceedings where, in order to not interfere with the jury's vital role, there are limited restrictions on public statements made by attorneys. But this court's rule was unusually sweeping; it applied to civil litigation as well, including the type of civil liberties litigation that IJ routinely does.

After trying unsuccessfully to challenge the rule within Daniel's ongoing cases, IJ sued the court's four judges to stop enforcing the rule. Even though the judges could not explain how their rule satisfied the First Amendment, they still fought for years to protect their power to silence attorneys.

A week before the judges had to respond to IJ's arguments in a federal appellate court, they suddenly reversed course and rescinded their unconstitutional rule—citing IJ's public case against the rule.

In other words, free speech won more free speech.

Thanks to Daniel's fight, Tennessee attorneys can now discuss their litigation without fear of reprisal.◆

Jared McClain is an IJ attorney.

Forbes

The 2025 Social Media Ranking Of Free-Market Think Tanks

May 9, 2025

According to a May 2025 Forbes social media ranking of free-market think tanks, the "Institute for Justice is the top among legal defense groups." IJ also placed No. 1 in views of YouTube videos (two minutes or longer) among "judicial defense and rule of law" groups.

This reflects a period of substantial growth in IJ's video program. Since 2020, our subscribers on YouTube have grown from 59,400 to more than 480,000, with 91,400 new subscribers in the past year alone. We now average nearly 2 million views *per month*, and in the past year, those views totaled 1.3 million hours of watch time.

Since July 2024, we have released 20 mini-documentary case videos; 22 episodes of our video podcast *Beyond the Brief*, which accounted for 500,000 total watch hours; and 34 "shorts," a vertical video format that exposes new audiences to brief but compelling updates about IJ cases. In that same period, 11 videos broke 500,000 views—and three broke 1 million!

Our most popular videos over the past year are listed at left. Many of these are recent, but several older videos gained a second wind and went "viral" this year, amassing hundreds of thousands of additional views. One such video was our feature on James King, whose case IJ argued at the Supreme Court in 2020.

To see all our latest videos, scan the QR code provided below.

DEA Caught Red-Handed: Airport Intimidation
3.8M views

Senior Citizens Jailed for Exposing Corruption
1.5M views

Flock's Creepy Surveillance System Coming to a City Near You
991K views

Man's House Bulldozed—No Notice, No Compensation
726K views

Grandma "Kidnapped" by US Marshals (BODYCAM)
474K views

Carrying Cash is NOT a Crime
419K views

Innocent Mom Arrested, Mistreated in Jail, Missed Christmas
409K views

Game Wardens Caught Trespassing on Land
275K views

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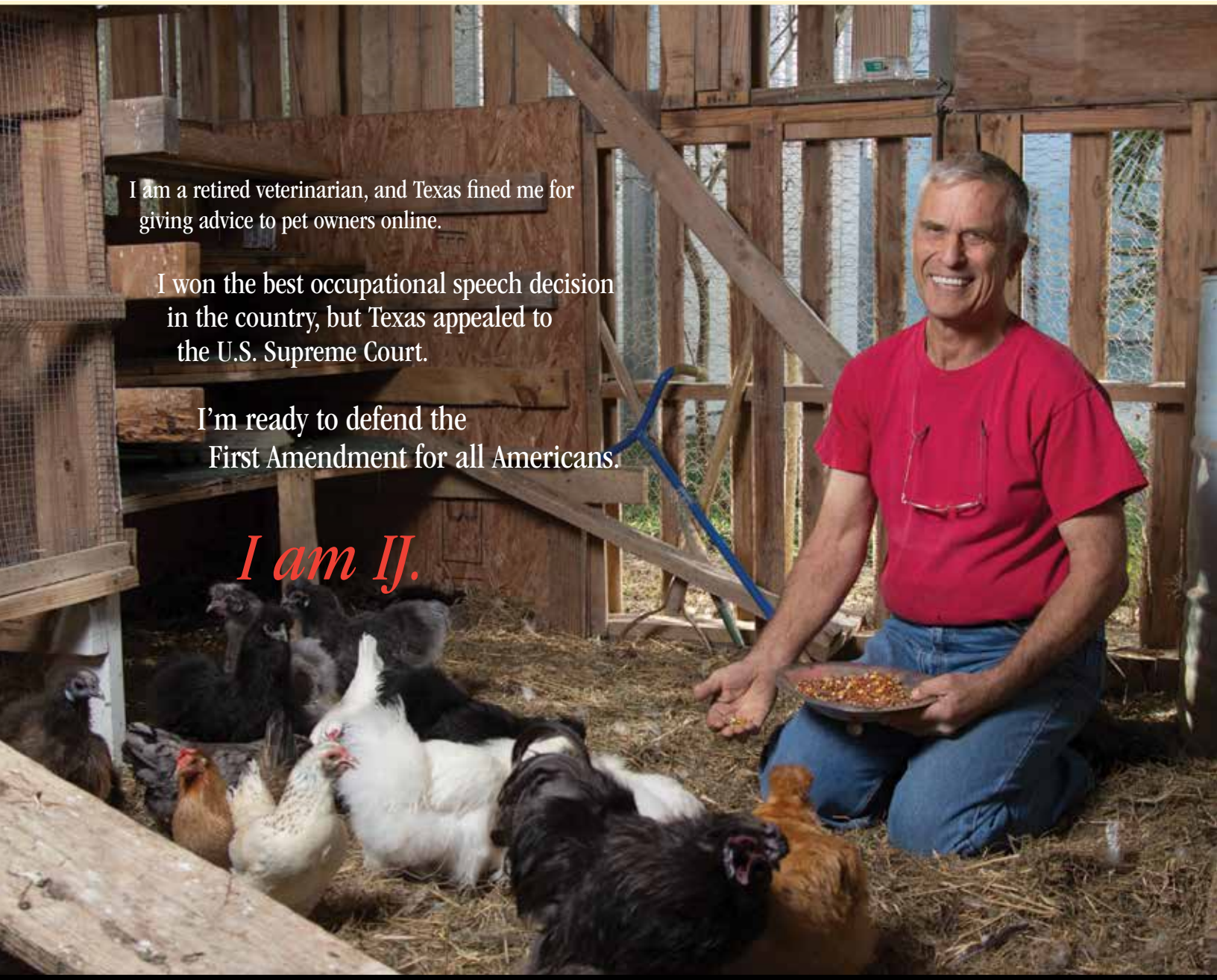

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