

No.

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**In the Supreme Court of the United States**

FRANK THOMPSON,  
*Petitioner,*

*v.*

CARL WILSON, IN HIS OFFICIAL CAPACITY AS  
COMMISSIONER, MAINE DEPARTMENT  
OF MARINE RESOURCES,  
*Respondent.*

*On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The First Circuit*

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Maine requires all federally-permitted lobstermen, including Petitioner Frank Thompson, to install a GPS tracker on their fishing boats and submit to 24/7 government surveillance as a condition of keeping their fishing license. The First Circuit held that the Fourth Amendment's administrative search doctrine authorizes Maine's trespass—even when lobstermen are not using their private fishing boats for commercial purposes. In doing so, it concluded, in conflict with the Sixth and Ninth Circuits, that Fourth Amendment trespassory protections under *United States v. Jones*, 565 U.S. 400 (2012), apply to criminal cases only, not to commercial cases.

The questions presented are:

1. Whether Maine's requirement that lobstermen place a GPS tracking device on their private fishing vessels and submit to 24/7 surveillance constitutes an unreasonable trespassory search in violation of the Fourth Amendment?
2. Whether courts must evaluate the reasonableness of a warrantless administrative search based on the Fourth Amendment's protections against government trespass, and not solely on a business owner's reasonable expectations of privacy?

**PARTIES TO THE PROCEEDING AND  
RULE 29.6 STATEMENT**

Petitioner Frank Thompson is a lifelong lobsterman in Maine and was the plaintiff in the district court and appellant at the First Circuit. Joel Strout, Jason Lord, Christopher Smith, and Jack Cunningham were all individual lobstermen plaintiffs in the district court, but they were not appellants at the First Circuit and are not part of this petition.

Respondent Carl Wilson, in his official capacity as the Commissioner of the Maine Department of Marine Resources, was the appellee at the First Circuit. He was substituted for Patrick Keliher, the defendant at the district court, upon taking office as Commissioner after Mr. Keliher's retirement.

**STATEMENT OF RELATED CASES**

The proceedings in federal district and appellate courts identified below are directly related to the above-captioned case in this Court under Rule 14.1(b)(iii):

*Thompson v. Keliher*, No. 1:24-cv-00001-JAW (D. Me. Nov. 21, 2024).

*Thompson v. Wilson*, No. 25-1007 (1st Cir. Nov. 18, 2025).

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Frank Thompson respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the First Circuit.

### **OPINIONS BELOW**

The First Circuit's decision is available at 159 F.4th 91 (1st Cir. 2025) and reprinted at App.1a.

The decision of the United States District Court for the District of Maine is not reported but is available at 2024 WL 4851243 (D. Me. Nov. 21, 2024) and reprinted at App.31a.

### **JURISDICTION**

The First Circuit's Judgment was entered on November 18, 2025. App. 1a. On December 22, 2025, Justice Jackson granted Petitioner's application for an extension of time within which to file a petition for a writ of certiorari until March 19, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED**

The Fourth Amendment to the U.S. Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Pursuant to 13–188 C.M.R. Ch. 25, § 25.98, Maine requires all federally permitted lobstermen to install a GPS tracking device on their lobstering vessels and to submit to 24/7 surveillance as a condition of keeping their fishing licenses. App.150a-155a.

Under Section 3.1 of Addendum XXIX to the American Lobster Fishery Management Plan, the Atlantic States Marine Fisheries Commission (“ASMFC”) required its member states, including Maine, to adopt and enforce that requirement. App.136a-149a.

## INTRODUCTION

For Petitioner Frank Thompson, a fifth-generation lobsterman, his business in the lobstering industry is his family’s livelihood. But Thompson, like many lobstermen, also uses his fishing boat for personal activities unrelated to lobstering. Maine requires Thompson and all other lobstermen to place a GPS tracking device on their fishing boats, keep it there at all times, and submit to government surveillance as a condition of keeping their license. Maine tracks lobstermen’s boats 24/7—even outside work areas and hours when they are not using their boats for lobstering. This case presents important Fourth Amendment questions about trespass on and constant surveillance of private property used for both commercial and noncommercial purposes.

The First Circuit’s attempt to resolve these Fourth Amendment questions deepened a split between the Tenth Circuit and the Ninth and Sixth Circuits over whether the reasonableness of the government’s warrantless trespass on private property—outside of commercial areas, hours, and operations—should be judged under the Fourth Amendment’s core trespass-

to-property protections (in accordance with *Jones*), or under an administrative search doctrine. Compare App.14a-20a, 28a n.18, and *Johnson v. Smith*, 104 F.4th 153, 167 (10th Cir. 2024), with *Rush v. Obledo*, 756 F.2d 713 (9th Cir. 1985); *Taylor v. City of Saginaw*, 11 F.4th 483, 487-90 (6th Cir. 2021) (*Taylor II*). Some courts hold that the administrative search doctrine displaces the Fourth Amendment’s protection from trespass. Others hold that it does not.

The First Circuit also deepened a split with the Ninth Circuit over whether the reasonableness determination under an administrative search test must be guided by the Fourth Amendment’s trespass-to-property protections under *Jones*, or solely by business owners’ “reasonable expectations of privacy” under *Katz*. Compare App.24a-30a, 28a n.18, with *Patel v. City of Los Angeles*, 738 F.3d 1058, 1061-65 (9th Cir. 2013) (*Patel I*) (*en banc*).

These Fourth Amendment questions warrant the Court’s review. Had the First Circuit followed the other federal courts’ approaches, it would have struck down Maine’s requirement—that Thompson and other lobstermen place a tracker on their boat and submit to 24/7 government surveillance—as an unreasonable trespassory search of their private property.

The Court should also grant certiorari because this case presents recurring issues of nationwide importance. Today, almost all businesses are heavily regulated. Thus, many individuals and small business owners are susceptible to being considered part of “closely regulated industries,” meaning they too can be subjected to 24/7 surveillance—even when they are not using their property for commercial purposes. This important issue will continue across the entire industry.

Not only are Maine’s lobstermen subject to this constant government surveillance, but, under ASMFC regulations and federal laws, nine other member states must also fall in line with the ASMFC directives or their state’s lobstermen will be prohibited from fishing. Indeed, the ASMFC directive prompted Maine to enact its rule.

