

IN THE  
**Supreme Court of the United States**

---

SHANE VINALES, INDIVIDUALLY AND  
AS NEXT FRIEND OF L. V. AND S. V., *et ux.*,

*Petitioners,*

*v.*

AETC II PRIVATIZED HOUSING, L.L.C., *et al.*,

*Respondents.*

---

**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

---

**BRIEF OF MILITARY HOUSING COALITION AS  
*AMICUS CURIAE* IN SUPPORT OF PETITIONERS**

---

JESSICA LIMBAUGH  
BRYAN CAVE LEIGHTON  
PAISNER LLP  
221 Bolivar Street,  
Suite 101  
Jefferson City, MO 65101

J. BENNETT CLARK  
*Counsel of Record*  
MARK B. LEADLOVE  
ELLEN M. KOMLOS  
JAZMYN FERGUSON  
BRYAN CAVE LEIGHTON  
PAISNER LLP  
211 North Broadway,  
Suite 3600  
St. Louis, MO 63102  
(314) 259-2418  
ben.clark@bclplaw.com

*Counsel for Amicus Curiae*

December 29, 2025

---

131839



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

## TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES .....	ii
INTERESTS OF AMICUS CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	2
ARGUMENT.....	3
I. Improving Housing Protection for Military Families Will Have Broad Impact .....	4
II. Congress Recognizes that It Is in the Federal Interest to Ensure Suitable Housing for Military Families.....	5
III. Under the “Frozen-in-Time” Approach, Applicable Law Can Differ Within a Military Enclave, Depending on When a Given Parcel Became Part Thereof .....	8
IV. The Dispute Process for Those Military Personnel and Families Seeking Redress Relating to Their Housing Situation Is Ineffective.....	9
CONCLUSION .....	10

## TABLE OF CITED AUTHORITIES

	<i>Page</i>
<b>Cases</b>	
<i>Bd. of Cnty. Comm'r's of Arapahoe Cnty. v. Donato,</i> 356 P.2d 267 (Colo. 1960) .....	4
<i>Burnett v. Grattan,</i> 468 U.S. 42 (1984) .....	4
<i>Howard v. Commissioners of Sinking Fund of City of Louisville,</i> 344 U.S. 624 (1953) .....	3
<i>Kamen v. Kemper Fin. Servs. Inc.,</i> 500 U.S. 90 (1991) .....	4
<b>Statutes</b>	
10 U.S.C. §2871 et seq. .....	5
10 U.S.C. §2875 .....	5
<b>Other Authorities</b>	
141 Cong. Rec. S18853 (daily ed. Dec. 19, 1995) .....	5
CHANGE THE AIR FOUND., Press Release, “ <i>Unsafe and Unheard</i> ”: <i>Landmark National Survey Confirms Military Housing Crisis, Toxic Living Conditions for Thousands of Families</i> , (Nov. 20, 2025), <a href="https://changetheairfoundation.org/?sdm_process_download=1&amp;download_id=9424">https://changetheairfoundation.org/?sdm_</a> process_download=1&download_id=9424 .....	5

*Cited Authorities*

	<i>Page</i>
CHANGE THE AIR FOUND., <i>Unsafe and Unheard: Military Service Members and Their Families Sound Off on Dangerous Living Conditions</i> (2025), <a href="https://changetheairfoundation.org/mold-in-the-military/">https://changetheairfoundation.org/mold-in-the-military/</a> [perma.cc/YNG6-2SJ5]. . . . .	7
Chad DeVeaux, <i>Trapped in the Amber: State Common Law, Employee Rights, and Federal Enclaves</i> , 77 BROOK. L. REV. 499 (2012). . . . .	8
René Kladzyk, <i>Operation Counter Mold: The Hidden Battle in Military Homes</i> , POGO INVESTIGATES (Oct. 24, 2024), <a href="https://www.pogo.org/investigates/operation-counter-mold-the-hidden-battle-in-military-homes">https://www.pogo.org/investigates/operation-counter-mold-the-hidden-battle-in-military-homes</a> . . . . .	4, 5
Letter from Elizabeth Warren et al., to the Secretary of Defense (Dec. 6, 2023), UNITED STATES SENATE, <a href="https://www.warren.senate.gov/imo/media/doc/2023.12.06%20Letter%20to%20DoD%20re%20Substandard%20Military%20Housing%20Conditions%20and%20Formal%20Dispute%20Resolution%20Process.pdf">https://www.warren.senate.gov/imo/media/doc/2023.12.06%20Letter%20to%20DoD%20re%20Substandard%20Military%20Housing%20Conditions%20and%20Formal%20Dispute%20Resolution%20Process.pdf</a> . . . . .	4-5
Michael J. Malinowski, <i>Federal Enclaves and Local Law: Carving Out A Domestic Violence Exception to Exclusive Legislative Jurisdiction</i> , 100 YALE L.J. 189 (1990) . . . . .	8

