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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF OWNER OPERATOR INDEPENDENT
DRIVERS ASSOCIATION, INC.,

Appellant,

v. NO. 45

NEW YORK STATE DEPARTMENT OF
TRANSPORTATION,

Respondent.

20 Eagle Street
Albany, New York
May 17, 2023

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Counsel.

2 MR. STINSON: Good afternoon, Your Honor.

3 CHIEF JUDGE WILSON: First case today is a matter
4 of Owner Operator Independent Drivers v. New York State
5 Department of Transportation.

6 MR. STINSON: Yes, I'd like to reserve two
7 minutes for rebuttal.

8 CHIEF JUDGE WILSON: Yes, sir.

9 MR. STINSON: May it please the court, Charles
10 Stinson for the plaintiffs-appellants who are the Owner
11 Operator Independent Drivers Association and three
12 independent trucker members.

13 This case require - - - case requires the court
14 to confirm a seemingly straightforward proposition: that
15 the state constitution applies to and limits state
16 regulations, specifically here that Article 1, Section 12
17 limits the government's use of electronic logging devices
18 and GPS tracking and - - -

19 JUDGE TROUTMAN: So prior to the electronic
20 monitoring - - -

21 MR. STINSON: Yes.

22 JUDGE TROUTMAN: - - - or tracking, there - - -
23 there was logbooks that were required, correct?

24 MR. STINSON: That is correct.

25 JUDGE TROUTMAN: And that was permissible.



1 What's wrong with tracking or log - - - or documenting the
2 time here?

3 MR. STINSON: Well, ELDs - - - ELDs affect a more
4 - - - a more invasive search than did the logbooks.
5 Logbooks were required - - - required drivers to record
6 their duty status and - - - and general location, city and
7 state generally, at change of duty status.

8 JUDGE TROUTMAN: But the ELD doesn't give
9 specific pinpointed location.

10 MR. STINSON: Well, I - - - I suppose that
11 defines - - - or depends on how you define pinpoint, but
12 it's more specific than a logbook was.

13 Furthermore, ELDs require the - - - ping the
14 location every hour in between every change of duty status
15 as well.

16 JUDGE TROUTMAN: But not continuous, which would
17 be more invasive?

18 MR. STINSON: I suppose, yes. That - - - I mean,
19 it could be more invasive. In fact, the federal government
20 earlier this year, propo - - - issued a notice suggesting
21 that perhaps it would like to record even more location
22 information, every fifteen minutes in between duty status.

23 JUDGE TROUTMAN: With a highly regulated
24 industry - - -

25 MR. STINSON: Yes, Your Honor.



1 JUDGE TROUTMAN: - - - should your clients expect
2 this to happen?

3 MR. STINSON: I think it's important to note that
4 you - - - in a - - - participation in a highly pervasively
5 regulated industry, if we accept that trucking is, you
6 don't check your - - -

7 JUDGE TROUTMAN: Do you dispute that it is?

8 MR. STINSON: Not in this case, no.

9 JUDGE TROUTMAN: Okay.

10 MR. STINSON: You don't check your constitutional
11 rights at the door. The State can't condition your
12 participation in earning an employment in waiving your
13 constitutional rights.

14 So yes, participation in a pervasively regulated
15 industry does perhaps decrease your expectation of privacy,
16 but it doesn't wipe it away. That's why the administrative
17 search exception rule, the guidelines laid out by this
18 court in Keta and other courts - - - that's why they exist,
19 because you still do have an expectation of privacy.

20 JUDGE RIVERA: So you argue that there's not a
21 sufficient - - - I'm not sure these are your words, but
22 let's just put it this way - - - there's not a sufficient
23 nexus between the governmental interest and the problem
24 they're trying to address - - -

25 MR. STINSON: Yes.



1 JUDGE RIVERA: - - - And the additional
2 information - - - forget about the logbooks for a moment -
3 - - the additional information to be gathered through the
4 GPS. Could you address that more - - -

