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NCLA Suit Challenges Lack of Due Process Hearing in Suspension from USDA Crop Insurance Program

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

Washington, DC (June 17, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed a [brief](#) in opposition to the Motion to Dismiss submitted by the Department of Agriculture (USDA), the U.S. Risk Management Agency (RMA), and the respective heads of those entities. NCLA clients Kevin Gubbels and *Insure My Honey, Inc.* are [contesting](#) the efforts of the agencies to summarily and indefinitely suspend his participation and that of his company’s insurance agents in the federal crop insurance program without due process. The brief asks the U.S. District Court for the District of Nebraska to reject the agencies’ demands to dismiss the case, and to instead grant Mr. Gubbels’s request for a preliminary injunction.

The government has taken the position that the federal court cannot hear any challenge to its suspension procedure until it finalizes its action against Mr. Gubbels. In challenging that allegation, NCLA has pointed out that the federal court has subject-matter jurisdiction over all of Mr. Gubbels’s claims. It also states that the agency has violated his constitutional rights, and it cannot sidestep judicial oversight by refusing to provide Gubbels with the hearing that he is due, the right to confront witnesses, and the right to defend himself in the stalled agency proceeding. Every month that goes by further increases damage to Mr. Gubbels from his suspension. So, as USDA drags out the administrative process, delay itself becomes a severe punishment.

The USDA and the RMA did not follow their own regulations or comply with basic constitutional protections before imposing their suspension order against Mr. Gubbels. They first failed to provide adequate notice of specific charges against him. While admitting that Mr. Gubbels is entitled to a full evidentiary hearing to challenge a “temporary” suspension order, they have so far refused to confirm *if* and *when* they will grant him the hearing. To make matters worse, RMA Administrator Martin Barbre, who would oversee any hearing, has already shown that he is unable to be an impartial adjudicator.

This situation started in November 2019 when an anonymous accuser told RMA (the agency that administers crop insurance) that Mr. Gubbels was selling crop insurance policies after the deadline and misrepresenting the program. USDA, acting through RMA, indefinitely suspended Mr. Gubbels, unlawfully claimed the authority to also suspend *Insure My Honey, Inc.*, and suspended all of the independent contractor insurance agents from participating in the company’s business of selling and servicing federal crop insurance policies.

Mr. Gubbels has remained in suspension for nearly five months with no chance to clear his name. USDA's unwillingness to provide Mr. Gubbels a hearing to dispute *all* of the charges requires federal court intervention.

View full case summary [here](#).

NCLA released the following statements:

“The Constitution protects Mr. Gubbels’s rights regardless of whether federal agencies and administrators play games by *claiming* that they will eventually provide due process, while also refusing to actually move forward with a hearing. Lip service does not satisfy the mandates of the 5th Amendment to the United States Constitution. Empty promises are no substitute for due process of law.”

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

“Even though it has indefinitely shuttered Mr. Gubbels’s business, cost him millions of dollars in lost revenue, ruined his reputation, and threatened the livelihoods of more than 60 people who work with him, USDA has argued in court that a federal judge lacks any power to right the wrongs inflicted on Mr. Gubbels. This case provides the court an opportunity to remind agencies like USDA that they must comply with the Constitution.”

—**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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