No. 25-1105

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 Writ of Certiorari to the United States Court of Appeals for the First Circuit

Brief of the Liberty Justice Center as Amicus Curiae Supporting Petitioner

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Interest of the Amicus Curiae

The Liberty Justice Center is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights.[1]

LJC is interested in this case because it frequently litigates important cases against government overreach and violations of Americans' Fourth Amendment rights. For example, in *Scholl v. Ill. State Police*, 776 F. Supp. 3d 701 (N.D. Ill. 2025) (appeal pending, No. 25-1847 (7th Cir.)), LJC alleges that warrantless dragnet surveillance of every citizen that drives by automated license plate readers constitutes an unreasonable search.

LJC also files amicus briefs on similar issues, such as its brief in *Chatrie v. United States*, No. 25-112 (U.S. cert. granted Jan. 16, 2026), which argued that geofence warrants are modern-day "general warrants," and its brief in *Page v. Comey*, No. 25-705 (petition for cert. filed Dec. 11, 2025) which highlighted the importance of judicial review of Fourth Amendment violations.

Summary of Argument

The Fourth Amendment was adopted to provide robust protection from government overreach. The

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[1] Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission. All parties received timely notice of Amicus's intent to file this brief.

presumption of protection favors the citizens, not the state, and requires strict adherence to procedural safeguards to protect the fundamental right to privacy. Over time, this Court's precedent has carefully recognized limited exceptions to the baseline warrant requirement, including allowing for administrative searches occurring outside the context of traditional criminal investigations.

But business owners do not forfeit their privacy rights by virtue of operating in the public sphere. And while regulatory regimes may permit inspections as a condition of engaging in certain industries, that consent does not authorize boundless and unfettered surveillance.

Yet this privacy-shattering monitoring is exactly what the Maine Department of Resources is imposing on lobstermen. What the Court set out as a narrowly defined warrant exception is being expanded well beyond its intended limits to an unprecedented scope of space, time, and intrusiveness—all without any opportunity for precompliance review by a neutral decisionmaker.

The Founders launched a revolution to escape far less-invasive breaches of privacy than what the First Circuit allowed below. As technology becomes more powerful, courts must decline to extend existing exceptions in ways that dilute the warrant requirement. Instead, constitutional protections must be allowed to keep pace with the government's increasing capacity to intrude upon private life.

ARGUMENT

I. The imposition of continuous GPS surveillance on lobstermen's vessels is a direct affront to the foundational principles and original purpose of the Fourth Amendment.

The Fourth Amendment was ratified on December 15, 1791, yet the governmental overreach that necessitated its creation was decades in the making. Leading up to the Revolution, American colonists were subjected to the intrusive power of British "writs of assistance," which granted crown officers the unchecked authority to board any vessel or enter any building to search for smuggled goods. *Boyd v. United States*, 116 U.S. 616, 623 (1886). The writs had no limits to the scope or duration of the search, allowing the officers to intrude whenever and wherever they wished. This Court has identified these specific writs as the "principal grievance" that the Fourth Amendment was designed to eliminate. *Brower v. Cnty. of Inyo*, 489 U.S. 593, 596 (1989).

And now, in 2026, history appears to be repeating itself as the lower federal courts condone subjecting citizens to an even more extreme version of this egregious overreach. The descendants of those original colonial seafaring merchants find themselves facing a familiar threat as their boats—the core instruments of their livelihoods akin to the merchant ships targeted by the writs of assistance—become targets for arbitrary and invasive searches. Only this time, the offense is broader in scope and more invasive

than the writs the Fourth Amendment was designed to forbid.

A. The Framers ratified the Fourth Amendment to secure a right to be free from gratuitous searches.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. It further provides that "no Warrants shall issue, but upon probable cause." *Id.* This rule "applies to commercial premises as well as to homes." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978).

Thirty years before the Fourth Amendment was ratified, in 1761, attorney James Otis Jr. stood in a Boston courtroom and denounced writs of assistance as "'the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book;' since they placed 'the liberty of every man in the hands of every petty officer.'" *Boyd,* 116 U.S. at 625. This Court has recognized Otis's outcry as "perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country." *Id.* A young John Adams sitting in the audience raptly beheld what he later described as "the first scene of the first act of opposition to the arbitrary claims of Great Britain."[2]

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[2] John Adams, Letter from John Adams to William Tudor, Sr., (Mar. 29, 1817), *in* Nat'l Archives: Founders Online, https://founders.archives.gov/documents/Adams/99-02-02-6735 (last visited April 21, 2026).

He described that, "[t]hen and there the Child Independence was born. In fifteen years, i.e. in 1776, he grew up to manhood and declared himself free." *Id.*

Adams's reflection underscores how central the right to privacy—and freedom from gratuitous searches—was to the founding generation. The conviction that a constitutional republic cannot tolerate groundless searches of personal property was the foundational motive for the American Revolution and the subsequent birth of the United States.