5 MR. STINSON: Sure.

6 JUDGE RIVERA: - - - specifically because I
7 wasn't really persuaded, but I may be missing something - -
8 -

9 MR. STINSON: Okay.

10 JUDGE RIVERA: - - - in your argument.

11 MR. STINSON: Well, I think that maybe wasn't my
12 words, but that - - - maybe that should have been my words
13 because I think you put it very, very well there. Yeah, so
14 before, with ELD - - - or excuse me, with logbooks, there
15 was a for - - - at least a stated need for location
16 information in order to back up the information the driver
17 put in the logbook, right? So if the driver picked up a
18 load in Atlanta and got stopped in Albany but only put that
19 the driver had been going six hours, then there might be an
20 issue there that the officer could double-check that. But
21 ELDs obviate the need for that information because they
22 record when the truck is moving. So this location
23 information is no longer needed.

24 The hours of service, the calculation is found in
25 49 CFR 395.3, and that's been incorporated into - - - into



1 the state law. Those depend on what the driver's doing and
2 for how long the driver's been doing it. And ELDS - - -
3 ELDs record automatically how long the driver - - - how
4 long the truck has been moving or not.

5 JUDGE CANNATARO: This is a bit of a logical
6 problem for me because I think you just conceded, and I
7 believe you also concede in your briefs, that the
8 information that's collected by the ELD, i.e., location
9 information, is part of what needed to be provided when
10 they were just doing written logs, correct?

11 MR. STINSON: I think the state had a good
12 argument that you could - - - that that information was
13 useful in backing up what's recorded on the state - - - on
14 the logbooks.

15 JUDGE CANNATARO: But factually, they had to log
16 in some location information when they were filling out
17 their forms on paper.

18 MR. STINSON: They did. They did have to.

19 JUDGE CANNATARO: So is your argument - - - since
20 I think we now all agree that location information is a
21 necessary element, or has been prior to the advent of ELDS,
22 is your argument simply that they're collecting too much
23 location information now?

24 MR. STINSON: I'd like to hit a couple topics
25 there. I'm not sure that we agree that location

1 information is necessary to calculate hours of service.

2 JUDGE CANNATARO: I'm just saying, it was an
3 element of what was provided, even before the ELDs.

4 MR. STINSON: It was - - - that is correct. This
5 case isn't about whether or not that was permissible.

6 JUDGE CANNATARO: No, you're not litigating that.

7 MR. STINSON: Yes, so - - - but - - - so I just
8 say that to point out that we're not necessarily conceding
9 that that was permissible, but it made more sense logically
10 then because the logbooks don't automatically record when
11 the truck is moving.

12 So here, I think there's two points for why the
13 ELDs are worse than the logbooks. And one is that point,
14 that by recording automatically when the truck is moving,
15 you don't need that location information to back up what
16 the truck was doing.

17 JUDGE CANNATARO: But doesn't that get to the
18 very heart? Because the problem, as perceived by those who
19 created the regulations and, you know, required the ELDs,
20 was that there was too much potential for falsifying the
21 logbook information. And this sort of forecloses that
22 possibility. Is it - - - whether you think they're going
23 about doing it the right way or the wrong way, would you
24 agree with that general proposition that this keeps people
25 more honest?

1 MR. STINSON: Well, that's one of the problems,
2 first of all. And pressure from carriers on truckers was
3 another big issue with logbooks. But I think there's a
4 distinction - - - we need to make a distinction between
5 ELDs generally recording automatically this information and
6 the location information in ELDs. And whether or not
7 there's a good reason for an automatic recording of hours
8 of service is different than whether or not we need the
9 location part of it because ELDs are - - - are recording
10 when that truck is moving, so they don't - - - they no
11 longer need this location information.

12 JUDGE RIVERA: So are you saying that a trucker
13 does not have to reveal, whether it's through this
14 tracking - - - put that to the side - - - never has to
15 disclose location even to the carrier? Right now, doesn't
16 a carrier need to know my truck is in, wherever, Albany,
17 whatever you said before?

18 MR. STINSON: Yeah, perhaps.

19 JUDGE RIVERA: So that is not - - - because I
20 think in part the presumption you're working off is that
21 the location is confidential; nobody gets that information.

