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 MANHATTAN INSTITUTE AS *AMICUS CURIAE* SUPPORTING PETITIONER

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## QUESTIONS PRESENTED

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?

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## INTEREST OF *AMICUS CURIAE*[1]

The Manhattan Institute (MI) is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. To that end, MI has sponsored scholarship supporting the rule of law and opposing government overreach.

This case interests MI because privacy is an essential element of a free society. While the government has a justified role in conducting searches for public safety, it must do so within the confines of the Fourth Amendment. This case presents the Court with an important opportunity to define the parameters of the Fourth Amendment when new technologies are arising that can potentially harm privacy.

## SUMMARY OF ARGUMENT

Even assuming commercial lobstering is a closely regulated industry, the Maine Department of Marine Resources rule at issue fails under the Court's precedent on its own terms. *New York v. Burger*, 482 U.S. 691 (1987). *Burger* authorizes warrantless inspections, not warrantless surveillance. Its framework presupposes a bounded search conducted pursuant to law and confined by meaningful limits of time, place, and scope sufficient to function as a constitutionally adequate substitute for a warrant. Maine rule is not such a regime. It compels continuous, automated GPS tracking whenever a vessel is in the water—including during personal use—and thereby generates a comprehensive

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus*, their members, or their counsel funded its preparation or submission.

minute-by-minute record of movement with no discrete inspection event, no triggering suspicion, and no meaningful endpoint.

The First Circuit acknowledged the regime's "constant search" character but upheld it based on the device's automated operation, the collection of "time and position data only," and the rule's temporal trigger of when the vessel is in the water. Those features do not supply the meaningful limits *Burger* requires. Automation may reduce officer-by-officer discretion, but it also enables surveillance of a scale, duration, and comprehensiveness no traditional inspection regime imposed. "Time and position data only" understates the intrusion, because continuous location records reveal a detailed chronicle of movement through aggregation over time. And "whenever the vessel is in the water" is not a bounded inspection window. It is an always-on monitoring rule that extends beyond commercial fishing to personal use unconnected to regulated activity.

Historical practice confirms the distinction. From the Founding Era forward, government authority over regulated vessels has traditionally been exercised through boarding and physical inspection—manifest review, cargo examination, and other discrete onboard encounters—not through compelled continuous electronic reporting. The historical materials identify no analogue to a rule requiring a licensed operator to broadcast his vessel's location to the government every minute as a condition of licensure. While new technologies can change how inspection regimes work, they don't change the privacy concerns at the heart of the Fourth Amendment.

The absence of historical analogue matters because *Burger*'s doctrine itself is built for inspection-style

enforcement. This Court's cases have upheld warrantless inspections of premises, records, goods, and equipment at identifiable times and within meaningful statutory limits. They have not approved continuous automated surveillance in place of a bounded inspection regime. As has frequently been the case in this Court's Fourth Amendment jurisprudence, new technologies often don't easily fit into old case law.

*Carpenter* and *Jones* do not control the administrative-search question, but they confirm by analogy why persistent technology-enabled location tracking cannot be dismissed as constitutionally minor merely because the underlying data consist only of coordinates and timestamps. This Court has already recognized that continuous location monitoring is distinctive because of its continuity, aggregation, and comprehensiveness.

Finally, the First Circuit's reasoning lacks a limiting principle. If a state may impose continuous GPS tracking because regulated work occurs at irregular hours, because the data collected are "only" location data, and because the system is automated, then the same logic can be extended across closely regulated industries. That would convert *Burger*'s narrow inspection exception into a general surveillance authorization for licensed work, contrary to *Patel*'s warning that the closely regulated industry exception must remain narrow lest it swallow the rule.

The Court need not extend *Carpenter* or *Jones* to reverse the lower court here. Maine's rule already exceeds the limits of *Burger* itself.

The petition should be granted.

## ARGUMENT

### I. MAINE'S GPS REGIME EXCEEDS THE *BURGER* DOCTRINE, WHICH ALLOWS INSPECTIONS, NOT SURVEILLANCE

#### A. The Administrative-Search Framework Permits Warrantless Inspections Only Within a Regulatory Scheme that Supplies Meaningful Safeguards as a Constitutionally Adequate Substitute for a Warrant

The Fourth Amendment applies to administrative inspections of private dwellings and commercial premises alike. *Camara v. Municipal Court*, 387 U.S. 523, 532–39 (1967); *See v. City of Seattle*, 387 U.S. 541, 543 (1967). Warrantless searches are "per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions." *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). A businessman, "like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property." *Camara*, 387 U.S. at 543.

