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NCLA Triumph in Unlawful Charter Boat Surveillance Rule Case Leads Gov't to Pay Attorneys' Fees

Mexican Gulf Fishing Company, et al. v. U.S. Department of Commerce, et al.

Washington, DC (November 29, 2023) – The New Civil Liberties Alliance has agreed to dismiss its motion for fees under the Equal Access to Justice Act in *Mexican Gulf Fishing Company v. U.S. Department of Commerce*. In lieu of a court judgment on the pending motion, the U.S. Government has paid NCLA a \$160,000 fee settlement. In February, NCLA convinced the U.S. Court of Appeals for the Fifth Circuit to set aside an unconstitutional National Marine Fisheries Service (NMFS) [Final Rule](#) that required 24-hour GPS tracking of recreational charter fishing vessels and reporting of confidential economic data. NCLA celebrates this just conclusion to our clients' long-fought battle against the Final Rule, along with Greg Grimsal and his colleagues at the New Orleans firm of Gordon Arata, who provided invaluable local counsel in the case.

NCLA has represented more than 1,300 federally permitted charter boat owners in this class-action lawsuit against the Final Rule, which required every boat to install an onboard Vessel Monitoring System tracking device that continuously transmitted its GPS location to NMFS. The Rule forced charter boat captains to pay for these devices, which tracked boats whether they were being used for a charter-fishing trip or something else. This 24-hour surveillance was unnecessary, unduly burdensome, and violated the Fourth Amendment by searching without probable cause or a warrant. It also exceeded NMFS's authority under the Magnuson-Stevens Act and was arbitrary and capricious in violation of the Administrative Procedure Act. NCLA also complained the rule required reporting data that the agencies had nowhere specified in proposing the rule for comment.

The Fifth Circuit largely agreed with NCLA's analysis and held that the GPS-tracking requirement was unlawful for several reasons, including that "the Government failed to respond to public comments expressing concerns of personal privacy violations stemming from GPS surveillance." Judge Jennifer Elrod emphasized that particularly on unlawful searches "the Government fail[ing] to identify this particular concern from the public comments borders on incredible." NCLA commended the Fifth Circuit for its wise decision and is now pleased to bring its clients' long ordeal to an end.

In January 2024, NCLA will present oral arguments before the U.S. Supreme Court in its [Relentless v. Department of Commerce](#) case challenging the *Chevron* doctrine and another unconstitutional NMFS rule that requires fishing companies in the North Atlantic to pay for at-sea government monitoring of their herring catch. *Relentless* will be argued in tandem with the case of *Loper Bright Enterprises, et al. v. Gina Raimondo*. In these cases and many others, NCLA continues to turn the tide against the Administrative State's violations of Americans' civil liberties.

NCLA released the following statements:

"We are pleased to have reached a settlement agreement with the Government on the legal fees at issue in this matter. This \$160,000 payment rewards NCLA and its local counsel for taking this important case, vindicates our clients' rights, and avoids burdening the Courts with ancillary litigation."

— **John Vecchione, Senior Litigation Counsel, NCLA**

“This rule was a constitutional travesty from the get-go. NCLA is proud to have vindicated our clients’ civil liberties. We will put these funds to good use in lawsuits against other federal agencies, securing Americans’ civil liberties from an Administrative State that routinely fails to respect people’s rights.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page [here](#) and watch the case video [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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