

No. 25-1105

IN THE
Supreme Court of the United States

FRANK THOMPSON,

Petitioner,

v.

CARL WILSON, 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

**BRIEF OF *AMICUS CURIAE*
LANDMARK LEGAL FOUNDATION
IN SUPPORT OF PETITIONER**

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April 22, 2026

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STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae Landmark Legal Foundation (“Landmark”) is a national public-interest law firm committed to preserving the principles of limited government, separation of powers, federalism, originalist construction of the Constitution and individual rights. Landmark has submitted briefs supporting protection of constitutional and legal rights for businesses in *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45 (2025); *Loper Bright Enter. v. Raimondo*, 603 U.S. 369 (2024); and *Glacier Northwest, Inc. v. Int’l Bhd. of Teamsters Loc. Union No. 174*, 598 U.S. 771 (2023).

Landmark urges this Court to grant the petition.

**INTRODUCTION AND
SUMMARY OF ARGUMENT**

Petitioner Frank Thompson is subject to warrantless twenty-four-hour surveillance of his private mode of transportation because he works in a “closely regulated” industry. *Maine Lobsterman Challenges Unconstitutional 24/7 GPS Tracking*, Pac. Legal Found., <https://pacificlegal.org/case/thompson-maine-lobstermen-gps-tracking/> (last visited Apr. 19, 2026). There is nothing in the state’s regulation prohibiting the sharing of his location data

1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Counsel for *Amicus Curiae* provided timely notice to counsel for all parties of its intention to file this brief.

with law enforcement. 13–188 C.M.R. Ch. 25, § 98 (2023). And the surveillance does not stop for his personal travel when he is off duty. Pac. Legal Found., *supra*. Even his trips to the hospital could be monitored. *Id.* This constant surveillance is a condition of his employment. *Id.* If he does not submit to it, he could lose his license to continue working in his nearly life-long vocation. *Id.* But he does not transport radioactive materials, hazardous chemicals, or military munitions. To the best of *Amicus Curiae*'s knowledge, he is not a former felon or a criminal suspect. Mr. Thompson is a lobster fisherman.

Since 2023, the Maine Department of Marine Resources (MDMR) has enforced a warrantless GPS surveillance program on its lobster fishermen under rule 13–188 C.M.R. Ch. 25, § 98 (2023). This rule went into effect after the Atlantic States Marine Fisheries Commission (ASMFC) passed “Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan; Addendum IV to the Jonah Crab Fishery Management Plan.” Pet. App. at 40a. The ASMFC is an interstate regulatory body empowered by federal statute, 16 U.S.C. §§ 5101-5108, to “ensure the health and sustainability of vital marine resources” and “protect the fisheries that are essential to the Atlantic coast’s ecosystems, economies, and communities.” *About Us*, Atlantic State Marine Fisheries Commission, <https://asmfc.org/about/> (last visited Apr. 18, 2026). The MDMR rule purports to fall within an exception to the Fourth Amendment, which has historically permitted warrantless searches of a few closely regulated industries like firearms and mining. *United States v. Biswell*, 406 U.S. 311 (1972); *Donovan v. Dewey*, 452 U.S. 594 (1981). This exception has now expanded to the point where a lobsterman’s

vessel's every move is tracked under regulations whose "primary purpose," according to the First Circuit, is protecting a North Atlantic whale species. Pet. App. at 5a. This state-mandated intrusion is far afield from the Framers' vision of an individual's liberties protected by a limited government.

As early as the 1760s, abuses such as general warrants and writs of assistance by the British in the colonies began to foment revolution and lay the groundwork for the Fourth Amendment. Writs of assistance "permitted the customs agents to search any place in which smuggled goods might be concealed, even if there was no particular suspicion the goods were there." Orin S. Kerr, *Searches and Seizures*, in *The Heritage Guide to the Constitution* 424, 424 (David F. Forte & Matthew Spalding, eds. 2d ed. 2014). In *Paxton's Case*, 1 Quincy 51 (Mass. 1761), James Otis Jr. represented a group of Boston merchants challenging the writs. Although Otis failed to win the case, his five-hour oration before the Massachusetts Superior Court, attended by John Adams, articulated principles that would later inspire the Fourth Amendment. After the Revolution, John Adams would write of Otis's speech in *Paxton's Case*, "[e]very Man of an immense crowded Audience appeared . . . ready to take Arms against Writs of Assistants. Then and there was the first scene of the first Act of opposition to the Arbitrary claims of Great Britain. Then and there the Child Independence was born." John Adams, *From John Adams to William Tudor, Sr., 29 March 1817*, National Archives: Founders Online, <https://founders.archives.gov/documents/Adams/99-02-02-6735> (last visited Apr. 17, 2026).