This sentiment was underpinned further by the 1765 English landmark case *Entick v. Carrington,* 95 Eng. Rep. 807 (K.B. 1765), a decision "undoubtedly familiar" to "every American statesman" at the time the Constitution was adopted. *Boyd,* 116 U.S. at 626. *Entick* became a foundational common-law condemnation of executive intrusion into private property and papers. "By the laws of England, every invasion of private property, be it ever so minute, is a trespass." *Id.* at 627. In that case, government agents entered Entick's home and seized his papers under broad official authority. "It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasions of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence." *Id.* at 630. The case was "welcomed and applauded by the lovers of liberty in the colonies as well as in the mother country." *Id.* at 626.

B. Pervasive GPS surveillance is more invasive than the writs of assistance.

That the founders were fundamentally opposed to—and indeed afraid of—the threat of trespass is uncontested. And, of course, likewise uncontested must be the reality that they never could have imagined the technological advancements of the last two centuries that give way to the question now before this Court. Yet, the Court has given attention "to Founding-era understandings" "when applying the Fourth Amendment to innovations in surveillance tools" and recognized that, as technology advances, the Court must be "informed by historical understandings of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted." *Carpenter v. United States,* 585 U.S. 296, 305 (2018) (cleaned up).

If the intrusion of the writs of assistance was enough to spark a revolution, the near-total surveillance of the modern GPS mandate is surely enough to simply trigger the protections of the Fourth Amendment. Never could a colonial merchant have conceived that the government could perpetually watch his vessel's movement from perhaps hundreds of miles away. Continuous GPS tracking of a lobsterman's vessel is not literal boarding, as occurred via the writs, but is the functional equivalent of the government being able to digitally "board" the vessel at all times and for all purposes. Indeed, the harm is more invasive because, while a writ of assistance allowed repeated intrusions, the GPS monitoring is continuous, making the intrusion broader in scope and exhaustive in potential yield. *See Carpenter,* 585 U.S. 296 (2018) (prolonged cell-site location

surveillance implicated substantial privacy concerns because it provides a detailed chronicle of a person's physical movements); *Grady v. North Carolina,* 575 U.S. 306 (2015) (per curiam) (a state conducts a Fourth Amendment search when it attaches a tracking device to a person's body, without consent, for the purpose of monitoring that person's movements); *Riley v. California,* 573 U.S. 373 (2014) (modern technology can reveal vast quantities of personal information and traditional categorial rules must be applied with sensitivity to those technological realities); *United States v. Jones*, 565 U.S. 400 (2012) (a GPS device attached to a vehicle used to obtain information constitutes a Fourth Amendment search).

These decisions grope towards an unsettling reality: the nature and breadth of modern surveillance technology make "unobtrusive" searches like the lobstermen's GPS trackers much more revealing than any writ of assistance. "The difference is not one of degree but of kind, for no single journey reveals the habits and patterns that mark the distinction between a day in the life and a way of life, nor the departing from a routine that, like the dog that did not bark in the Sherlock Holmes story, may reveal even more." *United States v. Maynard*, 615 F.3d 544, 562 (D.C. Cir. 2010).

In *Carpenter*, this Court acknowledged that "individuals have a reasonable expectation of privacy in the whole of their physical movements." 585 U.S. at 310. Enforcing a rule that requires maintaining a minute-by-minute account of those movements does not merely erode that expectation, it eviscerates it.

The effects of long-term, pervasive surveillance were part of this Court's decision in *Jones*. In that case, after the expiration of a warrant, police attached a GPS tracker to a suspect's car while it was parked in a public parking lot and tracked the vehicles movements for twenty-eight days. *Jones*, 565 U.S. at 403. Justice Scalia's majority opinion focused on the trespassory nature of the search, but Justice Alito and Justice Sotomayor indicated that "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy." *Id.* at 430 (Alito, J., concurring); *Id.* at 415 (Sotomayor, J., concurring) (agreeing with Justice Alito).

The Fourth Amendment arose to protect citizens from the very injury Maine lobstermen face. A "crown officer" has been replaced by an unblinking digital eye, requiring the lobstermen to forfeit constitutionally protected rights as the price of pursuing their trade. Yet in its opinion below, the First Circuit disclaimed this Court's Fourth Amendment precedent in the criminal context saying that "any direct comparison . . . falls short." *Thompson v. Wilson*, 159 F.4th 91, 106 n.18 (1st Cir. 2025). This dodge creates a perverse reality: police must get a warrant to obtain detailed information about a criminal suspect's movements, but a state agency can impose permanent surveillance on the movements of lobsterman seeking only to make an honest living.

II. The closely regulated industries exception to the administrative search requirements does not foreclose the opportunity for precompliance review.

There are a few "well-delineated exceptions" to the Fourth Amendment's warrant requirement, among them the administrative search exception. *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015) (quoting *Arizona v. Gant*, 556 U.S. 332, 338 (2009). This exception covers situations where a warrantless search may be reasonable because "special needs . . . make the warrant and probable-cause requirement impracticable," and the search's primary purpose is something other than "the general interest in crime control." *Id.* at 420 (internal citations omitted).