22 MR. STINSON: Well, I - - -

23 JUDGE RIVERA: It strikes me that that can't be
24 right.

25 MR. STINSON: No.



1 JUDGE RIVERA: But if it's true, it's true.

2 MR. STINSON: No, I don't think that's - - - I
3 don't think that's right. I mean, we're talking about
4 the - - - I see my time expired, but - - -

5 JUDGE RIVERA: Please.

6 MR. STINSON: - - - we're talking about the
7 government's invading truckers' privacy. I think there's a
8 difference, clearly, between a carrier asking where its
9 property is versus the government requiring drivers to turn
10 over where they've been.

11 JUDGE RIVERA: Yeah, but - - - I'm sorry - - -
12 but doesn't the carrier need that information to ensure
13 that indeed the driver is either on duty or off duty? I
14 mean, if you're in a location that has nothing to do with
15 the duty assignment, that is revealing something to the
16 carrier that is of consequence to the government.

17 MR. STINSON: I'm not sure - - -

18 JUDGE RIVERA: Or have I misunderstood the way
19 this works? That could be also.

20 MR. STINSON: I'm not sure - - - the government
21 has not said how that would work.

22 JUDGE RIVERA: I see.

23 MR. STINSON: The government has never said - - -

24 JUDGE SINGAS: When you're off-duty, though,
25 isn't the location tracked to a ten-mile radius? So - - -

1 which is as big as all of New York City.

2 MR. STINSON: Right.

3 JUDGE SINGAS: So what's the imposition of
4 privacy there with that kind of radius?

5 MR. STINSON: Well, I think there's a balance.
6 If the government hasn't stated why it needs that
7 information, then - - - then any imposition on the location
8 there is an invasion of privacy beyond Article 1, Section
9 12.

10 JUDGE GARCIA: Counsel, I know your light is on.
11 With the Chief Judge's permission, can you just explain for
12 me a more practical issue? So let's say we rule the way
13 you're asking us to on the state constitutional ground and
14 you are a New York trucker. You live in New York; you have
15 this truck. You're working; you cross over the George
16 Washington Bridge. You're in New Jersey, and the New
17 Jersey safety officers pull you over. Do you have to
18 provide this information to them?

19 MR. STINSON: Likely, yes.

20 JUDGE GARCIA: So what would the practical effect
21 of that ruling be? It would only be that New York safety
22 inspectors couldn't ask for the information, right?

23 MR. STINSON: That's true. And I think, first of
24 all, the - - - the state constitution applies either way,
25 right? I mean, the state constitution is there to protect

1 individual privacy. So any inform - - - any privacy, any
2 private information that you don't have to give up to the
3 government, I think, is a win.

4 JUDGE GARCIA: True, but since you're asking us
5 to do this on a state constitutional basis, one of the
6 issues we look at in the analysis - - - not a dispositive
7 one, though, is uniformity, right? So uniformity is a
8 factor, not a determining factor, and where you have forty-
9 eight other states requiring this information now,
10 shouldn't that be a fairly weighty factor here, where the
11 only limitation, then, at the end of the day would be New
12 York safety inspectors can't pull your truck over on this
13 side of the George Washington Bridge?

14 MR. STINSON: I don't think so. I think that - -
15 - as I said, you know, the regulations, they always tend
16 towards digging into truckers' lives more and more. So any
17 time the truckers can get a win on that side is a win. So
18 protecting their privacy - - -

19 JUDGE GARCIA: You would only be producing it,
20 not having to record it, right? For practical purposes,
21 you'd still have to record this information. The only win
22 would be you wouldn't have to give it up to New York
23 officials?

24 MR. STINSON: Perhaps, but I think that we
25 consider that to be a big win.

1 CHIEF JUDGE WILSON: Thank you.

2 MR. STINSON: Thank you.

3 CHIEF JUDGE WILSON: Counsel?

4 MR. HU: All right. Good afternoon. May it
5 please the court, Kevin Hu on behalf of the Department of
6 Transportation.