*Cited Authorities*

	<i>Page</i>
MILITARY HOUSING COALITION, <i>2025 Military Housing Conditions Executive Summary</i> (June 15, 2025), <a href="https://www.militaryhousingcoalition.com/executive-summary/">https://www.militaryhousingcoalition.com/executive-summary/</a> .....	7
Amanda Obis, <i>Privatized Military Housing Is Making Service Members and their Families Sick at an Alarming Rate, Survey Finds</i> , FEDERAL NEWS NETWORK (Nov. 24, 2025) <a href="https://federalnewsnetwork.com/federal-report/2025/11/privatized-military-housing-is-making-service-members-and-their-families-sick-at-alarming-rates-survey-finds/">https://federalnewsnetwork.com/federal-report/2025/11/privatized-military-housing-is-making-service-members-and-their-families-sick-at-alarming-rates-survey-finds/</a> .....	9
Reuters Investigates, “Ambushed at Home: the hazardous, squalid housing of American military families.” <a href="https://www.reuters.com/investigates/section/usa-military/">https://www.reuters.com/investigates/section/usa-military/</a> .....	7
U.S. GAO, Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program [Reissued with Revisions Apr. 20, 2023] <a href="https://www.gao.gov/products/gao-23-105377">https://www.gao.gov/products/gao-23-105377</a> .....	6

## INTERESTS OF AMICUS CURIAE<sup>1</sup>

The Military Housing Coalition (MHC) is a grassroots, military family-led nonprofit dedicated to improving privatized military housing across the United States. Founded by spouses and residents who have personally experienced unhealthy and otherwise inadequate housing conditions, MHC is committed to building a better housing system that treats military families with respect and dignity.

MHC works at the local and national level to identify systemic issues, equip residents with tools to understand and act on their housing rights, and advocate for stronger oversight, transparency, and accountability. Its coalition collaborates with all stakeholders — including residents, military leadership, housing providers, and policymakers — to create long-term, meaningful change to the military housing landscape.

MHC advocates for fair Basic Allowance for Housing rates, promotes energy conservation, works for tenant rights and protections, and actively influences legislative changes prioritizing the housing needs of its service members and their families.

MHC is not funded by the government or housing companies. It is powered by individuals who believe all military families deserve safe, quality, and fair housing.

---

1. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties were timely notified in advance of the filing of this brief.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

It cannot be seriously contested that ensuring suitable military housing conditions implicates a federal policy of providing basic habitability support for members of the military and their families, as recognized by Congress. Texas law as applied by the Fifth Circuit removes current, basic rights to assert violations of the Texas Deceptive Practice Act, the implied warranty of habitability, the making of negligent misrepresentations, infliction of mental distress, and personal injury suffered under residential leases.

Redress for concerns such as those alleged by Petitioners, if proven, should be as available to persons located in a federal enclave as it is for others outside of enclaves in the same state, including other military families. Yet, the “frozen-in-time” approach used by the Fifth Circuit can lead to differences in applicable law, on a tract-by-tract basis within a given federal enclave.

Thus: 1. The Texas law at issue here should not be limited to that in effect at the creation of the enclave, because such a limitation is contrary to the important federal policy of providing suitable housing to United States military personnel and their families; 2. A finding that insufficient, dated state-law protection applies will have widespread impact on such personnel and families; 3. Congress has recognized the importance of this issue, though its attempts to rectify the situation have been inadequate; 4. The approach employed below potentially leads to inequitable differences between tracts of a given enclave; and 5. Dispute procedures have not sufficed to

vindicate the important federal policy of suitable military housing. The Fifth Circuit’s decision continues these problems and should be reviewed and reversed.

## ARGUMENT

In *Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 U.S. 624 (1953), this Court upheld municipal taxation of employees living in territory annexed by the City of Louisville, Kentucky from within a federal enclave. The Court stated that the existence of a federal enclave “can have no validity to prevent the state from exercising its power over the federal area within its boundaries, *so long as there is no interference with the jurisdiction asserted by the Federal Government.*” *Id.* at 627 (Emphasis supplied). The federal government’s exclusive jurisdiction over a federal enclave and the state’s exclusive ability to amend state law “are not antagonistic”; instead, “[a]ccommodation and cooperation are their aim.” *Id.* Notably, the Court upheld the taxation of employees which began per Kentucky statutory amendment following annexation, well after the federal enclave was established.

