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NCLA Asks Supreme Court to Hear Case to Overturn "Petty-Offense Exception" to Jury-Trial Right

David Lesh v. United States

Washington, DC (December 13, 2024) – Today, the New Civil Liberties Alliance and the Stanford Law School Supreme Court Litigation Clinic petitioned the Supreme Court to hear ***David Lesh v. United States***. On behalf of Mr. Lesh, NCLA seeks to overturn the Court's unjust precedent that directly contradicts the explicit language of the Constitution by denying individuals charged with "petty offenses" their right to a jury trial. This precedent led the U.S. Court of Appeals for the Tenth Circuit to rule that NCLA client David Lesh was not deprived of his constitutional jury-trial right when prosecuted and convicted for violating U.S. Forest Service (USFS) regulations. The Supreme Court should take this opportunity to eliminate the "petty-offense exception."

An accomplished skier and founder of the outdoor gear company Virtika, Mr. Lesh posted two photographs on his personal Instagram account in April 2020 that depicted an unidentifiable snowmobiler performing a jump at Colorado's Keystone Ski Resort. The resort rests on USFS-administered land and was closed at the time due to Covid-19. Mr. Lesh's Instagram post did not mention Virtika, nor did it promote the company's products. Nevertheless, a federal magistrate judge convicted him of violating one regulation prohibiting operation of a snowmobile outside of a designated route and another banning unauthorized "work activity or service" on USFS lands. Mr. Lesh's request for a jury trial was denied because of Supreme Court precedent declaring he was not entitled to one for a petty offense. Without a jury trial, Mr. Lesh was initially sentenced to six months' probation, 160 hours of community service, and a $10,000 fine. The Tenth Circuit overturned the latter conviction, in July 2024, for conducting unauthorized "work activity or service," finding the regulation behind it to be impermissibly vague.

The Supreme Court's "petty-offense exception" to the Constitution's jury-trial guarantee required the Tenth Circuit to uphold the magistrate's determination that Mr. Lesh was not entitled to a jury trial. However, in a powerful concurrence, Tenth Circuit Judge Tymkovich, joined by Judge Rossman, urged the Supreme Court to revisit the doctrine. Judge Tymkovich explained that this exception appears to be inconsistent with the text of both Article III of the Constitution and the Sixth Amendment, and he noted that the exception has been called into question by many constitutional scholars. Notably, the district court judge, who reviewed the magistrate's determination, had made a similar observation in his decision upholding the convictions.

The Sixth Amendment's jury-trial guarantee "[i]n all criminal prosecutions" is currently interpreted by the Supreme Court to exclude petty offenses—those generally carrying a penalty of six months' imprisonment or less. Article III independently protects this right as well, requiring trials for ***all*** crimes. The exception applies even if, as in Mr. Lesh's case, the defendant could conceivably serve more than six months if multiple counts of conviction are served consecutively. Regardless, the exception contravenes the Constitution's plain language and history and contradicts the Supreme Court's methods for interpreting constitutional text. The Justices have

recently made clear that Americans cannot be stripped of their right to a jury trial for reasons of efficiency or expedience.

NCLA released the following statements:

"Juries have long played a critical role in our nation as they provide a check on legislative, prosecutorial, and judicial powers. But the petty-offense exception eliminates that protection for many defendants. In modern America, where the number of federal regulatory crimes ranges between 300,000 and unknowable, restoring the full jury-trial right in all criminal prosecutions is long overdue."
— **Kara Rollins, Litigation Counsel, NCLA**

"While the Supreme Court is understandably reluctant to overturn its own precedent, it should not hesitate to make an exception to this general rule when—as here—that precedent contradicts explicit language in the Constitution. It's all-the-more important where an individual's very liberty is at stake."
— **Jenin Younes, Litigation Counsel, NCLA**

"It is not every day that the Supreme Court sees a petition for certiorari with Pam Karlan's and Philip Hamburger's names on it. I think the Justices, and their clerks, will be curious to discover what vital constitutional principle these two ideologically diverse academics have joined forces to vindicate."
— **Mark Chenoweth, President, NCLA**

"Over the past few terms, the Supreme Court has overruled several cases that mistakenly constricted the right to jury trial, reiterating the important role juries play in our system of governance. The so-called petty-offense exception flouts the text, structure, and history of the Constitution's jury-trial provisions. We believe that the Court should follow its recent trajectory and grant certiorari in this case."
— **Jeffrey L. Fisher, Stanford Law School Supreme Court Litigation Clinic**

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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