7 The ELD rule is constitutional because it
8 authorizes only limited administrative searches that easily
9 meets all the elements of the pervasively regulated - - -

10 JUDGE SINGAS: So why do you need the location
11 data?

12 MR. HU: That's a fair question, Your Honor. So
13 it's important to emphasize that under the hours of service
14 regulation, truck drivers are allowed to use their
15 commercial vehicles for personal errands. And so really
16 the only way to distinguish when that duty status, the
17 authorized personal use, is being properly used is to
18 record some degree of data that can help distinguish when a
19 personal task was being accomplished versus when time is
20 actually being used to perform work functions.

21 CHIEF JUDGE WILSON: But there, aren't you really
22 relying on their say-so?

23 MR. HU: That's correct, Your Honor. So the duty
24 statuses do have to be manually entered by the driver. And
25 so when a driver selects a authorized personal use, there

1 certainly is a presumption that they are doing some sort of
2 personal errand. So they - - -

3 CHIEF JUDGE WILSON: So how does the location
4 information, then, tell you if they're not telling the
5 truth in that circumstance?

6 MR. HU: So the location data, first of all, it's
7 an objective, easily understood set of data. And so to use
8 an example, if the truck driver has a job that takes him
9 from New York City to Los Angeles, and the records showed
10 that there were multiple personal errand designations
11 throughout that trip and also the location data shows that
12 those personal errands continue to take him in a westward
13 direction, that would certainly raise a red flag that there
14 was a potential that the personal errand duty status was
15 being used in a potentially improper way.

16 JUDGE HALLIGAN: And is it actually used that way
17 when someone is pulled over or is that just a hypothetical
18 possible way in which you might use the data?

19 MR. HU: So Your Honor, there - - - the data is
20 typically reviewed in two ways. First, the Department does
21 randomized stops, and in those stops the driver has to
22 furnish one week's worth of data. And so to the extent
23 that there are red flags visible in that one-week set of -
24 - - set of data, they would follow up with a further
25 inquiry.

1 JUDGE HALLIGAN: And - - - and you're saying that
2 that is, in fact, what happens, not just that it can
3 happen?

4 MR. HU: That is right, Your Honor. And the
5 second way that it is used is the Department conducts
6 audits with the motor carriers themselves. Drivers upload
7 their data to their - - - to the motor carrier employers
8 who then keep it in six-month batches, and so the
9 Department will then look for patterns in the data. So for
10 example, if a driver consistently completes trips here in
11 Albany and then uses the personal errand duty status to
12 complete round trips to the - - - to New York City and then
13 come back to Albany before going on duty again, perhaps
14 he's just visiting grandma, but perhaps he's also, with
15 that sort of regularity, completing some sort of work
16 function that would, again, require follow-up. It - - -
17 it's not necessarily that the geographic - - -

18 CHIEF JUDGE WILSON: I'm not sure how the
19 location data would help you distinguish between those two
20 things. I mean, he might visit his grandma weekly.

21 MR. HU: That - - - that's right. But the
22 regularity and the pattern in that data would allow the
23 Department to follow up and just provide some - - - and
24 just ask the questions. It's not necessarily the
25 geographic data will reveal with a certainty that someone

1 is committing abuse, but it's a way for - - - it's a way of
2 identifying red flags to ask further questions.

3 JUDGE TROUTMAN: So are you saying it allows for
4 assistance with an audit?

5 MR. HU: That's right, Your Honor. And again,
6 because duty statuses must be manually implemented, there
7 still is that potential to manipulate the - - - the driving
8 time. And the federal government did consider certain
9 technology that would eliminate abuse of the duty statuses,
10 but ironically those - - - those technologies would be
11 significantly more intrusive into the privacy of these
12 truck drivers: for example, on-body cameras, biometric
13 scanners, those sorts of things.

14 JUDGE SINGAS: Can I ask you what happens when
15 law enforcement - - - how do they collect the data? Did
16 they actually go inside the truck? Do they have to access
17 anything inside the cabin? How does that work?

18 MR. HU: So when a truck is stopped and is asked
19 for the data, the data transfer is actually completely
20 electronic. And so the reviewing state agent is not
21 allowed inside the vehicle; they cannot conduct a search of
22 the vehicle themselves - - - the vehicle itself. The data
23 is transferred through the cloud, or email, or through a
24 USB, and then the reviewing agent then looks at it in his -
25 - - in his or her own vehicle.