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As the panel’s decision below demonstrates, Fourth Amendment doctrine in the lower courts has lost its mooring from constitutional first principles and drifted far asea. At bottom, this case gives the Court the opportunity to continue reconnecting its Fourth Amendment jurisprudence to original principles as it did in *Jones* and to extend that seminal holding to government trespasses ostensibly committed under the administrative search doctrine.<sup>1</sup> The First Circuit’s decision to judge the reasonableness of 24/7 government searches of private property based on business owners’ reasonable expectations of privacy—not on their core Fourth Amendment freedoms from trespass to property—is precisely the kind of jurisprudential “miasma” that this Court should clear up. *See Case v. Montana*, 607 U.S. \_\_\_, slip op. at 3 (Jan. 14, 2026) (Gorsuch, J., concurring) (citations omitted).

This Court should grant this petition to restore the Fourth Amendment’s “sturdier” property protections,

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<sup>1</sup> This Court’s decision to grant cert in *Chatrie v. United States*, No. 25-112, this Term reflects the need to resolve Fourth Amendment issues regarding the government’s execution of geofence warrants that allow it to identify and track cellphone users in particular locations and particular times. This case gives the Court the opportunity to address Fourth Amendment doctrine and similar themes when the government purports to carry out an “administrative search.”

and resolve the growing split between the First, Sixth, Ninth, and Tenth Circuits.

## STATEMENT OF THE CASE

### A. Factual Background

Frank Thompson has been lobstering off the coast of Vinalhaven, Maine, for over 55 years. App.190a-191a. Thompson and his wife, Jean, and their two sons, own and operate the Fox Island Lobster Company, LLC, a lobstering business based in Vinalhaven. App.191a. As a fifth-generation lobsterman, Thompson and his family have built their lives around the lobstering industry. App.194a-195a.

Thompson's business and the broader lobstering industry have long grappled with federal and state regulations governing the Nation's fisheries. App.4a.<sup>2</sup> Ten states, including Maine, exercise joint regulatory authority over lobstering and other aquatic resources through the ASMFC. App.4a, 136a. The ASMFC creates fishery management plans ("FMPs") mandating that member state agencies, like the Maine Department of Marine Resources, adopt rules and enforce federal requirements to regulate those aquatic resources. App.4a-5a.

The ASMFC amended its Lobster FMP in March 2022, requiring member states to promulgate rules mandating that federally permitted lobstermen install GPS electronic tracking devices on their fishing boats by December 15, 2023, for conducting 24/7 surveillance of the lobstermen. App.5a-6a. Federal law mandates

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<sup>2</sup> See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 380-82 (2024); *Massachusetts Lobstermen's Ass'n v. Raimondo*, 141 S.Ct. 979, 980 (2021) (Roberts, J., concurring in the denial of certiorari).

that ASMFC member states implement similar rules, or else the Secretary of Commerce may impose a moratorium on fishing in that state's waters. 16 U.S.C. § 5106.

Following the ASMFC's mandate, on September 13, 2023, the Maine Department of Marine Resource ("MDMR") issued a new rule requiring all federally permitted lobstermen to install the Particle TrackerOne—a GPS tracking device manufactured in China and distributed by Particle, and have them fully operational on their boats as a condition of keeping their permits. App.6a-7a, 49a-50a.<sup>3</sup> Maine prohibits the lobstermen from ever removing the device. App.42a, 46a-48a.

Under the MDMR Rule, Maine monitors all the lobstermen's movements by using this GPS tracker to collect their boats' time and position (longitude and latitude within 100 meters), 24 hours per day, 7 days a week on a minute-by-minute basis while the vessel is moving, and every six hours when the vessel is moored or docked. App.6a-7a, 42a, 46a-48a, 74a, 173a-174a; App.192a; (Dist. Ct. Doc. No. 1-3 at 1). The GPS tracker is Bluetooth and Wi-Fi compatible and can collect audio information aboard the boat. App.50a, 181a, 187a, 194a.

Thompson, like many other Maine lobstermen, regularly uses his lobster boat for personal activities unrelated to lobstering. App.191a, 210a, 217a. Not only

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<sup>3</sup> To be sure, Maine separately asserted reasons why it was imposing the GPS tracking requirement. Maine justified the GPS tracking requirement based on its purported need for lobster harvesting data (i.e., the "spatial and temporal data" related to where and when Maine lobstermen had fished for and retrieved lobsters). App.219a. Notwithstanding those justifications, the ASMFC requires Maine and other member states to adopt and enforce the requirement as a matter of federal law.

does he use his vessel for recreational purposes, like taking day trips with his family, but Thompson also uses his boat for emergency search and rescue operations, such as transporting residents from the island of Vinalhaven to the mainland when they need emergency treatment. Thompson once transported his own daughter-in-law to the mainland to give birth to his granddaughter. App.49a, 180a, 191a. Plaintiff-Appellant’s Initial Brief at 8, *Thompson v. Wilson*, 159 F.4th 91 (1st Cir. 2025) (No. 25-1007).

Maine is always tracking Thompson’s boating activities at the federal government’s behest—whether he is lobstering or not—including when he is only using his boat for personal purposes. App.42a, 46a-49a. And Maine is doing so without a warrant or pre-compliance review. Plaintiff-Appellant’s Initial Brief at 4, 11, 13, *Thompson v. Wilson*, 159 F.4th 91 (No. 25-1007). Maine justified the mandatory GPS tracker rule by claiming that the tracker would extract data with better resolution than the spatial data already provided through harvester reports. App.218a-219a.<sup>4</sup> Thompson has substantial property and privacy interests in not

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<sup>4</sup> Before adopting these regulations, Maine itself proclaimed that the lobster fishery “has been a model of conservation, not only in the management of the lobster resource, but also in its two-decade participation in regulations aimed at protecting large whales.” Pls.’ Opp’n to Defs.’ Mot. to Dismiss (Dist. Ct. Doc. No. 24, at 8) (citing Dec. 27, 2019, Ltr. from Commissioner Patrick Keliher to NMFS at 1, *available at* Dist. Ct. Doc. No. 61-1 at 19, *Maine Lobstermen’s Ass’n, Inc. v. Nat’l Marine Fisheries Serv.*, No. 1:21-cv-02509 (D.D.C. 2022)). The ASMFC had previously imposed a 2018 regulation requiring lobstermen “to self-report” the same data that the GPS tracker would extract. App.41a-42a, 110a-111a, 140a, 174a, 205a-207a, 213a, 215a.