One "well-delineated" exception permits warrantless inspections of closely regulated industries. The justification is that proprietors in such industries have "voluntarily chosen to subject [themselves] to a full arsenal of governmental regulation," and thus possess a diminished expectation of privacy in the regulated enterprise. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313 (1978). But *Barlow's* insisted that this exception remain confined to "responses to relatively unique circumstances," *id.,* and rejected the idea that efficiency or surprise alone can justify dispensing with warrants,

because warrants may issue on administrative standards and can be obtained *ex parte* without advance notice. *Id.* at 316, 320.

Even within a closely regulated industry, a warrantless inspection is constitutionally permissible only if three criteria are satisfied. There must be: (1) a substantial government interest informing the regulatory scheme; (2) a showing that warrantless inspections are necessary to further the scheme; and (3) an inspection program that, in terms of the certainty and regularity of its application, provides a constitutionally adequate substitute for a warrant—meaning it advises the owner the search is pursuant to law, has a properly defined scope, and limits inspecting officers' discretion. *Burger*, 482 U.S. at 702–03; *see also City of Los Angeles v. Patel*, 576 U.S. 409, 426 (2015).

*Patel* reinforces two points relevant here: (1) the closely regulated industry exception remains narrow, and (2) the government cannot satisfy *Burger's* second and third prongs merely by asserting that warrantless inspections are necessary because notice or review would risk record alteration. *Id.* at 424–25. The Court explained that officers could instead use an *ex parte* warrant or secure the registry pending review, separately holding the ordinance invalid because it failed sufficiently to constrain officer discretion. *Id.* at 437.

The parties agreed below that Maine has a substantial interest in regulating and conserving its lobster fishery, satisfying *Burger's* first prong. The second prong—whether a warrantless inspection is necessary to further the scheme—doesn't address whether this type of tracking is necessary or the only viable option. Petitioners challenge this system of warrantless surveillance, but not necessarily other types of inspection.

The remaining question is whether the Maine's system provides a constitutionally adequate substitute for a warrant under *Burger*'s third prong. It does not.

### B. *Burger*'s Framework Allows Bounded Inspections, Not Continuous Surveillance

This case requires the Court to identify a limiting principle implicit in *Burger's* framework and reflected in every inspection regime the Court has upheld under it. *Burger* is built around inspection-style searches—bounded, legally defined encounters conducted within meaningful limits of time, place, and scope.

This distinction is not merely rhetorical. It is grounded in the structure of the inspection regimes the Court has upheld under *Burger*. Each involved a discrete encounter with identifiable boundaries. In *Burger* itself, the regime authorized on-premises examination of records and vehicle parts during business hours. 482 U.S. at 711–12. In *Donovan v. Dewey*, 452 U.S. 594 (1981), the Court upheld periodic physical inspections of mines. In *United States v. Biswell*, 406 U.S. 311 (1972), the regime authorized inspection of a firearms dealer's locked storeroom during business hours. And in *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970), it was an inspection of a liquor licensee's premises. In each case, the inspection was a discrete event: officials examined specified premises, records, or items at identifiable times and under statutory constraints that could meaningfully be compared to the limiting functions of a warrant.

Maine's GPS regime shares none of these features. It is triggered automatically when the vessel enters the water, operates continuously, and compiles a minute-by-minute record of vessel movement—personal

and commercial alike—with no human decision to begin or end the search. It is not an inspection in the sense that the doctrine has traditionally recognized; it is surveillance. The distinction between inspection and surveillance is what prevents *Burger* from becoming a general-purpose surveillance authorization.

### C. The First Circuit's Three Reasons for Upholding Maine's Regime Fail to Supply the Meaningful Limits the Doctrine Requires

The First Circuit acknowledged the regime's "constant search" character but held that three features provided a constitutional safe harbor, as it were: automated operation, collection of "time and position data only," and the trigger of "when the vessel is in the water." *Thompson v. Wilson*, 159 F.4th 91, 103–06 (1st Cir., 2025). But none of these provides the meaningful limits in time, place, and scope that *Burger* requires.