1 JUDGE SINGAS: So it's not reviewed there on
2 site; it's reviewed later?

3 MR. HU: It could - - - it could be either.

4 JUDGE RIVERA: And then if they review it on
5 site, what - - - what do they do? If they think there is a
6 red flag, what do they do?

7 MR. HU: They would ask follow-up questions.
8 Drivers are required to keep documentation for precisely
9 this purpose. And - - -

10 JUDGE RIVERA: And if they think there is a
11 violation, what - - - again, what would they do?

12 MR. HU: There are - - - violations of the hours
13 of service requirements are subject to both civil and
14 criminal penalties.

15 JUDGE RIVERA: Yes. Yes.

16 JUDGE CANNATARO: But those don't get adjudicated
17 on the side of the road, do they? There must be a process
18 for that.

19 MR. HU: That's correct, Your Honor. The
20 Department - - - the DMV and the Department of
21 Transportation would have the authority to then initiate a
22 proceeding to - - -

23 JUDGE RIVERA: So are they issued a ticket? I
24 mean, I'm just trying to figure out what happens on site,
25 if indeed the information is reviewed on site. Otherwise,

1 I don't know why it's being reviewed on site.

2 MR. HU: I believe they would be issued a ticket,
3 but it's - - - I have not discussed that question with my
4 client. But I will say, though, that when a truck goes
5 through one of those checkpoints and has their data
6 reviewed, they then receive a decal that they can stick on
7 their car so that if they get caught up in another
8 randomized inspection, that decal actually allows them to
9 be pulled out - - - pulled out of the stop and just sent
10 back on the road.

11 JUDGE GARCIA: How long is that for?

12 JUDGE RIVERA: Right.

13 JUDGE CANNATARO: How long does that last, your
14 pass?

15 MR. HU: Three months.

16 JUDGE RIVERA: Three months?

17 MR. HU: Yes.

18 JUDGE CANNATARO: Can I ask you, technologically
19 - - - I've been listening to all the seemingly valid areas
20 of inquiry - - - administrative inquiry that - - - that can
21 be done with the ELD information, but it seems to me that
22 you could probably do much the same thing even if you just
23 turned off the location-finding feature of the ELD when the
24 driver put in that they were on personal time, off-duty
25 time. So technically, can you do that? Can you just

1 instruct the ELD that when the driver puts in "off duty",
2 that it just doesn't track location at all?

3 MR. HU: I don't believe that ELDs have that
4 functionality precisely to prevent situations where a
5 driver might improperly try to withhold the location data.
6 But it's worth noting that - - -

7 JUDGE CANNATARO: But can't you - - - you know,
8 you gave this hypothetical about how the driver's
9 consistently moving in a westward direction, and that
10 raises a red flag, and I completely understand that. But
11 if it wasn't tracking location during the off-duty time,
12 you could still see the westward movement. The same red
13 flags would go up, but you would deprive your adversary of
14 the argument that you're monitoring location during off-
15 duty time.

16 MR. HU: That's correct, Your Honor, but it's
17 worth noting that the personal errands will not necessarily
18 take a vehicle in a - - - will not necessarily take a
19 vehicle in a concrete direction in that manner. So for - -
20 - going back to my example about someone who goes on and
21 off duty in Albany but then completes a round trip to New
22 York City, a circumstance like that would not - - - if we
23 were to only look at the location data when he goes - - -
24 when he switches duty status, it would not capture that
25 round trip to the - - - to New York City.

1 JUDGE HALLIGAN: Do you have any information on
2 how frequently the use of the location data along the lines
3 of what you're laying out has actually yielded a finding
4 that someone is breaking the hours of service rules?

5 MR. HU: Unfortunately, it's not in the record,
6 Your Honor, given the facial challenge. The posture of
7 this case is a facial challenge. We don't - - - we don't
8 have specifics about how many hours of service violations
9 or - - -

10 JUDGE HALLIGAN: So you can't tell us if it's,
11 for example, one out of a hundred stops or one out of a
12 hundred truckers or something that would give us some sense
13 of the efficacy of the access to the data?