being tracked. His decisions concerning the movements of his fishing vessel and the placement of his traps are the result of hard work and knowledge passed down through his family over many decades. App.194a-195a. In the context of the lobster industry, this knowledge is, in every sense of the term, the equivalent of a proprietary trade secret having great monetary value. App.194a-195a, 213a. For Thompson, it is essential that his trip information remain confidential so that he can retain an important business advantage. *Ibid.*

During the MDMR proposed rulemaking's notice and comment period, a number of Maine lobstermen came forward and questioned the new tracking requirement's constitutionality (App.209a, 213a), with several observing that Maine's GPS surveillance requirement treats them like criminals. App.209a, 217a. Lobstermen who have been working in the profession their entire lives objected that Maine's tightening regulatory burdens threatened their family's continued ability to make a living in an industry that is "struggling to survive." App.205a-210a, 214a-217a. If Thompson does not comply with Maine's GPS tracking requirement, he will face sanctions, including fines and the loss of his federal lobstering license. App.6a-7a & n.4, 78a-79a, 132a-133a, 193a-194a. Meanwhile, mandatory data collection and accompanying enforcement actions threaten Thompson's Fourth Amendment rights and his business operations. App.194a.

## **B. Procedural History**

### **1. District Court Proceedings**

In January 2024, after the MDMR Rule went into effect, Thompson and a group of lobstermen sued the

Commissioner in his official capacity in the United States District Court for the District of Maine.<sup>5</sup> The suit sought to enjoin Maine's enforcement of its GPS tracking requirement and to have it declared unconstitutional under the Fourth Amendment.<sup>6</sup> App.3a, 32a, 156a, 160a, 182a-183a, 188a-189a. Thompson alleged that Maine's GPS tracking requirement constitutes an unreasonable trespassory search and goes far beyond what is necessary to accomplish MDMR's objectives because of its warrantless entry upon his property and its around-the-clock tracking of lobstermen's boats regardless of the commercial or personal nature of their activities. App.53a-56a, 188a-189a.

Maine moved to dismiss Thompson's Fourth Amendment claim. App.8a, 33a. On November 21, 2024, the district court granted Maine's motion and dismissed Thompson's case. App.7a-8a, 31a-134a. During district court proceedings, Maine conceded that the MDMR Rule's GPS tracking requirement constituted a Fourth Amendment search, so the court's decision focused on the requirement's reasonableness. App.102a-103a n.18 (citing Def. Mot. to Dismiss, Dist. Ct. Doc. No. 23 at 12 n.16).

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<sup>5</sup> During district court proceedings Patrick Keliher was MDMR Commissioner. Carl Wilson was named Acting Commissioner as of February 26, 2025, replacing Keliher. Wilson has continued in his role as MDMR Commissioner from appellate proceedings through the present. App.7a & n.7; Plaintiff-Appellant's Initial Brief at 1 n.1, *Thompson v. Wilson*, 159 F.4th 91 (No. 25-1007).

<sup>6</sup> Thompson brought additional claims at the district court, but he only appealed the Fourth Amendment violation to the First Circuit. App.7a-8a & n.8, 53a-54a.

The district court found that “[t]he MDMR Rule contemplates a constant search of each licensed lobster boat in the entire lobstering fleet. The data collection under the MDMR Rule is vastly different in kind and intensity to past MDMR practice.” App.121a. The court concluded that “[t]he degree of state intrusion would be inimical to the restraint on government guaranteed by the Fourth Amendment but for the *Burger* exception for administrative searches of a closely regulated industry.” App.120a. The court felt itself bound by precedent, but “encourage[d] the lobstermen to appeal [its] decision . . . for an authoritative ruling.” App.32a. The court emphasized that “this case raises significant Fourth Amendment issues” that “should be presented to the First Circuit on review.” App. 3a, 32a, 125a.

## 2. First Circuit Proceedings

On December 19, 2024, Thompson filed a timely notice of appeal.<sup>7</sup> Dist. Ct. Doc. No. 35. The First Circuit affirmed dismissal, acknowledging Maine’s concession that the GPS tracking requirement constitutes an “administrative search,” App.8a, but rejecting Thompson’s arguments that the MDMR Rule’s GPS tracking requirement constitutes an unreasonable trespassory search of property in violation of the Fourth Amendment. App.3a, 14a-30a; Plaintiff-Appellant’s Initial Brief at 1-4, 11-13, 14-34, *Thompson v. Wilson*, 159 F.4th 91 (No. 25-1007).

First, Thompson argued that Maine’s requirement for the lobstermen to place GPS trackers on their boats and keep them for around-the-clock surveillance constitutes an unreasonable trespassory search

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<sup>7</sup> Of the lobstermen who were the original plaintiffs at the district court, only Frank Thompson appealed. App.7a & n.6.

unrelated to commercial lobstering, and violated the Fourth Amendment's fundamental protections against warrantless trespass. App.14a-15a; Plaintiff-Appellant's Initial Brief at 14-25, *Thompson v. Wilson*, 159 F.4th 91 (No. 25-1007). For such trespasses to private property, Thompson argued that Maine's GPS tracking requirement must be judged for reasonableness under the Fourth Amendment's core protections from trespass (in accordance with *Carpenter*, 585 U.S. 296 (2018), and *United States v. Jones*, 565 U.S. 400 (2012)), not the *Burger* administrative search test. Plaintiff-Appellant's Initial Brief at 14-25, *Thompson v. Wilson*, 159 F.4th 91 (No. 25-1007).

The First Circuit rejected Thompson's arguments, holding that "[b]ecause the *Burger* test applies to searches of closely-regulated industries, which necessarily have a reduced expectation of privacy . . . the privacy concerns and judicial balancing Thompson requests come pre-baked into the *Burger* test, and need not be repeated outside of its application." App.18a-19a (citing *New York v. Burger*, 482 U.S. 691, 702 (1987)).

Second, Thompson argued that the Fourth Amendment's trespass to property protections must be applied in evaluating reasonableness under the *Burger* administrative search test. When those trespassory protections are applied as in *Jones*, Maine's 24/7 GPS tracking requirement is unreasonable. Plaintiff-Appellant's Initial Brief at 14-25, 29-30, *Thompson v. Wilson*, 159 F.4th 91 (No. 25-1007). Thompson further argued that, even if analyzing his rights under the administrative search test, the court should evaluate reasonableness in accordance with the Fourth Amendment's original meaning, which shows that the MDMR

Rule is like an impermissible general warrant that defies the Constitution’s minimum guarantees of protection. *Id.* at 1-4, 14-20, 30, 33-34.