#### 1. "When the vessel is in the water" is not a meaningful time limit.

The First Circuit held that "when the vessel is in the water" is a sufficient temporal boundary because lobstermen may haul traps at any hour, so narrower limits would frustrate enforcement. *Id.* at 104–05. For that proposition, it relied on *Rivera-Corraliza v. Morales*, 794 F.3d 208, 221 (1st Cir. 2015), which in turn cited the commercial-trucking case *United States v. Ponce-Aldona*, 579 F.3d 1218 (11th Cir. 2009).

But the trucking analogy underscores the defect in Maine's rule rather than curing it. A trucking regime may need to permit inspections at unpredictable times because commercial trucks operate around the clock. Yet that is still a regime of episodic inspections: an officer stops a truck and examines it at a particular time

and place. The absence of fixed business hours does not eliminate the inspection window; it merely makes the permissible window flexible.

Maine's rule is fundamentally different. It does not authorize inspections at any hour, but compels continuous transmission during *all times* the vessel is in the water. That surveillance covers not only fishing activity but all vessel operations, including personal use. So instead of defining when an inspection may occur, the rule effectively abolishes any inspection window at all and replaces it with always-on monitoring triggered by the ordinary act of putting the boat in the water.

*Burger* relied on express statutory limits: inspections "during [the] regular and usual business hours" of covered records and vehicles or parts on the premises. *Burger*, 482 U.S. at 711. The "time" component of the warrant-substitute analysis contemplated discrete inspection windows, not perpetual data collection. *Rivera-Corraliza* confirms both why timing matters and why the First Circuit's reasoning cannot simply be extended from episodic inspections to continuous monitoring. *Rivera-Corraliza* recognized that context may affect the feasibility of time limits, but it still treated timing and scope as essential parts of the *Burger* inquiry. 794 F.3d at 221–23. The proposition that inspections would be unworkable without flexible timing is a different proposition from claiming that continuous automated monitoring is justified because regulated activity occurs at unpredictable times.

**2. "Time and position data only" is not meaningfully narrow.**

The First Circuit treated "time and position data only" as sufficient to confine the scope of the search.

The court reasoned that the devices "relay time and position data only," that the rule "only collects a limited and specific type of data," and that the devices "do not record and report everything done aboard the vessel." *Thompson*, 159 F.4th at 106.

The relevant question is not whether the device captures every onboard act, but whether constant location transmission itself creates a record of movement so comprehensive that it exceeds anything resembling a traditional inspection. Describing the data as "limited" because it contains only coordinates and timestamps characterizes the data at the wrong level of abstraction. A continuous, minute-by-minute location record reveals patterns of movement, duration of stops, frequency of visits to particular locations, and the full scope of the vessel operator's maritime activity, both commercial and personal.

This Court's decisions in *United States v. Jones*, 565 U.S. 400 (2012), and *Carpenter v. United States*, 585 U.S. 296 (2018), demonstrate by analogy why "location-only" understates the intrusion. *Jones* recognized that GPS tracking is a search, and the concurring opinions emphasized the distinctive privacy concerns raised by prolonged and comprehensive monitoring of a person's movements. 565 U.S. at 415 (Sotomayor, J., concurring); *id.* at 431 (Alito, J., concurring in the judgment). The comprehensiveness of a search does not arise from a single data point but from the *aggregation* of location data over time. *Carpenter*, 585 U.S. at 309–13. Maine's regime requires minute-by-minute GPS transmissions whenever the vessel is in the water, producing a denser and more deliberately continuous record of movement than the historical location data at issue in *Carpenter*.

The First Circuit thus erred in treating "time and position data only" as self-evidently narrow. Continuous location records are comprehensive due to their continuity and aggregation, not despite the apparent simplicity of the underlying data. *See* Section III *infra.*

**3. Uniform, non-discretionary GPS monitoring does not by itself supply the limiting principles *Burger* requires.**

The First Circuit treated the devices' "mindless" and non-discretionary operation as a constitutional virtue: "Minimally intrusive, mindless tracking devices remove discretionary judgment calls from the equation entirely." *Thompson*, 159 F.4th at 105.