14 MR. HU: I unfortunately do not, Your Honor, but
15 perhaps it's worth noting that in the reply brief, my
16 adversary cited a study that looked at the first eight
17 months of - - - the first eight months after the ELD rule
18 was adopted at the federal level, and even that study found
19 significant reductions in hours of service violations
20 because all of the - - - all of the relevant data entries
21 are now automatic. So it's simply that much more difficult
22 to falsify.

23 JUDGE GARCIA: You mentioned audits of the
24 carriers which accesses the same data, right, but as - - -

25 MR. HU: That's right.



1 JUDGE GARCIA: - - - a carrier. Is there a
2 protocol or guidelines as to when those audits occur?

3 MR. HU: I'm not sure, Your Honor. The carriers
4 are required to keep ELD data in six-month batches,
5 compared to the one week - - - the one week that a single
6 driver is required to, but the Department of Transportation
7 is ultimately bound by federal guidance. So any - - - to
8 the extent that there are any federal rules setting forth
9 limitations on those audits, they would certainly apply.

10 JUDGE RIVERA: So let's say that there's an
11 investigation going on - - - maybe it's undercover; maybe
12 not - - - and that leads to a determination that there may
13 be, as you concede that criminal penalties can apply to
14 some of these violations, that the violations raise to the
15 level of warranting criminal penalties. What - - - does
16 law enforcement go to the carrier and say, I want to see
17 these many months so that I can pursue my investigation?
18 Do they have - - - at that point, do they have to get a
19 warrant? Or is this hypothetical nonsensical? It doesn't
20 work this way?

21 MR. HU: Your Honor, I don't believe the
22 hypothetical works because the only way that they would be
23 able to - - - perhaps your hypothetical might work in one
24 situation, which is using the one-week data - - -

25 JUDGE RIVERA: Yes.

1 MR. HU: - - - they find sufficient red flags
2 that they then want to see the six-month - - - six-month
3 circumstance. In that scenario, because we are still - - -
4 because the elements of the pervasively regulated industry
5 exception are met, we - - - I do not believe law
6 enforcement would need a warrant in that circumstance.

7 CHIEF JUDGE WILSON: So the federal regulations,
8 if I read them correctly, limit the use of the ELD data to
9 enforcement of the hours limit.

10 MR. HU: That's right.

11 CHIEF JUDGE WILSON: Is there a parallel legal
12 restriction in New York you're bound to?

13 MR. HU: We have adopted - - -

14 CHIEF JUDGE WILSON: You've adopted them?

15 MR. HU: That's right. That restriction has been
16 incorporated into New York by the wholesale adoption of the
17 federal regulations governing the ELD rule.

18 CHIEF JUDGE WILSON: So you're bound by those?

19 MR. HU: That's right, Your Honor.

20 Great. And unless there are any further
21 questions, we respectfully request this court affirm.
22 Thank you.

23 MR. STINSON: Just like to touch on a few topics
24 here. First, with respect to that - - - your last
25 question, Chief Judge, the federal regulations don't limit

1 the scope of ELD data - - - the use of ELD data. The
2 Appellate Division and the Department have cited the
3 federal statute, which is an enabling statute that tells
4 the Secretary of Transportation that it should limit the
5 use of ELD data to enforcing hours of service. But that
6 wasn't - - - that wasn't incorporated. And in fact, the
7 Department, in its motion for - - - motion to dismiss,
8 cited an affidavit from an officer in New York that said
9 we're only using ELD data to enforce hours of service
10 rules.

11 Well, that's not good enough with the warrantless
12 administrative search. That needs to be in the face of the
13 rule. It needs to be - - - give notice to people who
14 are - - - this is a facial challenge. We're talking about
15 the rules authorize - - - or excuse me, the search is
16 authorized by - - - by the rule.

17 A couple of other notes - - -

18 JUDGE RIVERA: Can you address his - - - his
19 example about the trucker who goes between the City and
20 Albany and that that might raise red flags? Can you
21 address that? Why isn't he right that that's an example of
22 how this is very useful?