Notwithstanding the First Circuit’s own suggestion that Thompson’s *Jones* trespass-to-property-based reasonableness arguments should “come pre-baked into the *Burger* test,” App.19a, the court refused even to consider *Jones*’s and *Carpenter*’s bearing on the reasonableness of Maine’s GPS surveillance requirement and its trespass on Thompson’s private boat under *Burger*’s three prongs. App.28a n.18. The lower court rejected those cases’ relevance to the tracking requirement’s reasonableness, asserting that they are “criminal in nature and involve government searches to uncover evidence of criminal activity,” and “[t]herefore, any direct comparison to the MDMR Rule falls short.” App.28a n.18 (citation omitted). The First Circuit’s determination that Maine’s placement of “mindless” GPS tracking devices on lobstermen’s boats was minimally intrusive was predicated on the lobstermen’s expectations of privacy, not on their protections from government trespass. App.27a-30a.

### **C. The Basic Legal Framework**

In 1761, a Boston lawyer named James Otis argued against writs of assistance giving English officials unfettered discretion to search not only colonists’ homes, but also their commercial properties—ships, warehouses, and shops. Otis called such writs “the worst instrument of arbitrary power.” James Otis, *The Collected Political Writings of James Otis* (Richard A. Samuelson ed., Liberty Fund 2015).

Otis’s speech helped spark the Revolution, and the Founders’ aversion to the writs of assistance led to the

Fourth Amendment—a bulwark against unreasonable government intrusions. *Carpenter v. United States*, 585 U.S. 296, 303-04 (2018) (citing 10 *The Works of John Adams* 248 (C. Adams ed. 1856)).

This Court has long recognized “the Fourth Amendment’s prohibition of unreasonable searches and seizures is applicable to commercial premises, as well as to private homes.” *Burger*, 482 U.S. at 699 (citation omitted). Fourth Amendment protections exist “not only with respect to traditional police searches conducted for the gathering of criminal evidence but also with respect to administrative inspections designed to enforce regulatory statutes.” *Id.* at 700 (citing *Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 312-13 (1978)).

Yet this Court has also held that a narrow group of closely regulated industries “have such a history of government oversight that no reasonable expectation of privacy . . . could exist for a proprietor over the stock of such an enterprise.” *Burger*, 482 U.S. at 700 (citing *Katz v. United States*, 389 U.S. 347, 351-52 (1967), and *Marshall*, 436 U.S. at 313). “These cases are indeed exceptions,” and “they represent responses to relatively unique circumstances.” *Marshall*, 436 U.S. at 313. The Court further reasoned that “[b]ecause the owner or operator of commercial premises in a ‘closely regulated’ industry has a reduced expectation of privacy, the warrant and probable-cause requirements, which fulfill the traditional Fourth Amendment standard of reasonableness for a government search . . . have lessened application in this context.” *Burger*, 482 U.S. at 702 (citation omitted).

*Burger* created a three-pronged reasonableness test for administrative searches in “closely regulated” industries:

First, there must be a “substantial” government interest that informs the regulatory scheme pursuant to which the inspection is made. . . . Second, the warrantless inspections must be “necessary to further [the] regulatory scheme.” . . . [Third], “the statute’s inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant.”

*Burger*, 482 U.S. at 702-03 (citations omitted). “In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers.” *Id.* at 703 (citation omitted).

After *Burger*, this Court’s decisions in *Jones* and *Carpenter* addressed Fourth Amendment doctrine regarding the government’s use of GPS trackers and other surveillance technologies.<sup>8</sup> Those recent precedents focused on the Fourth Amendment’s original meaning and revived a trespass-to-property-based approach (as opposed to fixating solely on *Katz*’s reasonable expectations of privacy view on individual rights). See *Jones*, 565 U.S. at 404-09, 411; *Carpenter*, 585 U.S. at 303-07. In *Jones*, for example, this Court held that “the *Katz* reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test.” 565 U.S. at 409. This Court thus

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<sup>8</sup> As with *Jones* and *Carpenter*, Thompson’s case involves the government’s use of GPS tracking technology to trespass on private property, but here Maine claims the administrative search doctrine allows the government to force federally licensed lobstermen to submit to perpetual GPS surveillance.

rejected “apply[ing] *exclusively* *Katz*’s reasonable-expectation-of-privacy test . . . when that eliminates rights that previously existed.” *Id.* at 411. Since *Burger*, this Court has also warned against permitting “what has always been a narrow [closely regulated industry] exception to swallow the rule.” *City of Los Angeles v. Patel*, 576 U.S. 409, 424-25 (2015) (*Patel II*).

Following *Jones* and *Carpenter*, the circuit courts diverged in applying those cases in the context of administrative searches. The first split concerns whether government trespasses on private property outside of commercial areas, hours, and operations should be evaluated for reasonableness under the Fourth Amendment’s basic trespass-to-property test, not an administrative search test. *Compare* App.14a-20a, 28a n.18, *and Verdun v. City of San Diego*, 51 F.4th 1033, 1037-48 (9th Cir. 2022), *with Taylor II*, 11 F.4th at 487-90, *and Rush*, 756 F.2d 713 (applying similar Fourth Amendment protections even pre-*Jones*).

The second split concerns whether courts applying an administrative search doctrine must evaluate the reasonableness of warrantless searches based on the Fourth Amendment’s common-law trespassory protections, as under *Jones*, and not solely on reasonable expectations of privacy as under *Katz*. *Compare* App.24a-30a, 28a n.18, *with Patel I*, 738 F.3d at 1061-65. The First Circuit evaluates the factors of the *Burger* administrative search test strictly according to property owners’ reasonable expectations of privacy whereas the Ninth Circuit requires that the factors must account for trespass protections.

## REASONS FOR GRANTING THE PETITION

### I. **The Court Should Resolve the Lower-Court Conflict over Whether the Government’s Warrantless Trespass on Private Property Outside of Commercial Areas and Hours Violates the Fourth Amendment**

The First Circuit created a circuit split when it held that Maine could mandate that lobstermen must place GPS tracking devices on their fishing boats and submit to 24/7 trespassory surveillance in areas and hours of personal, non-commercial use. The court refused to apply the Fourth Amendment’s common-law trespass test to Maine’s trespassory surveillance in non-commercial areas, hours, and operations, holding that it was instead subject strictly to the *Burger* administrative search test for “closely regulated” industries.