In response to the crown's open-ended and intrusive powers, the Fourth Amendment protects citizens from "unreasonable searches and seizures." U.S. Const. amend. IV. However, while search warrants are traditionally required to invade the privacy of persons and property, the applicability of the Amendment to commercial property has evolved over time. Eight years after upholding a warrantless safety inspection of a private residence in *Frank v. Maryland*, 359 U.S. 360 (1959), the Court reversed course. In *See v. Seattle*, 387 U.S. 541 (1967), and *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967), the Court required warrants for administrative searches of both businesses and homes. Starting in 1970, however, the Court began to narrow the impact of the holdings in *See* and *Camara*. *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970). The Court did so with a series of decisions which held that warrantless searches of commercial property of closely regulated industries are acceptable. However, they must be necessary, well-defined, and in furtherance of a substantial government interest.

While warrantless searches of certain commercial property were initially intended to be a narrow exception to the rule, today the Fourth Amendment protections of small business owners are at risk of serious erosion. Under the current test, announced in *New York v. Burger*, 482 U.S. 691 (1987), and refined by *City of L.A. v. Patel*, 576 U.S. 409 (2015), lower courts may find nearly any industry closely regulated, including the one at issue here: lobstering. Such activity does not resemble any of the other industries which this Court has found to be closely regulated, such as mining, junkyards, alcohol, and firearms. Granting certiorari allows the Court to clarify

the test for determining closely regulated industries and conclude that lobstering does not fall within that category.

The need for the Court's involvement is heightened by the troubling regulatory trend to use more intrusive technology to collect information beyond the workplace or duty hours. This case involves collecting locational data on dual-use property, namely boats which are used both for business and personal activities. The ambiguity of the closely regulated industry test thus creates confusion for individuals about the status of their dual-use property. And it opens the door for mass warrantless searches of such property because of its business use, without proper guidance on how to consider its personal use. This issue is an additional justification for granting certiorari.

ARGUMENT

I. The Supreme Court Should Grant Certiorari To Refine Its Test For Determining What Constitutes A "Closely Regulated" Industry.

While the Fourth Amendment applies to commercial property, this Court has made clear that "[a]n expectation of privacy in commercial premises . . . is different from, and indeed less than, a similar expectation in an individual's home." *New York v. Burger*, 482 U.S. 691, 700 (1987). And "[t]his expectation is particularly attenuated in commercial property employed in 'closely regulated' industries." *Id.* Accordingly, the Court has ruled that warrantless administrative searches on closely regulated industries do not violate the Fourth Amendment.

The Court has addressed the parameters of this exception in five cases over the past half century, but this line has not always been clear. In the first four, the Court found that the businesses subject to warrantless searches were closely regulated industries. *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (alcoholic beverage dealer); *United States v. Biswell*, 406 U.S. 311 (1972) (firearms dealer); *Donovan v. Dewey*, 452 U.S. 594 (1981) (mining company); *New York v. Burger*, 482 U.S. 691 (1987) (junkyard business). In *City of L.A. v. Patel*, 576 U.S. 409 (2015), however, the Court found that hotels were not.

The factors used to determine whether an industry is closely regulated have varied. And factors which had been determinative in earlier cases later became less crucial. Beginning with *Colonnade*, the Court held that a warrantless search of an alcohol distributor was not per se unreasonable because the alcohol industry had been “long subject to close supervision and inspection.” *Colonnade*, 397 U.S. at 77. Liquor had been subject to regulation since the seventeenth century in England, demonstrating a historical tradition of regulation. *Id.* at 75. That tradition included permitting law enforcement officials to inspect facilities producing or selling alcohol without a warrant. *Id.*

Later, in *Biswell*, the Court concluded that an industry with far less of a historical tradition of regulation could nonetheless be closely regulated. “Federal regulation of the interstate traffic in firearms is not as deeply rooted in history as is governmental control of the liquor industry.” *Biswell*, 406 U.S. at 315. Yet warrantless searches of firearm dealers were acceptable for purposes of public

safety, being of “central importance to federal efforts to prevent violent crime.” *Id.* The Court also added a new wrinkle—that the sale of firearms was a “pervasively regulated business” further solidifying its status under the exception. *Id.* at 316.