Automation is relevant to the discretion inquiry, which point should be conceded as far as it goes. Eliminating officer-by-officer judgment calls at the point of execution may address one component of the *Burger* analysis. But automation itself cannot substitute for meaningful limits on the search's time, scope, and operation, including whether the regime extends to continuous monitoring and personal use. *See Burger*, 482 U.S. at 702–03, 711–12; *Patel*, 576 U.S. at 424–25.

Automation simultaneously eliminates discretion and expands scale. A regime in which no officer decides when to search because the search never stops has not solved the discretion problem; it has dissolved the concept of a bounded search altogether. As *Carpenter* recognized, automatic and passive collection can intensify rather than reduce the intrusion when it enables comprehensive tracking that would have been impractical through traditional means. *Carpenter*, 585 U.S. at 311–12. *Riley* and *Kyllo* reinforce the broader point that technologically enhanced information gathering

cannot be assessed by mechanically extending pre-digital analogies or by allowing advances in technology to erode practical Fourth Amendment protection. *See Riley v. California*, 573 U.S. 373, 393–97, 401 (2014); *Kyllo v. United States*, 533 U.S. 27, 34–35 (2001).

The First Circuit's rationale has no built-in stopping point. In any industry where automated monitoring is technologically feasible, the devices would always be "mindless," would always reduce officer discretion, and could always be described as collecting "only" some limited data. On that logic, the exception would expand from episodic inspections of closely regulated activity to continuous monitoring of ordinary licensed workers and small-business operators across a wide range of industries. *See* Section IV, *infra*.

### D. The Monitoring Rule's Application to Personal, Non-Commercial Use Exposes the Doctrinal Failure

The whole justification for reduced privacy expectations in a closely regulated industry is that "when an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation." *Barlow's*, 436 U.S. at 313. That rationale is tied to the commercial activity—the regulated business. It has never been understood to authorize surveillance of a person's entire life, or of activity unconnected to the regulated enterprise.

Whatever reduced privacy expectation may attach to commercial lobstering, Maine's rule does not stop at that activity. It requires one-minute GPS transmission whenever the vessel is in the water, including during personal use. It also requires the tracking device to remain powered and transmitting "at all times the vessel

is in the water," including when a vessel is docked or being operated for personal use. *Thompson*, 159 F.4th at 95. A lobsterman who takes his family fishing on a Saturday, or motors to an island for a personal errand, is tracked at the same one-minute interval as when hauling traps commercially.

*Burger*'s warrant-substitute analysis makes sense only if the inspection remains tied to the regulated activity. The junkyard operator's reduced privacy expectation in *Burger* applied to the covered records and vehicles on his business premises—not to his personal vehicle in his driveway. 482 U.S. at 711–12. The trucking inspection in *Ponce-Aldona* applied to the commercial vehicle and its required documents—not to the driver's personal car. 579 F.3d at 1222–23. When a regime extends beyond the regulated activity to encompass personal life, the foundational justification—voluntary assumption of regulatory burdens by entering a regulated business—no longer applies.

The First Circuit did not grapple with this problem. Although it acknowledged elsewhere that the rule applies during personal use, it treated "when the vessel is in the water" as a sufficient temporal limit without addressing the fact that this "limit" sweeps in personal, non-commercial activity for which the closely regulated industry rationale provides no justification. *Thompson*, 159 F.4th at 106. The decision below identified no case approving continuous monitoring of concededly personal activity unrelated to the regulated enterprise merely because the person works in a closely regulated industry.

## II. HISTORICAL PRACTICE CONFIRMS THE DISTINCTION BETWEEN EPISODIC INSPECTION AND CONTINUOUS TRACKING

### A. Since the Founding Era, Government Authority Over Vessels Has Been Exercised Through Boarding and Physical Inspection, Not Continuous Location Reporting

The government's authority to inspect vessels without a warrant has deep historical roots. But historically that authority took the form of physical boarding and inspection—episodic encounters in which an officer went aboard, examined specified items, and departed. *See Maul v. United States*, 274 U.S. 501, 504–06 (1927). While the technologies may have changed, the Fourth Amendment has not.