That decision conflicts with the Ninth Circuit’s opinion in *Rush*, 756 F.2d 713, and the Sixth Circuit’s opinion in *Taylor II*, 11 F.4th at 487-89, on the issue of whether the Fourth Amendment’s trespassory search protections apply when the government trespasses on private property outside of commercial areas, hours, and operations. The First Circuit diverged from the Ninth and Sixth Circuits in rejecting the Fourth Amendment limiting principles that apply to trespassory surveillance.

**A. The Ninth and Sixth Circuits apply the Fourth Amendment’s common-law trespass test when the government trespasses on private property outside of commercial areas and hours**

Even before this Court’s decision in *Jones*, the Ninth Circuit held in *Rush* that the administrative search test for “closely regulated” industries does not apply to the government’s “warrantless entry”—i.e., trespass—on business owners’ private property outside of commercial areas, hours, and operations. 756 F.2d at 717-18, 721-22. Instead, the Ninth Circuit decided that the Fourth Amendment prohibits such trespasses without a warrant.

The regulation at issue in *Rush* placed no geographic or temporal restrictions on daycare inspections, which could be unannounced and warrantless at any time of day—even inside the plaintiff’s private home. 756 F.2d at 721. Even though daycare operations were considered a “closely regulated industry” in the Ninth Circuit, the court held that when those operations are conducted in a private residence, searches must be limited both to the hours of daycare operations and to the rooms used for childcare. *Ibid.*; see also *Richards v. Newsom*, No. 8:23-cv-02413-JVS-KES, 2024 WL 4812537, at \*11 (C.D. Cal. Oct. 16, 2024). Inspections during business hours and in areas devoted to daycare did not infringe on Fourth Amendment rights. *Rush*, 756 F.2d at 722. But once the children left, the home—like Thompson’s fishing boat—reverted to private property with full constitutional protections, reserved for personal use and shielded from a warrantless trespass.

The Ninth Circuit’s limitation on the scope of inspections is especially stark considering the “urgent” government interests in keeping children safe. *Ibid.*; see also *Golden Day Schools, Inc. v. Pirillo*, 118 F.Supp.2d 1037, 1042-43 (C.D. Cal. 2000) (explaining *Rush*’s government interest analysis). The warrantless inspection regime was designed to prevent easily concealed “poisonous chemicals or firearms, open pools, hazardous stairwells, and sexual or physical abuse.” *Rush*, 756 F.2d at 720. These dangers are much more severe—both in their nature and in their potential harm to the most vulnerable members of society—than the dangers of non-constantly-surveilled lobstermen. The Ninth Circuit was right to distinguish between commercial and non-commercial locations and uses.<sup>9</sup>

Later, in *Taylor II*, the Sixth Circuit held that the administrative search test for “closely regulated” industries does not apply to a government’s warrantless trespass on private property outside of the “closely regulated” industry’s commercial areas and operations. 11 F.4th at 487-89. The court reasoned that the test *could* apply to warrantless searches of vehicles on a “closely regulated” junkyard’s premises, but it does not apply to the same automobile when parked on a city street. *Id.* at 488. Accordingly, even though an automobile—like a lobsterman’s fishing boat—can serve dual commercial and non-commercial purposes, the regulatory search doctrine “applies to industries, not objects.” *Ibid.* Recognizing as much, the Sixth Circuit held that non-commercial use of private property could not be subject to a warrantless trespassory search. *Ibid.*

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<sup>9</sup> Notably, the Washington Supreme Court adopted the same position as the Ninth Circuit in *State v. Miles*, 160 Wash. 2d 236, 250-52 (2007).

The Ninth and Sixth Circuit decisions align with this Court’s holding in *Jones* that the Fourth Amendment’s “18th-century guarantee against unreasonable searches” provides “at *a minimum* the degree of protection it afforded when it was adopted.” 565 U.S. at 409, 411.<sup>10</sup> Under those holdings, the Fourth Amendment prohibits government trespasses to private property, especially those physical trespasses perpetrated by continuous GPS surveillance without a warrant. Petitioner does not argue that all trespassory searches are categorically unreasonable, but only that a continuous, nonconsensual, warrantless, license-conditioned trespass on private property used for non-commercial purposes cannot be justified under the administrative-search doctrine.

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<sup>10</sup> *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765), considered to be “the true and ultimate expression of constitutional law with regard to search and seizure,” *Jones*, 565 U.S. at 405 (citations omitted), shows that warrantless searches that physically intrude upon and occupy private property were unreasonable at the founding:

[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour’s close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour’s ground, he must justify it by law.

*Entick*, 95 Eng. Rep. at 807 (cleaned up).

**B. The First and Tenth Circuits rejected the argument that the Fourth Amendment's common-law trespass test determines the reasonableness of the government's physical trespasses on private property outside of commercial areas and hours**

The panel below made no such distinctions between commercial and non-commercial areas, hours, and uses, directly splitting from the Ninth and Sixth Circuits. Indeed, upholding the 24/7 tracking of the boat's location extended the administrative search doctrine far beyond the Ninth Circuit's episodic, limited inspections contemplated in *Rush*. The panel's approach transformed a narrow exception into a license for constant trespassory surveillance, erasing core Fourth Amendment protections against warrantless, suspicionless searches.

Splitting even further from the Ninth Circuit, the First Circuit admitted lobstermen are subject to seasonal and weekend restrictions. App.29a. Like daycares, lobstermen are not conducting business 24/7, but Maine tracks them as if they are. Lobstermen must submit to placing Maine's GPS trackers on their boats at all times and subject themselves to around-the-clock trespassory surveillance while using their private property for private, noncommercial uses in direct contradiction to *Rush*.

The Tenth Circuit reached the same conclusion as the First Circuit in a case in which homeowners used their homestead to operate an animal training kennel. *Johnson v. Smith*, 104 F.4th 153, 167 (10th Cir. 2024). Nonetheless, the Tenth Circuit refused to apply the Fourth Amendment's trespass to property test and instead applied the *Burger* test, rejecting the argument

that the courts should not “apply[] the pervasively regulated industry exception—premised on reduced expectations of privacy—to [their] property-based physical intrusion claims.” *Ibid.* The Tenth Circuit observed that this Court gave “no hint” in *Patel* “of a revised approach to regulatory inspections resulting from the Court’s recent Fourth Amendment trespass jurisprudence.” *Ibid.*

If the First Circuit followed the Ninth, the panel would have found limitless GPS monitoring violated the Fourth Amendment. The GPS requirement mandates constant surveillance, including when Thompson uses his boat for noncommercial purposes, contradicting the Ninth Circuit’s requirement that daycare inspections be limited to commercial areas and commercial hours.<sup>11</sup> The Ninth and Sixth Circuits rightly applied a limiting principle to administrative searches—limits shrugged off by the First and Tenth Circuits, opening the floodgates to limitless surveillance.