Donovan applied nearly the same reasoning as *Biswell* to the mining industry. The Court emphasized that “the mining industry is among the most hazardous in the country and that the poor health and safety record of this industry has significant deleterious effects on interstate commerce.” *Donovan*, 452 U.S. at 602. As in *Biswell*, the public safety risks of this industry permitted warrantless searches. The Court stated that “the pervasiveness and regularity of the federal regulation . . . ultimately determines whether a warrant is necessary” for inspection of closely regulated industries. *Id.* at 606. It explicitly rejected that historical tradition was the sole controlling factor. *Id.* So while the Court’s decision in *Colonnade* turned on historical tradition, the pervasiveness of regulation determined the outcome in *Donovan*, and to a lesser extent in *Biswell*.

Six years after *Donovan*, the Court held junkyards to also be a closely regulated industry in *Burger*. The Court found that regulations for “the activity of vehicle dismantling are extensive,” which was determinative. *Burger*, 482 U.S. at 704. And, like in *Colonnade*, the Court gave some weight to the length of regulation of “related industries,” namely salvage industries generally. *Id.* at 707. The decision also provided the prevailing test for warrantless searches of 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).

As explained below, the *Burger* test has several problems. Certainly, it is susceptible to being overly inclusive, thereby permitting more warrantless searches. The government can claim a substantial interest in countless policy areas. Furthermore, an overly ambitious regulatory scheme is likely to require more intrusive enforcement out of necessity. And regular searching over time can justify more searching.

After *Burger*, the Court held that hotels were not a closely regulated industry in *Patel*. Justice Sotomayor, writing for the majority, noted first that “nothing inherent in the operation of hotels poses a clear and significant risk to the public welfare,” unlike, for example, mines or firearms. *Patel*, 576 U.S. at 424. Further, the regulations which hotels were subject to, including “maintain[ing] a license . . . conspicuously post[ing] their rates, and meet[ing] certain sanitary standards,” applied as much to them as to many other Los Angeles businesses. *Id.* at 425. And 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.” *Id.*

Justice Scalia disagreed, arguing that Anglo-American history had a long tradition of hotel regulation, and hotels in Los Angeles were subject to comprehensive regulation. *Id.* at 432-34 (Scalia, J., dissenting).

The limited nature of the *Patel* decision, addressing almost exclusively the industry at issue, has left the state of warrantless searches in the business context unsettled. Since *Patel*, the Court has not readdressed its test for what constitutes a closely regulated industry. This has left lower courts in the difficult position of using industry-specific rulings to discern where other industries fall. See Casey Adams, *Motel Blues: Inspecting Patel's Impact on the Law of Administrative Searches*, 51 N.M. L. Rev. 457 (2021). On a spectrum ranging from alcohol and junkyards to hotels, where does lobstering fall, for example? What makes an industry more similar to firearms or less similar to mining for purposes of its closely regulated status? These difficult questions raise a number of issues which this Court has an opportunity to resolve with a more generally applicable ruling. And as one observer has noted, "*Patel's* mode of analysis is not conducive to building coherent common law" because it "did not expressly distinguish *Burger*" and even adopted reasoning from the *Burger* dissent. Note, *Rethinking Closely Regulated Industries*, 129 Harv. L. Rev. 797, 809 (2016). "Consequently, it will be difficult for lower courts to say whether regulations comparable to those in *Burger* are sufficient to constitute a comprehensive scheme." *Id.*

A. The Test for Defining a “Closely Regulated” Industry has Created Confusion in Lower Courts and Threatens to Unacceptably Grow Beyond an Exception.

Defining a closely regulated industry has been no easy task. As explained above, the relative importance of factors in the analysis is inconsistent, but problems arise from the factors themselves as well.