The earliest federal customs statutes reflected the traditional inspection model. The Act of July 31, 1789, authorized customs officers to seize vessels liable to forfeiture. *Id.* at 504–05. The Act of August 4, 1790, expanded that regime. *Id.* at 504. And the Act of March 2, 1799, again enlarged the regulations and preserved the same basic seizure authority. *Id.* at 505.

As *Maul* explained, those statutes did not merely authorize seizure. "Along with" the seizure provisions, the early acts "contained other provisions distinct from [the seizure authority] which authorized customs officers to board and search vessels bound to the United States and to inspect their manifests, examine their cargoes, and prevent any unlading while they were coming in." *Id.* That is the relevant historical pattern:

boarding, inspection, manifest review, cargo examination, and, where warranted, seizure. *Id.* at 504–08.

The pattern across these Founding-era enactments is consistent. Government authority over vessels meant the power to board and inspect—to conduct a physical examination at a discrete moment in time. *Id.* Those inspections could be unannounced, could occur at unpredictable times, and could entail substantial authority over the vessel and its contents. *Id.* But they were still encounters, not monitoring systems. The government officer arrived, inspected, and left.

Fisheries-related enforcement followed the same basic model. Congress relied on documentation requirements, sworn statements, boarding, seizure, and cargo inspection—not continuous location transmission by the vessel itself. *Cf. id.* at 512–30 (Brandeis, J., concurring) (surveying longstanding maritime enforcement practice, including boarding and seizure of American vessels in enforcing navigation, customs, and related maritime laws). Modern Maine practice remains similar. State marine patrol officers enforce marine-resource laws by boarding vessels, inspecting containers and catch, and examining compliance on board. *See State v. Thomas*, 8 A.3d 638, 640–43 (Me. 2010). In *Thomas*, for example, officers boarded a vessel approximately 35 miles offshore, inspected totes on deck, and examined the lobsters found there; Maine's high court upheld that inspection under the state's marine-resource inspection authority. *Id.* at 640–43.

That history matters for what it shows—and for what it does not. The historical tradition supports warrantless vessel inspections, including suspicionless and unannounced boardings. *Maul*, 274 U.S. at 504–08; *Thomas*, 8 A.3d at 642–43. It does not reveal any

tradition of requiring a vessel operator to carry a government-mandated device that continuously transmits the vessel's location whenever it is afloat.

This Court's decision in *United States v. Villamonte-Marquez*, 462 U.S. 579 (1983), upheld suspicionless vessel boarding in customs waters for documentation inspection, relying in part on the 1790 boarding statute's "impressive historical pedigree" and on maritime-specific enforcement realities, including the reduced practicality of land-style alternatives for vessels with ready access to the open sea. *Id.* at 585, 592–93. *Villamonte-Marquez* validated suspicionless vessel-boarding for documentation inspection. It does not suggest that the government may require vessel operators themselves to transmit a continuous stream of location data whenever the vessel is afloat. It becomes a significant authority for the state only if overread: the case supports episodic boarding and document checks, not permanent minute-by-minute location broadcasting. *Id.* at 593.

While technologies like GPS trackers of course didn't exist for most of the history of vessel inspections, the historical record is still important. A historical analogy would be an inspector who physically stayed on the ship for the entire time the vessel was in the water, including when no regulated activity was occurring. The Framers were concerned with searches that encroach on private life and go beyond the purpose of the search. *Kyllo*, 533 U.S. at 31–34. New technologies don't change that fact. *Id.* at 35–38. In fact, new technologies that facilitate seamless and comprehensive

surveillance are a reason to reiterate the principles of privacy embodied in the Fourth Amendment.

### B. The Absence of Any Historical Analogue Matters Because *Burger* Presupposes Inspection-Style Enforcement

*Burger*'s framework was built for inspection regimes. The three-prong test asks whether the statute gives notice, limits the scope of the search, and cabins the discretion of "inspecting officers." 482 U.S. at 703, 711–12. These are the features of a bounded encounter. They do not translate coherently to continuous automated monitoring, where there is no inspecting officer, no discrete moment of inspection, and no scope limit that is meaningful in the traditional sense.

The historical record confirms what the doctrine's structure already implies: *Burger* was designed for inspections. Extending it to surveillance requires the Court to do something the doctrine was never built for.