Divergence on the scope of administrative searches means that circuits apply inconsistent constitutional standards. Further, future circuit courts tasked with the same issue will have to choose which standard to apply, further entrenching the split. Granting this petition would forestall lower court confusion and give this Court the opportunity to state a clear rule. The Court should intervene now before lower courts repeat the First Circuit’s errors, irreparably injuring business

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<sup>11</sup> Here, the government’s trespass on private fishing boats outside of commercial areas and hours is not even justified or supported by the safety concerns that motivated courts to weaken Fourth Amendment protections in industries like daycare and trucking. *Rush*, 756 F.2d at 720; *Owner-Operator Indep. Drivers Ass’n v. U.S. Dep’t of Transp.*, 840 F.3d 879, 895 (7th Cir. 2016).

owners' Fourth Amendment property rights in any number of industries.

## **II. The Court Should Resolve a Circuit Split on Whether the Reasonableness of a Warrantless Administrative Search under the *Burger* Test Depends in Part on Trespass to Property Protections or Solely on Reasonable Expectations of Privacy**

### **A. This Court Has Not Yet Answered Whether *Jones's* Trespass to Property Protections Apply under *Burger***

The First Circuit reassured the lobstermen that the common-law trespass protections they argued for come baked into *Burger*, even though the panel rejected the lobstermen's argument that the reasonableness of the government's administrative search should be evaluated under the Fourth Amendment's common-law trespass test instead of *Burger*. App.18a-19a.

Notwithstanding those reassurances, the First Circuit then decided the common-law trespassory protections from cases like *Carpenter* and *Jones* apply only in criminal cases. App.28a n.18. Accordingly, the lower court chose to evaluate the reasonableness of Maine's surveillance requirement under *Burger* based solely on the lobstermen's "reasonable expectations of privacy" in a "closely regulated" industry, which are virtually non-existent. *See Burger*, 482 U.S. at 700 (holding that closely regulated industries "have such a history of government oversight that no reasonable expectation of privacy . . . could exist for a proprietor over the stock of such an enterprise") (citing *Katz*, 389

U.S. at 351-52). The First Circuit played a shell game with the lobstermen's Fourth Amendment protections.

The decision below demonstrates the need for this Court to settle the question of when and how the *Jones* property-based approach applies to evaluating the reasonableness of warrantless administrative searches under *Burger*.

Though *Jones* only specifically addressed step one of the Fourth Amendment's requirements—the existence of a search—*Jones* shows that the trespass/physical intrusion paradigm informs Fourth Amendment reasonableness analyses, including under the *Burger* test for warrantless administrative searches in “closely-regulated” industries. The *Burger* Test is fundamentally a reasonableness inquiry. But as *Jones* suggested, the Fourth Amendment protects the “18th-century guarantee against unreasonable searches,” establishing a baseline for freedoms from trespass that provides “at a *minimum* the degree of protection it afforded when it was adopted.” *Jones*, 565 U.S. at 411.

*Jones* also rejected “apply[ing] *exclusively* *Katz*'s reasonable-expectation-of-privacy test,” such as under *Burger*, “when that eliminates rights that previously existed[,]” especially basic freedoms from common-law trespass guaranteed under the Fourth Amendment. *Jones*, 565 U.S. at 411.

Yet *Jones* itself did not state whether the trespass test should also be applied to administrative searches. This ambiguity has led to doctrinal confusion, as lower courts struggle to answer whether *Jones* trespass-to-property protections inform the *Burger* analysis or are confined to criminal cases. The First Circuit's decision reflects this confusion by finding that the Fourth

Amendment caselaw arising in the criminal context cannot elicit a “direct comparison” with the Fourth Amendment cases arising in the civil context. App.28a n.18.

This Court has never squarely addressed whether and to what extent the *Jones* protections inform the *Burger* test. Until it does, lower courts will continue diverging, leaving business owners and government officials without clear constitutional boundaries. See Orin Kerr, *The Two Tests of Search Law: What Is the Jones Test, and What Does That Say About Katz?*, 103 WASH. U. L. REV. 309 (2025).<sup>12</sup>

Lower courts’ uncertainty has practical and significant consequences. Different circuits require regulating agencies to implement different rules in different ways, leading to arbitrary enforcement and inconsistent protection of Fourth Amendment rights. This Court should grant certiorari and resolve these disputes between lower courts.

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<sup>12</sup> The separate opinions in *Carpenter v. United States* exemplify the uncertainty about which precedents apply, and at what step of Fourth Amendment analysis *Jones* should be considered. See 585 U.S. at 334, 341 (Kennedy, J., dissenting) (arguing property principles should inform the *Katz* analysis); *id.* at 342-61 (Thomas, J., dissenting) (arguing that *Jones* should replace *Katz*); *id.* at 405 (Gorsuch, J., dissenting) (arguing that *Jones*, *Katz*, and a historical analysis should each be their own avenue of proving a Fourth Amendment interest). Likewise, the circuit courts are also split. See *supra* §§ I, II.

**B. Circuits Are Split Over Whether to Apply *Jones*'s Trespass to Property Protections to Administrative Searches in Closely-Regulated Industries**

The unanswered questions left open by *Jones* have, as noted, caused doctrinal confusion among the lower courts. The Ninth, Sixth, and First Circuits all conflict on which protections to apply in warrantless civil searches to determine Fourth Amendment reasonableness. The Ninth Circuit applies the *Jones* Trespass Test and the Reasonable Expectation of Privacy Test when evaluating administrative searches. The Sixth Circuit also applies the *Jones* Test. Yet the First Circuit refused to apply the *Jones* Trespass Test to administrative searches and instead applied only the *Katz* Test. Circuits are picking and choosing which test to apply to administrative searches, diverging on whether *Katz* and *Jones* principles carry over into a reasonableness analysis.

Confusion in the lower courts will persist, and individuals will not know when their rights are violated unless this Court grants the petition and clarifies that both tests must be applied.