Pervasiveness has appeared most frequently in these decisions and, in the most recent cases, seems to be the focal point of analysis. However, the caselaw does not define close or pervasive with precision, and it does not indicate the weight given to different kinds of regulation. In some instances, the same type of regulation has cut in opposite directions in different cases. For example, the fact that a hotel must maintain a license in Los Angeles was discounted as evidence of pervasive regulation in *Patel*, but licensing was considered operative in *Burger*. *Patel*, 576 U.S. at 425; *Burger*, 482 U.S. at 704. The precedent for determining closely regulated industries is thus at least partially at odds with itself.

Furthermore, regulation of industries has become increasingly pervasive across the entire economy. The regulatory state increased dramatically after *Burger*. Omar Al-Ubaydli & Patrick McLaughlin, *A Numerical Database on Industry-specific Regulations for All U.S. Industries and Federal Regulations, 1997-2012*, Mercatus Center (Nov. 12, 2014), <https://www.mercatus.org/research/working-papers/regdata> (showing federal regulations increased from nearly 850,000 to over 1,000,000 from 1997 to 2012). And the number of federal

regulations still totals nearly 1,100,000 regulations after *Patel*. Kofi Ampaabeng, Jonathan Nelson & Elise Amez-Droz, *Healthcare RegData: Quantifying the Volume of Healthcare Regulations*, Mercatus Center (Apr. 15, 2020), <https://www.mercatus.org/research/policy-briefs/healthcare-regdata-quantifying-volume-healthcare-regulations> (indicating the total number of federal regulations was 1,085,063 in 2018). Even without further Supreme Court precedent loosening the closely regulated industry category, the expansion of the regulatory state will eventually allow the exception to swallow the rule.

And caselaw in the lower courts indicates that this process is underway. In the almost four decades since this Court last held that an industry *was* closely regulated, lower courts have added numerous industries from fields as varied as trucking to food production and taxidermy to the category. Note, *supra* at 805-06 (citing over twenty cases in lower courts finding various industries to be closely regulated).

The *Patel* decision further muddies the waters for lower courts. It “leaves two ambiguities with respect to intrinsic dangerousness: whether this factor is necessary and what sorts of risks are covered.” Note, *supra* at 810. Circuit courts appear to be at odds as to whether *Patel* changed the standard by making a “clear and significant risk to the public welfare” a requirement for determining whether an industry is closely regulated, or whether it merely reiterated an already existing factor. *Patel*, 576 U.S. at 424.

The Eighth Circuit, in *Calzone v. Olson*, 931 F.3d 722, 724 (8th Cir. 2019), appeared to interpret *Patel* as

requiring that an industry be intrinsically dangerous to be considered closely regulated. By contrast, in *Liberty Coins, LLC v. Goodman*, 880 F.3d 274 (6th Cir. 2018), the Sixth Circuit rejected the argument that *Patel* had dramatically narrowed the test, concluding that precious metal dealers could be considered closely regulated. In *Mexican Gulf Fishing Co. v. United States Dep't. of Com.*, 60 F.4th 956, 968 (5th Cir. 2023), the Fifth Circuit held that “*Patel* did not establish a new requirement for the closely-regulated-industry test.” But the circuit court reasoned that the lack of evidence of a risk to public welfare supported the conclusion that the Department of Commerce could not require charter fishing boats to install GPS locators on their vessels. *Id.* at 970. And, in *Owner-Operator Indep. Drivers Ass'n v. United States Dep't. of Transp.*, 840 F.3d 879, 894 (7th Cir. 2016), the Seventh Circuit noted that “the Supreme Court signaled in *Patel* that courts should consider whether the industry is inherently dangerous.” This discord further reinforces the conclusion that lower courts need guidance from this Court on how to apply the test for closely regulated industries.

B. GPS Tracking of Dual-Use Equipment Increases the Personal Intrusion of Warrantless Searches and Heightens the Importance of Clearly Defining “Closely Regulated” Industries.

When the MDMR rule was promulgated in 2023, lobstering boats that coastal Maine residents use for personal and business purposes became subject to near-continuous warrantless surveillance. Pet. App. at 150a-155a, 192a. This rule made no accommodation for

the lawful personal use of these boats that would enjoy considerably higher privacy protections as required on any other vessel. Pet. App. at 150a-155a. The impact of this type of rule may be felt in industries far beyond commercial lobstering. Numerous types of business equipment can serve dual purposes for personal and business use. Certainly, this includes Petitioner's boat, but it also could include a farmer's machinery, a service technician's vehicle, or a beer distributor's laptop. Despite the frequency of these overlaps, the constitutional status of these objects as they move through the day remains unaddressed in Supreme Court precedent. None of the five cases touching on closely regulated industries explain how to classify dual-use objects or consider a tailoring requirement for surveillance programs to reasonably accommodate lawful personal use.

