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Media Inquiries: [Judy Pino](#), 202-869-5218

WATCH: U.S. Forest Service Says It's a Federal Crime to Post a Photo Using Public Lands

United States v. David Lesh



Photo: David Lesh snowmobiling in Colorado, Defendant in United States v. David Lesh

Washington, DC (June 2, 2022) – Colorado resident David Lesh faces six months' probation, 160 hours of community service, and a \$10,000 fine for posting a photo on his personal Instagram account that allegedly depicted him snowmobiling over a jump at a closed ski resort. Mr. Lesh, who owns an outdoor apparel company, was charged pursuant to an overbroad delegation by Congress, that allows the U.S. Forest Service to make it a crime to sell merchandise or engage in commercial activity on its land without authorization.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil liberties group, released a [video](#) today featuring his case, *United States v. David Lesh*, arguing Congress has unlawfully divested itself of the power to write criminal laws related to the management of national forest lands. The agency has also failed to take into consideration Mr. Lesh's First Amendment right to post a photo to his Instagram account.

The legislative delegation at issue, which authorized the Secretary of Agriculture to make rules to prevent trespasses and regulate the use of occupancy of national forest lands, is impermissibly vague, as Mr. Lesh's case demonstrates. The reason the Government charged him with unauthorized sale is that Mr. Lesh had stated, in an [interview](#) with *The New Yorker*, that his sales had unexpectedly increased as a result of the publicity that the case had received.

Congress only gave the U.S. Forest Service authority to enact regulations to prevent *physical* trespass of the land. The law in question had nothing to do with someone incidentally profiting because he was charged with a federal offense. Yet, a federal magistrate found him guilty of operating a snowmobile off of a designated route, and conducting unauthorized work or sale on federal lands.

Beyond the serious constitutional concerns raised here, the Government also lacks sufficient proof to support the charges. There was no evidence that Mr. Lesh was the person in the photo, as the face of the individual cannot be discerned. There was also no evidence whatsoever that Mr. Lesh sold merchandise or conducted any work activity

upon lands administered by the U.S. Forest Service. NCLA is asking the U.S. District Court for the District of Colorado to reverse the magistrate's determination and vacate the sentence.

Excerpts from the video:

“I never in a million years thought that I would be charged with 12 federal crimes for posting content to my Instagram. ... If this sets a precedent that anyone who owns any company can't post a picture of themselves in a national park or national forest or just skiing with their friends it's really a dangerous and slippery slope.”

— **David Lesh, Defendant, *United States v. David Lesh***

“This is selective prosecution against David. If you go on the internet, you can find images of many people in the same places doing similar things, but those people aren't being prosecuted. ... This is unlawful for a couple of reasons. First of all, because Congress should be making the laws, and so an agency having the authority to enact regulations that end up with someone having a criminal prosecution, particularly one for which they could be facing jail time ... violates our separation of powers. It's also unlawful because David has a First Amendment right to post photos on Instagram.”

— **Jenin Younes, 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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