This fact is sufficient reason for the Court to grant the petition here. Perhaps more than any part of the Constitution, the Fourth Amendment's protections are constantly affected by technological change. New cases that deal with new technologies can often be only loosely analogized to cases dealing with older technologies. Maritime vessel inspection is almost as old as maritime vessels. How old doctrines apply to new technologies is one reason this Court is consistently asked to update doctrine. In so doing, however, the Court should stay focused on the privacy-protecting core of the Fourth Amendment, not on the way new technologies can make government searches easier and more "efficient." "As technology has enhanced the Government's capacity to encroach upon areas normally

guarded from inquisitive eyes, this Court has sought to 'assure[] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.'" *Carpenter*, 585 U.S. at 305 (quoting *Kyllo*, 533 U.S. at 34).

## III. MODERN LOCATION-TRACKING DOCTRINE CONFIRMS BY ANALOGY WHY CONTINUOUS GPS MONITORING IS CONSTITUTIONALLY DISTINCTIVE

*Carpenter* and *Jones* do not control the administrative-search analysis. They arose in the criminal-investigative context, and their holdings do not directly resolve the *Burger* question presented here. Their relevance is more narrow but important: they preempt any argument that persistent, technology-enabled location tracking is constitutionally minor or routine merely because the underlying data points are simple. This Court has already recognized otherwise.

### A. *Carpenter* Confirms That Continuous Location Tracking Cannot Be Treated as Constitutionally Minor or Routine

In *Carpenter*, this Court held that the government's acquisition of even seven days of historical cell-site location information ("CSLI") constituted a Fourth Amendment search requiring a warrant. 585 U.S. at 302. The Court's reasoning rested on the recognition that location history provides a "detailed, encyclopedic, and effortlessly compiled" chronicle of movement, revealing the "privacies of life" and enabling "near perfect surveillance." *Id.* at 309, 311, 312. The comprehensiveness of location data arose from aggregation over time, not from the complexity of any individual data

point. In total, law enforcement collected 12,898 small data points on the defendant in *Carpenter*. *Id.* at 302.

*Riley v. California* reinforces the same broader principle. There, the Court recognized that digital technologies can fundamentally transform both the quantity and quality of information the government obtains, so that pre-digital physical-search analogies cannot be mechanically extended to modern digital collection. 573 U.S. at 393–97 (noting that, "[t]he possibility that a search might extend well beyond papers and effects . . . is yet another reason that the privacy interests here dwarf those in [*United States v. Robinson*]"). And in *Kyllo*, the Court asked what limits exist on technology's power "to shrink the realm of guaranteed privacy," warning against leaving citizens "at the mercy of advancing technology." 533 U.S. at 34–35. *Kyllo* also shows how accessing even somewhat vague private data through a technology-enhanced search—blurry thermal images inside a home—still requires a warrant despite the argument that the images obtained are arguably not sufficiently "intimate." *Id.* at 37–39. Similarly, the comprehensive tracking of a vessel even when used for private activities may not seem terribly intrusive or "intimate," but it is still compiling a large data set of movements over time.

The First Circuit treated "time and position data only" as limited in scope. *Carpenter* demonstrates why that characterization is wrong: continuous location records are comprehensive because of their continuity and aggregation, regardless of the apparent simplicity of the underlying data. Maine's regime requires one-minute GPS transmissions whenever the vessel is in the water, producing a more deliberately continuous record of movement than *Carpenter*'s historical CSLI,

where the search averaged 101 data points per day. *Carpenter*, 585 U.S. at 302. Whatever the outer boundaries of *Carpenter*'s holding, the principle that continuous location tracking is constitutionally significant applies with full force to the regime challenged here.

### B. *Jones* Confirms That Compelled Installation of a Tracking Device Is a Search, Regardless of the Government's Purpose

In *Jones*, the Court held the government's physical attachment of a GPS device to a vehicle, combined with its use of that device to monitor the vehicle's movements, to constitute a search within the meaning of the Fourth Amendment. 565 U.S. at 404–05. The majority's holding was trespass-based: the government physically intruded on an "effect" for the purpose of obtaining information. *Id.* at 404–05, 409–11.