The intrusive nature of the MDMR rule here raises the stakes of the category dispute for those making their living in all types of potentially closely regulated industries. Relevant both for lobster vessels and other vehicles like automobiles, "GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations." *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring). The increasing capabilities of surveillance technologies, combined with the integration of business technology into daily life, have created an important issue for the Court to address. Whereas vehicle junkyards, liquor stores, gun shops, and mines are discrete premises that can be searched, many modern businesses and workplaces are not so easily cabined. Physicians often carry pagers for work at all

hours, and creative businesses can be run fully online from people's personal computers in their homes, to name a few examples. In the absence of further guidance, the trend of expansion of the closely regulated industry exception stands to facilitate business surveillance that is inextricably tied to the business owner's or employee's personal life.

While the surveillance of these lobster boats is one such industry that exemplifies this trend, trucking is another. Since 2017, electronic logging devices (ELDs) have been required by the Federal Motor Carrier Safety Administration on commercial motor vehicles which track location at regular intervals. These locations are recorded during all travel, whether for business or authorized personal use, with location precision decreasing for the latter. 49 C.F.R. pt. 395, subpt. B, app. A, § 4.7.3 (2026). Close surveillance of truckers and the trucking industry may well be justified by invoking an “intrinsic[] danger[]” *Patel*, 576 U.S. at 424 n.5, of roadway collisions, as was the case in the Seventh Circuit. *Owner-Operator Indep. Drivers Ass'n*, 840 F.3d 879. Nevertheless, the personal intrusion of this surveillance goes beyond what this Court has previously considered in the business context.

And if the limiting principle to this kind of surveillance is just the closely regulated industry designation, it all but necessitates buying personal replacements of these items to avoid unforeseen surveillance regimes. This can represent a major financial burden for workers whose companies purchase expensive objects like boats and automobiles. Even for those outside of businesses currently designated as closely regulated, the experience of the Petitioner here is instructive. He became subject

to invasive surveillance decades after he entered the industry, showing the looming potential that this could happen to other types of businesses. Pet. App. at 190a-191a.

Take, for example, a pharmaceutical sales representative in Massachusetts with a company car that, as an employment benefit, he can use in off hours. He is subject to serious restrictions on the interactions he can have with prescribing physicians, as granular as the food he can provide during educational visits and to whom he can provide it. 105 Mass. Code Regs. 970.000-.011 (2012). His industry, pharmaceuticals, also happens to be among the many which have been labeled closely regulated by at least one circuit court. See *United States v. Jamieson-McKames Pharm., Inc.*, 651 F.2d 532 (8th Cir. 1981). If the government's interest in protecting right whales and lobster populations is sufficient for *Burger* test purposes to merit constant warrantless surveillance, round-the-clock surveillance of pharmaceutical fleet vehicles to prevent overprescription kickback schemes seems possible.

To ensure that these representatives do not take trips to restaurants with physicians that violate the food gift rules, constant surveillance may be an attractive option to overzealous regulators. Government entities could gain access to troves of personal information about the sales representative akin to the personal information in the instant case. The sales representative may need to immediately purchase a new vehicle to avoid ceding privacy on sensitive “trips the indisputably private nature of which takes little imagination to conjure.” *Jones*, 565 U.S. at 415 (2012) (Sotomayor, J., concurring) (quoting *People v. Weaver*, 12 N.Y.3d 433, 441, 909 N.E.2d. 1195, 1199 (2009)). But for average Americans and small

business owners, these are the kinds of financial burdens that they may hope to be able to plan well in advance.

Here, this Court has an opportunity to help them do so. A straightforward definition of closely regulated industries would give notice to business owners and employees who could be subjected to surveillance schemes like this one. As aforementioned, this notice is crucial given surveillance's increasing ease and potential scope. Moreover, it would enable people to understand what it would cost for them personally to retain their privacy and decide if this price is worthwhile.