Respondents—and the courts below—assert that this exception gives them carte blanche to require Maine lobstermen to submit to continuous GPS tracking, regardless of whether they are pursuing their crustaceous quarry. But that broad surveillance authority far surpasses the boundaries of the administrative search exception.

For an administrative search to be constitutional, "the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker." *Id.* In *Patel*, this Court invalidated a Los Angeles ordinance requiring hotel owners to collect detailed information about guests and turn it over to police on demand or face criminal penalties because it lacked the "minimal requirement" of opportunity for precompliance review. *Id.* at 412–13, 419–20. Without such an opportunity, "the ordinance create[d] an intolerable risk that searches

authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests." *Id.* at 421.

Other courts of appeals have also emphasized the importance of precompliance review. In *Spirit AeroSystems, Inc. v. Paxton*, 142 F.4th 278 (5th Cir. 2025), the Fifth Circuit vacated the district court's determination that Texas's Request to Examine ("RTE") statute that compelled businesses to turn over their records to the attorney general was constitutionally lacking. The statute itself offered no mechanism for precompliance review, but while the case was pending at the Fifth Circuit, the Texas Supreme Court clarified that Texas civil procedure allowed recipients of administrative subpoenas—including the RTEs—to seek a protective order before complying. *Id.* at 291 (citing *Paxton v. Annunciation House, Inc.*, 719 S.W.3d 555, 592–93 (Tex. 2025)). The Fifth Circuit noted that "[a]lthough the district court correctly identified constitutional deficiencies in the RTE statute at the time of its decision, the Texas Supreme Court harmonized the RTE statute with other provisions of Texas law to create the opportunity for precompliance review." *Id.*

The Second Circuit similarly upheld a New York law allowing local governments to penalize landlords who fail to provide rental information pursuant to the state's 2019 amendment to its rent stabilization law. *See Hudson Shore Assocs. L.P., v. New York*, 139 F.4th 99 (2d Cir. 2025). The court found that New York's civil procedure rules allowed for "relief against any administrative action that 'was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of

discretion.'" *Id.* at 109 (quoting N.Y.C.P.L.R. § 7803(3)). And the court reasoned that this process is similar to motions to quash administrative subpoenas "blessed" by this Court, including in *Patel*. *Id.* Because the landlords had access to the state courts to challenge the scope of the demands using this procedure, the Second Circuit upheld the law. *Id.* at 111.

By contrast, the First Circuit and the district court below ignore the concept of precompliance review completely, handwaving it away under closely regulated industries' "more relaxed standard." *See Thompson v. Wilson*, 159 F.4th 91, 97 n.10 (1st Cir. 2025); *Thompson v. Keliher*, No. 1:24-cv-00001-JAW, 2024 U.S. Dist. LEXIS 211714 at *86–87 (D. Me. Nov. 21, 2024). Both ground this theory in *Patel*, but nothing in *Patel* indicates that the relaxed standards for closely regulated industries eliminates the "minimal requirement" of the opportunity for precompliance review. *See Patel*, 576 U.S. at 424 ("Rather than arguing that [the ordinance] is constitutional under the general administrative search doctrine, the City . . . contend[s] . . . that the ordinance is facially valid under the more relaxed standard that applies to searches of this category of business. They are wrong . . .").

Patel incorporates the necessity of precompliance review into the framework applied to closely regulated industries from *New York v. Burger*, 482 U.S. 691 (1987). *Burger* supplies the three criteria necessary for warrantless searches of "pervasively regulated businesses": (1) there must be a "substantial" government interest underpinning the regulatory scheme; (2) "the warrantless inspections must be

'necessary to further [the] regulatory scheme"; and (3) the certainty and regularity of the searches must provide a constitutionally adequate substitute for a warrant. *Burger*, 482 U.S. at 702–03.

Applying the *Burger* test, this Court rejected Los Angeles' contention that precompliance review would undermine the efficacy of the hotel inspection regime. *Patel*, 576 U.S. at 427. The city was worried that hoteliers would falsify their records during the delay, but the Court had "previously rejected this exact argument, which could be made regarding any recordkeeping requirement." *Id.* (citing *Barlow's Inc.*, 436 U.S., at 320). Sidestepping precompliance review was not necessary to further the regulatory scheme when police could still obtain warrants or guard the registry when they had reasonable suspicion that it would be altered. *Id.*

Here, there is no consideration of the necessity of precompliance review, or justification for why continuous GPS monitoring—even when boats are moored, off season, or being used for non-lobstering voyages—must happen without any opportunity for lobstermen to object to the scope of the surveillance. The Maine Department of Resources rule provides for no review; it simply makes it unlawful for federally permitted lobsterman to exist on the water without being constantly surveilled. The "more relaxed standard" applied to closely regulated businesses is not meant to erase all standards, and this Court should grant the petition to clarify how closely regulated businesses' rights to precompliance review by a neutral decisionmaker fit within the *Burger* framework.

Conclusion

For the foregoing reasons, and those stated by Petitioner, the Petition should be granted, and the decision below reversed.

Respectfully submitted,

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