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NCLA Appeals District Court Ruling Allowing Government to Unlawfully Track Gulf Charter Vessels

Mexican Gulf Fishing Company, et al. v. National Oceanic and Atmospheric Administration, et al.

Washington, DC (March 3, 2022) - The U.S. District Court for the Eastern District of Louisiana has [denied](#) the [Motion for Summary Judgment](#) filed by over 1,300 federally permitted charter boat owners in the class-action lawsuit, *Mexican Gulf Fishing Company, et al. v. NOAA, et al.*, and granted the Government’s motion to allow a [Final Rule](#) governing the tracking of boats to go into effect. Charter boats operating in the Gulf of Mexico must now comply with an unlawful requirement to pay for and “permanently affix” a Vessel Monitoring System (VMS) that tracks, relays, and stores information for government use. The U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service began enforcing the Final Rule on Tuesday, March 1, 2022. On behalf of its clients, the New Civil Liberties Alliance filed a [notice of appeal](#) on March 2 and will move for stay of the regulation in the U.S. Court of Appeals for the Fifth Circuit.

NCLA, a nonpartisan, nonprofit civil liberties group, brought the lawsuit on behalf of the entire class of charter boat permit holders under pressure to purchase at least one and sometimes multiple VMS devices that can cost up to thousands of dollars each. NCLA represents charter boat owners operating off the coasts of Alabama, Florida, Louisiana, Mississippi, and Texas, who are seeking relief against the Final Rule. In November 2021, NCLA was successful in [petitioning](#) the Government to delay the effective date of the Final Rule to March 1, 2022.

The VMS Requirement violates, among other things, the Fourth Amendment of the U.S. Constitution to be free of unreasonable searches. Even after assuming the tracking requirement constitutes a Fourth Amendment search, the District Court ruled against Plaintiffs because “the search is reasonable under the closely regulated industry exception,” which allows warrantless searches only in industries that pose significant dangers to the public. There is no evidence that charter boat operations present any risk to the public, particularly not the abstract concept of overfishing, as charter fishing’s impact on Gulf fish stocks is miniscule. But even if charter fishing were deemed closely regulated because it somehow poses a public danger—though the Supreme Court has not so held—the Government still cannot violate the Constitution even for a closely regulated industry.

Following the Supreme Court’s 2015 decision in *City of Los Angeles v. Patel*, being subject to licensing requirements and other regulations, even extensive ones, no longer suffices to qualify as “closely regulated” for Fourth Amendment purposes. Charter boats are regulated solely for how many fish they catch and when. Constant tracking of charter boats’ whereabouts, even when not fishing, is not part of any regulatory purpose. To the extent warrantless searches are permitted in the context of the fishing industry, at minimum, they must stop when Plaintiffs are not fishing. The Final Rule makes no such distinction and tracks Plaintiffs’ movement regardless of whether they are using their vessels for business, recreation, or travel.

The District Court erroneously skirted the post-*Patel* approach, whereby extensive regulation and licensing requirements are not enough for the “pervasively regulated” exemption. Instead, it relied on contrary pre-*Patel* decisions from other circuits. The Fifth Circuit should correct course and stay this unlawful regulation.

NCLA released the following statement:

“Taking people fishing in the Gulf of Mexico is neither a federal crime nor a closely regulated industry. The Government should not subject charter-boat captains to constant tracking, even when using their vessels for other purposes. NCLA is appealing this ruling to the Fifth Circuit. We will seek to stay the part of the regulation that violates the Fourth Amendment in the meantime.”

— **John J. Vecchione, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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