23 MR. STINSON: Because it's not in the rule.
24 Again, this is a warrantless administrative search. It
25 needs to be in the rule that says exactly how that's going

1 to happen. The Department cited to some mentions of
2 location data in the federal rulemaking notices that
3 basically just say, we're going to use location data to do
4 that or we're going to send it to an algorithm to do that,
5 but they don't ever tell how that's going to happen. And
6 it's not in the rule; it's not adopted in the rule in New
7 York. This is the point of a warrantless administrative
8 search is that the law authorizing these searches needs to
9 be narrowly and precisely tailored - - - that's what this
10 court said in Keta - - - in order to ensure the targets of
11 the search know what's going to happen and that officer
12 discretion is limited. This rule is deficient in those
13 ways in that it doesn't say how this location data is going
14 to be used.

15 I'd also like to note that the study that my
16 colleague referenced was not only mentioned on the reply;
17 it was presented to the Department at the rulemaking that
18 says, yes, ELD use - - - and I see my time is
19 obviously finished - - -

20 CHIEF JUDGE WILSON: Continue.

21 MR. STINSON: - - - yes, ELD use may - - - may
22 decrease hours of service violations, but the ultimate goal
23 here is highway safety. And what is not accounted for is
24 the unintended consequences of rigid hours of service
25 enforcement in a vacuum that then causes other safety

1 issues down the line and, in fact - - - in fact, works
2 against the ultimate goal of highway safety.

3 JUDGE RIVERA: How is - - - can you - - - I'm
4 sorry.

5 If I may?

6 CHIEF JUDGE WILSON: Of course.

7 JUDGE RIVERA: If you could just clarify that.
8 I'm not really sure I understand. Isn't the presumption
9 that if - - - excuse me - - - if there aren't violations of
10 the amount of time - - -

11 MR. STINSON: Right.

12 JUDGE RIVERA: - - - the amount of time that a
13 trucker is on the road, that that would - - - that
14 would - - - common sense - - -

15 MR. STINSON: Right.

16 JUDGE RIVERA: - - - that that would reduce any
17 kinds of accidents because you just don't have someone - -
18 -

19 MR. STINSON: Sure.

20 JUDGE RIVERA: - - - who's tired or perhaps
21 falling asleep on basically what is a weapon of mass
22 destruction.

23 MR. STINSON: Sure. And let me be clear.

24 There's perhaps no group that - - - for whom safety - - -
25 highway safety is more important than truckers. They spend

1 their lives and livelihood on the - - - on the highway, and
2 it is their - - - so this isn't about safety on one side,
3 not safe on the other side.

4 JUDGE RIVERA: Um-hum.

5 MR. STINSON: The problem is when you are faced
6 with an ELD, and let's say you get stuck in traffic and
7 you're running out of time on your hours of service.

8 JUDGE RIVERA: Um-hum.

9 MR. STINSON: The driver's often faced with the
10 decision of do I speed to get to my place in time, do I
11 violate the hours of service, or do I pull over in an
12 unsafe location and - - - and stop until I can drive again.
13 And because of that kind of choice, the evidence out there
14 is that ELDs don't make the highways more safe. And
15 this - - -

16 JUDGE RIVERA: So what do they choose? What - -
17 - I'm sorry. What are you saying they choose, and what - -
18 - it sounds like you're saying the ELDs incentivize
19 particular type of conduct. What would that be in that
20 scenario?

21 MR. STINSON: Well, yeah, in that scenario it
22 might be that you have to pull over on an on ramp that's
23 not safe.

24 JUDGE RIVERA: Um-hum.

25 MR. STINSON: So I think you're right, and that

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yes, maybe logically and the presumption is that, yeah, this is going to reduce accidents, it's going to be good for everybody, and that's the position the federal government took when it adopted the ELD rule in 2015, made it mandatory in 2017. The Department here had a few years of evidence to see whether that was actually the case, whether the ELD rule actually helps safety, and the Owner Operator Independent Drivers Association put that evidence in front of them during the rulemaking.

Thank you, Your Honor.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Leslie LeBlanc, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Owner Operator Independent Drivers Association, Inc. v. New York State Department of Transportation, No. 45 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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