Such considerations of accommodation and cooperation do not exist where, as here, law as it existed decades ago puts the federal enclave at Randolph Air Force Base out of step with the remainder of the State of Texas, including as to other federal military personnel living off military base in the same state.

The case law in various contexts makes clear that state law applies to bridge a gap in federal law only if it does not interfere with legitimate federal interests (as in *Howard*, sometimes couched as interference with

“federal jurisdiction”). *Burnett v. Grattan*, 468 U.S. 42, 48–49 (1984) (in context of Civil Rights Act, courts are to apply state law only if it is not inconsistent with United States law); *Kamen v. Kemper Fin. Servs. Inc.*, 500 U.S. 90, 98 (1991) (federal courts should incorporate state law as the federal rule of decision unless “application of [the particular] state law [in question] would frustrate the specific objectives of the federal programs.”) (citation omitted). *See also Bd. of Cnty. Comm’rs of Arapahoe Cnty. v. Donato*, 356 P.2d 267, 330 (Colo. 1960) (*en banc*) (noting the “manifold legal phases of the diverse situations arising out of the existence of federally-owned land within a state – problems calling not for a single, simple answer *but for disposition in the light of the national purposes which an enclave serves.*”) (Emphasis supplied).

## **I. Improving Housing Protection for Military Families Will Have Broad Impact**

We believe the facts concerning the military housing market are not disputed.

“Approximately 700,000 service members and their families live in [privatized military housing], run by 14 companies in the U.S. across 78 developments.” René Kladzyk, *Operation Counter Mold: The Hidden Battle in Military Homes*, POGO INVESTIGATES (Oct. 24, 2024), <https://www.pogo.org/investigates/operation-counter-mold-the-hidden-battle-in-military-homes>. “Approximately one-third of military families live in on-base housing, including about 100,000 children under the age of five.” Letter from Elizabeth Warren et al., to the Secretary of Defense (Dec. 6, 2023), UNITED STATES SENATE, <https://www.warren.senate.gov/imo/media/>

doc/2023.12.06%20Letter%20to%20DoD%20re%20Substandard%20Military%20Housing%20Conditions%20and%20Formal%20Dispute%20Resolution%20Process.pdf.

“In most cases, military families have the choice of living on or off base, though experts and advocates have cautioned that in some competitive housing markets, living off base may not be a real option: It can be cost prohibitive on a military salary, or have insufficient options for schools or child care.” Kladzyk, *supra*, at 5.

## **II. Congress Recognizes that It Is in the Federal Interest to Ensure Suitable Housing for Military Families**

Congress has recognized the critical nature of military family housing for many years. In 1996, it passed into law the Military Housing Privatization Initiative (MHPI). See Pub. L. No. 104-106, 110 Stat. 186 (1996) (codified at 10 U.S.C. §2871 et seq.); see also 10 U.S.C. §2875; 141 Cong. Rec. S18853 (daily ed. Dec. 19, 1995). The primary goal of this legislation was to enhance housing conditions for service members and their families. Under this program, the military services gained the authority to grant 50-year leases to private-sector housing companies. These leases conveyed ownership of existing housing situated on leased portions of military installation land to those private entities.

Agreements between the military and private real estate development companies per the MHPI are referred

to as Public-Private Ventures. In these agreements, housing companies construct, enhance, repair and manage housing facilities. In return, they receive rental payments from the Department of Defense/War (“the Department”)<sup>2</sup> equivalent to the standard Basic Allowance for Housing (BAH) that service members receive when residing outside military installations. MHPI companies oversee approximately 99% of military housing located in the continental United States. U.S. Gov’t Accountability Office, *Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program*, GAO-23-105377 (Apr. 6, 2023), <https://www.gao.gov/products/gao-23-105377>.

MHPI companies may also receive incentive funding from the Department, in addition to the BAH income. Payout metrics on the bonus include, *e.g.*, work order completion times, maintenance of housing communities, and resident satisfaction.

As the MHPI reached its third decade, Congress received feedback from military families across the country regarding inadequate housing conditions. These concerns included issues such as black mold, rodents, insect infestation, lead paint, plumbing damage, and inefficient HVAC systems. A compendium of issues and the awareness of same by elected representatives and the military, may be found in a Reuters investigative report,

---

2. Many of the events referenced in this brief occurred prior to President Trump’s executive order authorizing use of “Department of War.” To avoid confusion between that name and “Department of Defense,” the term “the Department” will be used herein.

“Ambushed at Home: the hazardous, squalid housing of American military families.” Reuters Investigates, <https://www.reuters.com/investigates/section/usa-military/>.