*Grady v. North Carolina* extended this principle beyond the criminal-investigative context. The Court held that government-imposed GPS monitoring is a search even in a civil regulatory regime, and that "the government's purpose in collecting information does not control whether the method of collection constitutes a search." *Grady v. North Carolina*, 575 U.S. 306, 309 (2015). In so doing, the Court cited the administrative-search case of *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967).

Maine's regime involves compelled installation of government-approved tracking equipment on private property that transmits location data to the government continuously. The parties and courts below have already agreed this constitutes a search. *Thompson*, 159 F.4th at 97–98. *Jones* and *Grady* confirm that compelled installation and tracking are searches. *Jones*,

565 U.S. at 402; *Grady v. North Carolina*, 575 U.S. at 309–10. The remaining question is reasonableness, and here the state seeks to answer that question through *Burger*. So the program must satisfy *Burger* on its own terms. As explained above, it does not.

## IV. THE FIRST CIRCUIT'S REASONING CANNOT BE CONFINED TO THIS CASE

*Patel* warns that the closely regulated industry exception must remain narrow. 576 U.S. at 424–25. *Barlow's* confines warrantless inspection authority to "relatively unique circumstances." 436 U.S. at 313. The question is whether the First Circuit's reasoning honors those limits. It does not, because each of its three holdings generalizes beyond lobstering.

**On time:** The court held that no time limit was required because regulated activity occurs at unpredictable hours. That rationale applies to every closely regulated industry in which work may not follow a 9-to-5 schedule—trucking, mining, commercial fishing of all types, auto salvage, agriculture, and more.

**On scope:** The court concluded that "time and position data only" was inherently limited. *Thompson*, 159 F.4th at 106. But every data type can be described as "limited" at a low enough level of abstraction. Financial transactions are only dollar amounts and timestamps; communications metadata is only call-related information rather than content. The First Circuit's reasoning supplies no limiting principle for treating GPS data as different.

**On discretion:** The court held that automated, non-discretionary monitoring satisfied *Burger*'s discretion constraint. *Id.* at 105–06. But every automated system is non-discretionary by definition. If

automation alone satisfies the discretion prong, then continuous automated monitoring of any kind in any closely regulated industry would pass *Burger*. And the third prong's "time, place, and scope" limits would be satisfied whenever the government can say the device "mindlessly" collects "only" one type of information.

None of this reasoning is limited to large industries or well-capitalized enterprises. The lobstermen here are individual fishermen and small operators. The same logic would apply to a sole-proprietor firearms dealer required to wear a location-broadcasting device around the clock, or to a one-truck owner-operator required to transmit continuous GPS data as a condition of maintaining a commercial driver's license. The closely regulated industry doctrine already covers an enormous range of American workers and small businesses. If *Burger* authorizes continuous electronic surveillance as a condition of licensure, the exception will no longer remain narrow, and ordinary licensed workers and small businesses across regulated industries will be exposed to a form of monitoring never before sanctioned under the Fourth Amendment.

The Fifth Circuit recently confirmed that materially similar GPS mandates raise serious privacy and limiting-principle concerns. *Mexican Gulf Fishing Co. v. U.S. Dep't of Comm.*, 60 F.4th 956, 971–73 (5th Cir. 2023). The court did not resolve the Fourth Amendment merits there; it held instead that the charter-boat fishing industry was not closely regulated and set the rule aside on statutory and APA grounds. *Id.* at 969–70, 976. But in doing so, it emphasized the substantial privacy and financial burdens imposed by continuous vessel-location reporting, including the "massive privacy cost" of requiring charter-boat owners to

transmit their exact location to the government "every hour of every day forever," regardless of whether the vessel was being used for commercial or personal purposes. *Id.* at 965–66. The court also stated at the outset that the regulation "very likely violated the Fourth Amendment," *id.* at 961, and later explained that a broader reading of the statute would raise "grave constitutional concerns." *Id.* at 966–67.

That decision does not control here. It does, however, show that courts confronting similar technology did not regard continuous GPS tracking as a trivial regulatory add-on.

## CONCLUSION

Even in a closely regulated industry, the Fourth Amendment does not permit the government to replace bounded inspection authority with continuous tracking. A program of constant GPS transmission during all vessel use is not a bounded inspection regime and cannot serve as a constitutionally adequate substitute for a warrant.

For the foregoing reasons, and those stated in the petition, the Court should grant certiorari.

Respectfully submitted,

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