C. This Court has Numerous Options to Fix the Test for “Closely Regulated” Industries.

Despite the test's potential for overbreadth, the Court has at least three paths available to continue the *Burger* test enforcement project it set upon in *Patel* and provide further guidance to lower courts. First, it could set a more complete definition for pervasive regulation. This path necessarily leaves the distinction somewhat discretionary, but clues about the quantities or types of regulations that should prove dispositive would be helpful. Even the brief treatment of this question in *Patel* provided necessary insights. For example, *Patel*'s rejection of regulations common to many Los Angeles industries as proof of close regulation indicates that some level of industry specificity is necessary to show pervasive regulation exists. *Patel*, 576 U.S. at 425. Still, several key questions remain. With respect to the types of regulations that are dispositive, should lower court judges be primarily looking for crime-prevention, natural resource protection, labor law regulations, or some other category for pervasiveness to

apply? How many industry-specific regulations amount to pervasiveness? And does close regulation of one part of an industry's function permit warrantless surveillance of the entire industry?

Another option, and one that avoids many of these issues, is to elevate the public safety factor within the close regulation definition. By looking at whether an industry is engaged in “intrinsically dangerous” business, the Court could preserve the prior case law and simultaneously resolve the instant case. *Patel*, 576 U.S. at 424 (comparing the public safety concerns in *Colonnade*, *Biswell*, *Donovan*, and *Burger* to *Patel*), 424 n.5. A test like this, based on whether an industry poses a “clear and significant risk to the public welfare,” benefits lower courts and business owners alike by providing a simple and intelligible principle. *Id.* at 424. If public safety is dispositive, there is no question that there is little danger in allowing lobstering to occur with normal law enforcement techniques. This solution honors the legitimate interests for American businesses to be able to predict their privacy rights and have them standardized across circuits. The economic effect of clarifying this legal landscape is an additional benefit of this rule, as regulatory uncertainty has long been understood as a hindrance to business investment. Scott R. Baker, Nicholas Bloom & Steven J. Davis, *Measuring Economic Policy Uncertainty*, 131 Q.J. Econ. 1593 (2016).

A final potential path is to leave the definition of a closely regulated industry relatively discretionary while shifting the most active enforcement to the first prong of the *Burger* test. Examining how substantial government interests are would provide a key check on an overly

intrusive regulatory regime. This path retains the prior precedents which all discuss the interest in warrantless searches in industries such as alcohol, firearms, mines, and junkyards. In the instant case, it is highly suspect whether there is a substantial government interest in regulating lobstering in such an overbearing manner. The lobstermen have noted below that their lobster population “currently is not in danger of being overfished.” Pet. App. at 92a. Further, they allege that the industry’s internal focus on sustainability is so strong that increasing surveillance now “flies in the face of evidence that Maine lobster fishermen have a history of regulatory compliance.” Pet. App. at 86a. Anthropologists have agreed on this point, referring to Maine lobstermen as “an industry with one of the strongest conservation ethics in the world” which “has solved its collective action dilemmas” related to the potential for overfishing. James M. Acheson & Roy Gardner, *The Evolution of Conservation Rules and Norms in the Maine Lobster Industry*, 53 *Ocean & Coastal Mgmt.* 524, 525 (2010). If lobster populations were indeed in crisis, perhaps a sufficiently weighty interest would exist to justify some surveillance. But in the absence of an emergency situation, round-the-clock warrantless GPS tracking very likely fails if the Court were to choose this path.

Regardless of how the enforcement of this exception is formalized, the situation faced by Petitioner and similarly situated business owners is untenable. Dozens of industries will always find themselves one ambitious regulation from unceasing surveillance without intervention from the Court. Twenty years ago, a unanimous Court in *Brigham City v. Stuart*, 547 U.S. 398 (2006), affirmed that “the ultimate touchstone of the Fourth Amendment

is ‘reasonableness.’” *Id.* at 403. This remains true today. But the glaring unreasonableness of the MDMR rule strongly indicates that the enforcement project begun in *Patel* remains unfinished.

The Court can confine this exception to Fourth Amendment protections in these or any other way it chooses. However, regardless of its preferred mechanism, it is time for a new addition to the privacy jurisprudence governing closely regulated industries. Certiorari is warranted.

CONCLUSION

The current state of this Court’s test for closely regulated industries must be resolved to provide clarity to lower courts and businesses alike. Landmark urges this Court to grant the petition.

Respectfully submitted,

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April 22, 2026