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NCLA Takes USDA to Task over Unlawful Agency Adjudication Procedures that Violate Civil Liberties

Kevin Gubbels and Insure My Honey, Inc. v. US Department of Agriculture, Administrator Martin R. Barbre, U.S. Risk Management Agency

Washington, DC (June 2, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [complaint](#) and a [motion for preliminary injunction](#) in the U.S. District Court for the District of Nebraska. The case, *Kevin Gubbels and Insure My Honey, Inc. v. U.S. Department of Agriculture and U.S. Risk Management Agency*, was filed against the U.S. Department of Agriculture (USDA), the U.S. Risk Management Agency (RMA), and the respective heads of those entities. Gubbels is contesting those agencies’ efforts to suspend and debar his participation in the federal crop insurance program without a hearing.

RMA’s action risks destroying a recently thriving business, and it has already put over 60 insurance agents out of work based on a hearsay complaint without giving the business a chance to contest the accusation at a hearing. Even if Mr. Gubbels is eventually granted a hearing, the process will be anything but fair, as the existing regulations consolidate the roles of both prosecutor and judge in the agency head. This in-house administrative adjudication makes a mockery of due process, and it has seriously threatened Mr. Gubbels’ livelihood.

In November 2019, an unknown tipster told RMA (the agency that administers the crop insurance program) that Mr. Gubbels was selling crop insurance policies after the deadline for doing so. USDA, acting through RMA, indefinitely suspended Mr. Gubbels, unlawfully claimed the authority to suspend *Insure My Honey, Inc.*— which is a distinct corporate entity, and suspended all of the independent contractor insurance agents from participating in the company’s business of selling and servicing federal crop insurance policies.

But these agencies did not follow their own regulations or comply with basic constitutional protections before imposing the order. First, they failed to provide adequate notice of specific charges against Mr. Gubbels that could serve as a lawful basis for that suspension and proposed debarment. Second, the agency has allowed a temporary “suspension” order to linger for months without providing Mr. Gubbels a hearing to contest the charge. These actions have shut down his business, and that of his insurance agents, with no due process.

Every day the suspension lingers, the financial damage increases. Administrator Barbre has already shown his unwillingness to be an impartial adjudicator. Mr. Gubbels has already been presumed guilty and has never been given the chance to clear his name. Not only does this action violate the applicable regulations, it violates the outer limits of procedural due process.

NCLA released the following statements:

“There is a reason that we have constitutional procedures in place to protect the rights of individuals and small businesses who contract with the government to provide important services to our agriculture community. It is to prevent federal employees from arbitrarily destroying their livelihood while also blocking them from defending themselves. Mr. Gubbels is entitled to tell his side of the story, regardless of whether USDA and the Risk Management Agency want to hear it.”

—**Harriet Hageman, Senior Litigation Counsel, NCLA**

“A bureaucrat shouldn’t have the power to arbitrarily shut down a thriving business. That’s what due process is supposed to protect against. This lawsuit will ensure that ‘agency adjudication’ can no longer be code for depriving people of basic liberties.”

—**Caleb Kruckenberg, Litigation Counsel, NCLA**

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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