**1. The Ninth Circuit applies the *Jones* and *Katz* tests to administrative searches**

The Ninth Circuit, *en banc*, applied *Jones* and *Katz* to an administrative search in *Patel I*, 738 F.3d 1058, and this Court affirmed in *Patel II*, 576 U.S. 409.<sup>13</sup> *Patel I* and *II* struck down a Los Angeles ordinance requiring

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<sup>13</sup> This Court reviewed the *en banc* decision in *Patel II*, but addressed only the Ninth Circuit's *Katz* analysis, leaving the *Jones* analysis from *Patel I* untouched and still binding within the circuit.

hotels to submit to warrantless administrative inspections. In *Patel I*, the Ninth Circuit applied the *Jones* trespass protections and the *Katz* Reasonable Expectation of Privacy Test to hold that a warrantless inspection of motel records was a Fourth Amendment search for two reasons: (1) the government inspected the motel’s private property without a warrant and without consent, and (2) the motel had a reasonable expectation of privacy in those private records.

At the Fourth Amendment’s second step—reasonableness—the Ninth Circuit invoked this Court’s caselaw on warrantless administrative inspections. The Ninth Circuit used its *Jones* and *Katz*-informed holdings from step one—that the ordinance was trespassory- and privacy-violative—to inform its step two civil search analysis. *Patel I*, 738 F.3d at 1063. *Patel I* explicitly distinguished between offices open versus closed to the public, given that closed offices in commercial buildings are, for *Jones* purposes, not open to business invitees, and for *Katz* purposes, more private. *Ibid.* (“If that office were not open to the public, officers could not insist on conducting the inspection there without an administrative search warrant.”).

Since the *Patel* decisions, the Ninth Circuit has gone so far as holding the *Jones* trespass test takes priority over the *Katz* test, *Lyall v. City of L.A.*, 807 F.3d 1178, 1186 (9th Cir. 2015) (“Only where the search did not involve a physical trespass do courts need to consult *Katz*’s reasonable-expectation-of-privacy test.”), but still applies both in civil search contexts to determine whether a search occurred and whether that search was reasonable. *See, e.g., Hotop v. City of San Jose*, 982 F.3d 710, 721 (9th Cir. 2020) (Bennett, J., concurring) (“*Patel I* serves only to confirm the Fourth Amendment’s requirement of a physical intrusion or its equivalent”);

*Taylor v. San Francisco Sheriff's Dep't*, No. 23-cv-04121-DMR, 2024 WL 2808650, at \*3 (N.D. Cal. May 31, 2024) (“Where the search did not involve a physical intrusion, the plaintiff must show that an ‘objectively reasonable’ expectation of privacy was violated.”). *See also United States v. Sayonkon*, No. 16-cr-0265, 2017 WL 11426870, at \*8 (D. Minn. Jan. 24, 2017) (“[T]he Ninth Circuit determined that searches . . . were ‘both a physical intrusion upon a hotel’s papers and an invasion of the hotel’s protected privacy interest in those papers.’”) (quoting *Patel I*, 738 F.3d at 1061); *Newman v. Moore*, 743 F.Supp.3d 62, 68 n.1 (D.D.C. 2024) (recognizing *Patel I*’s emphasis on both trespass and expectation of privacy analyses).

## **2. The Sixth Circuit applies the *Jones* test in civil searches**

In *Taylor v. City of Saginaw*, the Sixth Circuit held that police officers using chalk to mark the tires of parked vehicles to track how long they’ve been parked is a search under the Fourth Amendment and is not justifiable under the community caretaking exception to the warrant requirement. 922 F.3d 328, 331 (6th Cir. 2019) (*Taylor I*). Because “the *Katz* reasonable-expectation-of-privacy test has been *added to*, not substituted for, the common-law trespassory test[,]” the court determined “*Jones* provides the appropriate analytical framework” in this situation. *Id.* at 332 (citing *Jones*, 565 U.S. at 409 (internal citations omitted)).

The central question under *Jones* is whether the complained of act “constitutes common-law trespass upon a constitutionally protected area.” *Ibid.* Because the Supreme Court did not “provide clear boundaries for the meaning of common-law trespass,” the Sixth Circuit

adopted the definition from the Restatement. *Id.* at 332-33.

### **3. The First Circuit only applied the *Katz* test to an administrative search**

The panel’s decision that it must only apply reasonable expectations of privacy principles (and not common-law trespassory protections) split with the Ninth and Sixth Circuits. The government conceded the GPS device was a Fourth Amendment search, so the panel next applied the *Burger* test—the three-pronged substitute for the ordinary reasonableness inquiry standard. App.17a (calling the *Burger* test “a three-part reasonableness test”) (quoting *Owner-Operator Indep. Drivers Ass’n*, 840 F.3d at 895).

As a substitute for reasonableness, the *Burger* test was established with *Katz* principles, but this Court has not addressed the issue after *Jones* held that the Fourth Amendment requires a property-based analysis to determine reasonableness. The *Burger* test’s premise is that business owners purportedly surrender their “reasonable expectations of privacy” by choosing to make their living in “closely regulated” commerce. Other circuits updated the *Burger* test on their own, but the panel below split with those circuits in refusing to apply *Jones*’s common-law trespassory protections to evaluate reasonableness under its *Burger* analysis. The First Circuit failed to consider the lobstermen’s arguments that the government’s *trespass* on Lobstermen’s fishing vessels outside of commercial lobstering activities was, under *Burger*’s second prong, unnecessary to the government’s regulatory purpose of retrieving the particular location data related to commercial lobster harvesting—lobstermen

already reported that under regulations in place before Maine's GPS tracking requirement.

Under *Burger*'s third prong, the First Circuit failed to evaluate whether Maine's rule was a constitutionally inadequate substitute for committing a perpetual physical trespass onto lobstermen's fishing boats without a warrant.

The First Circuit's determination that the search was minimally intrusive was based on the nature of the information obtained (i.e., the lobstermen's expectation of privacy), and not on the fact that Maine's requirement for lobstermen to keep a GPS tracker on their boats for 24/7 surveillance committed a continuing physical trespass on private property.

The First Circuit determined that placing "mindless tracking devices" on lobstermen's boats removed government discretion in conducting searches. But that ignores the government's unfettered, unlimited discretion in committing a physical trespass on private property by coercing lobstermen, under threat of losing their fishing licenses, to place a government tracking device on their private property and surrender unconditionally to constant 24/7 surveillance.