Thus, instead of improved conditions resulting from the MHPI, numerous military service members find themselves living in unsuitable properties. *See, e.g.,* CHANGE THE AIR FOUND., *Unsafe and Unheard: Military Service Members and Their Families Sound Off on Dangerous Living Conditions* (2025), <https://changetheairfoundation.org/mold-in-the-military/> [perma.cc/YNG6-2SJ5]; MILITARY HOUSING COALITION, *2025 Military Housing Conditions Executive Summary* (June 15, 2025), <https://www.militaryhousingcoalition.com/executive-summary/>.

In August 2021, the Tenant Bill of Rights was enacted, as part of the National Defense Authorization Act. It lists 18 rights of families living in military housing. However, the Tenant Bill of Rights does not go far enough to ensure families are consistently provided with adequate housing. Several of the 18 rights are expressed in only general terms. These include, for instance, the right to “live in a dwelling that complies with relevant health and environmental regulations” and the right to “swift and expert upkeep and repair.” Such general guidelines can only have meaning if read in the context of current law applicable to similarly-situated persons.

### **III. Under the “Frozen-in-Time” Approach, Applicable Law Can Differ Within a Military Enclave, Depending on When a Given Parcel Became Part Thereof**

“[M]ost federal enclaves consist of tracts of land absorbed by the federal government at different times; the substantive law governing a single transaction involving several enclave tracts—for example, a suit for breach of contract where the cause of action has no tract-specific situs—might vary from tract to tract, all within the same federal enclave.” Michael J. Malinowski, *Federal Enclaves and Local Law: Carving Out A Domestic Violence Exception to Exclusive Legislative Jurisdiction*, 100 YALE L.J. 189, 194–95 (1990).

Indeed, “[T]he private law applicable within a particular enclave may literally differ from one side of a street to the other because the United States acquired jurisdiction over the respective tracts at different times.” Chad DeVeaux, *Trapped in the Amber: State Common Law, Employee Rights, and Federal Enclaves*, 77 BROOK. L. REV. 499, 517 (2012).

The approach employed by the Fifth Circuit and, in some instances, this Court, as a practical matter leads to confusion as to the applicable law within federal enclaves on a tract-by-tract basis, and also in forcing inhabitants to know — counter-intuitively — that their causes of action may be subject to past legal standards that, in any event, are not easily identified by lay persons.

#### **IV. The Dispute Process for Those Military Personnel and Families Seeking Redress Relating to Their Housing Situation Is Ineffective**

As reported by the Change the Air Foundation, its national survey found the following: “[T]he existing reporting process for military housing issues compounds the families’ problems . . .” Press Release, CHANGE THE AIR FOUND., “*Unsafe and Unheard: Landmark National Survey Confirms Military Housing Crisis, Toxic Living Conditions for Thousands of Families*,” (Nov. 20, 2025), [https://changetheairfoundation.org/?sdm\\_process\\_download=1&download\\_id=9424](https://changetheairfoundation.org/?sdm_process_download=1&download_id=9424). (e.g., finding that “While 94 percent of families always or often reported their housing problems to proper authorities, only 7 percent made it through the military’s ‘3-Step-Process’ to resolve issues.”)

In addition, the Change the Air Foundation survey highlights gaps in seven-year housing histories. Only 43% of service members received a history, and most were incomplete. Amanda Obis, *Privatized Military Housing Is Making Service Members and their Families Sick at an Alarming Rate, Survey Finds*, FEDERAL NEWS NETWORK (Nov. 24, 2025) <https://federalnewsnetwork.com/federal-report/2025/11/privatized-military-housing-is-making-service-members-and-their-families-sick-at-alarming-rates-survey-finds/>.

When claims make it to court, the law as articulated by the Fifth Circuit in the present case denies service members and their families effective recourse, as claims such as those in this case are limited and not in step with the rights currently available to other persons living off

the installation in the same state. The lack of effective, ultimate recourse is inconsistent with the federal policy of providing safe and habitable housing to service members and their families.

## CONCLUSION

Military personnel and their families are, at minimum, entitled to the same legal protection as other inhabitants of the state — and sometimes the same federal enclave — in which they reside. It is in the federal, and national, interest that they receive such protection.

Respectfully submitted,

JESSICA LIMBAUGH  
BRYAN CAVE LEIGHTON  
PAISNER LLP  
221 Bolivar Street,  
Suite 101  
Jefferson City, MO 65101

J. BENNETT CLARK  
*Counsel of Record*  
MARK B. LEADLOVE  
ELLEN M. KOMLOS  
JAZMYN FERGUSON  
BRYAN CAVE LEIGHTON  
PAISNER LLP  
211 North Broadway,  
Suite 3600  
St. Louis, MO 63102  
(314) 259-2418  
ben.clark@bclplaw.com

*Counsel for Amicus Curiae*

December 29, 2025