

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

PETITIONER'S SUPPLEMENTAL BRIEF

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INTRODUCTION

Petitioner submits this supplemental brief to bring the Court's attention to the Ninth Circuit's recent decision in *Richards v. Newsom*, __ F.4th __, 2026 WL 2529326, No. 25-693 (9th Cir. Aug. 27, 2026). As relevant here, *Richards* permits the government to treat a home-based gun dealer's residence as perpetually open to warrantless surveillance, just as the First Circuit decision in the instant case permits the government to treat a lobsterman's boat as perpetually open to warrantless surveillance. Day or night, weekend or holiday—so long as the homeowner sometimes sells guns from his home and the lobsterman sometimes fishes from his boat. *Richards* confirms that courts remain divided over the limits *New York v. Burger*, 482 U.S. 691 (1987), places on warrantless surveillance regimes affecting mixed-use commercial and private property. The circuit splits highlighted in the petition concern: (1) whether 24/7 surveillance constitutes an unreasonable trespassory search in violation of the Fourth Amendment, and (2) whether courts must evaluate principles of both trespass and reasonable expectations of privacy in determining reasonableness of a search.

Richards further illuminates the divides over whether *Jones*, *Katz*, or both must inform reasonableness inquiries for administrative searches. In addressing that issue, the majority distinguished *Rush v. Obledo*—the decision from which the First Circuit split—where a statute unconstitutionally failed to limit the hours and areas of daycare inspections. 756 F.2d 713 (9th Cir. 1985). *Richards* confirms *Rush*'s continuing relevance, deepens the circuit split, and underscores the need for this Court's review.

DISCUSSION OF SUPPLEMENTAL AUTHORITY

Richards is doctrinally relevant because both the majority opinion and dissent in the case acknowledged the scope of administrative surveillance depends on limits to place and time—the areas and hours of commercial use of otherwise private property. The very same doctrinal questions are posed in Thompson’s petition: whether *Burger* permits continuous, suspicionless surveillance of mixed-use property without meaningful limits on where and when the search could occur.

Richards rejected a challenge to a California law requiring gun sellers to maintain 24/7 video and audio surveillance. 2026 WL 2529326, at *2. Plaintiffs included traditional brick-and-mortar gun stores and sellers operating out of home offices for online and in-person sales. *Id.* at *5. Even assuming the statute authorized a search, the panel concluded that search would be reasonable under *Burger*. *Id.* at *14. And despite concluding that *Rush* did not control, the majority’s reasonableness analysis closely tracked *Rush*’s framework of analyzing the areas and hours of an administrative search authorization. *Id.* at *13-14. *Richards* therefore confirms that *Rush*’s areas and hours considerations still matter in the Ninth Circuit, whereas the First Circuit held that they did not. *Id.* at *13-14; Pet. App. 24a-30a, 28a n.18.

Judge Lee dissented in *Richards* because “the statute has no limits or even guidelines on what a government agent can do,” thereby running afoul of *Rush*. 2026 WL 2529326, at *29. He read the statute to authorize unlimited surveillance to ensure compliance,

unlike the majority, which held that surveillance authorization came from a separate, unchallenged statute. *Id.* at *29, *10. The dissent recognized the implication of the majority’s opinion for the plaintiffs who, as in *Rush*, ran their business from home. *Id.* at *30. The statute permits “a government agent without a warrant [to] enter a . . . [seller’s] house unannounced . . . —whether it be 11:00 p.m. on a Tuesday or on Christmas morning[.]” *Id.* at *29.

Lower courts continue to struggle to apply *Katz* and *Jones* to 24/7 administrative surveillance, as *Richards* demonstrates. The instant case is the right vehicle for this Court to use to resolve those questions and the contradictions they have caused.

CONCLUSION

For the foregoing reasons and those stated in Petitioner's previous briefing, this Court should grant the petition for a writ of certiorari.

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Respectfully submitted,

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