*Jones* established the property-based protections that should have informed the panel's analysis under *Burger* at step two. If the panel below had applied *Jones* like the Ninth and Sixth Circuits, the court would have held the GPS device violated Thompson's Fourth Amendment rights.

After all, *Jones* and *Thompson* have nearly identical facts: the government used GPS tracking data—without a warrant—to follow a citizen's vehicle without the citizen having been charged with a crime. *Jones*, 565 U.S. at 402-04.

### **III. Certiorari Should Be Granted Because This Case Is a Clean Vehicle to Resolve a Recurring Issue of Nationwide Importance**

The Fourth Amendment's guarantees against unreasonable searches and seizures are meant to protect Americans against arbitrary and intrusive government officials and protect the citizenry's property rights. Yet, for decades, judicially created exceptions to this fundamental protection have allowed governments unfettered discretion to monitor the American people. This case provides one example. The ASMFC's regulatory authority over every state on the Atlantic coast means the rule at issue can lead to similar illegal searches in other states. Every commercial lobsterman on the entire Atlantic seaboard will be subject to the government's constant GPS tracking. Tobias Russell & Mitchell Scacchi, *Caught in a Trap: Tracking Lobster Vessels 24/7* (Mar. 12, 2026), <https://tinyurl.com/uhkucrd3>. But this overreach is not isolated to lobstermen. Today, federal and state governments heavily regulate all businesses. The issues in this case portend serious Fourth Amendment problems for many business owners' private property rights.

#### **A. The issue of warrantless administrative searches is ongoing because many other states have adopted similar search authorizations**

Intrusive warrantless governmental searches of businesses are likely to be recurring for two reasons. First, because the ASMFC amendment is binding on nearly a dozen jurisdictions, lobstermen all along the Eastern Seaboard are subject to the same intrusive GPS monitoring requirements. Second, Maine's requirement at issue here is part of a larger trend of oversight

agencies trying to force boat owners to install GPS trackers.

First, Maine is not the only state to require continuous GPS tracking of lobster vessels. Pursuant to the ASMFC amendment, every lobstering state on the East Coast must either adopt a conforming regulation or potentially face the imposition of a moratorium on fishing in their waters. *See* 16 U.S.C. § 5106. Several states have already chosen the former, subjecting their lobstermen to permanent warrantless GPS tracking. *See* 322 Mass. Code Regs. § 7.11 (effective May 1, 2023); N.H. Code Admin. R. Fis 612.01 (effective Feb. 21, 2024); N.J. Admin. Code § 7:25-14.16(a)(12) (effective Mar. 8, 2024); 7 Del. Admin. Code § 3755-4.0 (effective Mar. 11, 2024); 250-R.I. Code Regs. § 90-00-5.5.8 (effective Apr. 28, 2024); Md. Code Regs. 08.02.08.10(G) (effective Aug. 5, 2024).

Second, there is a larger trend of the government trying to impose warrantless GPS tracking on fishing vessel owners. A similar GPS tracking requirement was struck down by the Fifth Circuit in the context of charter fishing. *Mexican Gulf Fishing Co. v. Dep't of Com.*, 60 F.4th 956, 975-76 (5th Cir. 2023). In *Mexican Gulf Fishing*, the warrantless imposition of GPS tracking devices was struck down despite the court applying the now-defunct *Chevron* deference. *Id.* at 963.

Attaching a tracker is not a one-time intrusion but a continuous search of a person's movements. This shows not only that the unlawful harm Mr. Thompson suffers because of a continual warrantless search will remain, but also the recurring nature of warrantless trespassory searches on private property.

**B. The issue of warrantless administrative searches is important because it diverts from the Constitution’s protections and subjects large swaths of property and businesses to unmitigated surveillance**

The Fourth Amendment was originally understood to prevent the very search powers Respondent exerts. In the last half century, courts have strayed far from James Otis’s, and indeed the general public’s, fears of unencumbered search power. This Court has made clear that the ban on warrantless searches applies to “commercial premises as well as homes.” *Marshall*, 436 U.S. at 312. In other words, the warrantless administrative search of businesses “is the exception[,]” not the rule. *Id.* at 313-14. This Court has warned not all regulated industries qualify as closely regulated industries. *Patel II*, 576 U.S. at 425. “If such general regulations were sufficient to invoke the closely regulated industry exception, it would be hard to imagine a type of business that would not qualify.” *Ibid.*

Indeed, despite this Court’s repeated insistence of the narrow scope of this exception, many lower courts have pushed the bounds of this exception to swallow the rule. Industries considered closely regulated by various lower courts include pharmacies, *United States v. Gonsalves*, 435 F.3d 64, 67 (1st Cir. 2006); massage parlors, *Pollard v. Cockrell*, 578 F.2d 1002, 1014 (5th Cir. 1978); commercial-fishing operations, *United States v. Raub*, 637 F.2d 1205, 1208-09 (9th Cir. 1980); day-care facilities, *Rush*, 756 F.2d at 720-21; nursing homes, *People v. Firstenberg*, 92 Cal.App.3d 570, 578-80 (1979); jewelers, *People v. Pashigian*, 150 Mich. App. 97, 100-01 (1986) (*per curiam*); barbershops, *Stogner v. Kentucky*, 638

F.Supp. 1, 3 (W.D. Ky. 1985); and rabbit dealers, *Lesser v. Espy*, 34 F.3d 1301, 1306-07 (7th Cir. 1994).

By allowing the closely regulated industry exception to apply to an ever-increasing number of businesses, lower courts ignore the narrowness of this exception. The result of these lower courts drifting further away from the original meaning of the Fourth Amendment is that business owners' rights against intrusive governmental searches are dependent on where they operate. *See Jones*, 565 U.S. at 411 (holding that the Fourth Amendment applies "an 18th-century guarantee against unreasonable searches, which . . . must provide *at a minimum* the degree of protection [against common-law trespass] it afforded when it was adopted").

The First Circuit's decision to exclude the *Jones* trespass test because this is a civil, closely regulated industry case as opposed to a criminal case, App.23a n.18, means that—as the lobstermen themselves noted in their comments to this rule during the administrative process—commercial lobstermen have less Fourth Amendment protections than criminally-accused defendants do. That cannot be right.

Certiorari is warranted.

**CONCLUSION**

This Court should grant the petition.

Respectfully submitted,

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MARCH 2026