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NCLA Suit Says Marco Island, FL Defied 4th Amendment, Captured ALPR Driver Data Sans Warrants

Shannon Schemel, Stephen Overman, and Michael Tschida v. City of Marco Island, Florida and Tracy Frazzano, Chief of Police

Washington, DC (February 7, 2022) - Everyone entering or exiting Marco Island be warned: the city is keeping tabs on you. Today, the New Civil Liberties Alliance filed the [lawsuit](#), *Shannon Schemel, et al. v. City of Marco Island, et al.*, to stop warrantless searches and the ongoing violation of every driver's right to privacy. NCLA, a nonpartisan, nonprofit civil rights group, represents Shannon Schemel, Stephen Overman, and Michael Tschida, who claim Marco Island and its Chief of Police have continuously monitored their movements into and out of the city for months using automated license plate recognition (ALPR) systems installed at each of the island's bridges.

Marco Island is a barrier island in Southwest Florida, linked to the mainland by bridges south of the City of Naples. By strategically placing and operating ALPRs on each of the bridges leading into and out of Marco Island since April 2021, the city has logged the location and movement of the Plaintiffs in their cars multiple times nearly every day. The ALPR data is retained by the city for three years. Even though most data generated by ALPRs has absolutely no connection with criminal activity, Marco Island has shared all information gleaned from its ALPRs with other law enforcement agencies across the country. NCLA argues this constant surveillance constitutes an unwarranted invasion of personal privacy, in violation of both the U.S. and Florida constitutions.

A [press release](#) from the city indicated that the police plan to use the ALPR system not only to investigate and uncover criminal activity but also to “deter” misconduct that has not yet taken place. The city states that it intends to do more than simply await evidence that a traffic infraction or crime has been committed—and then search its database for evidence. The city intends to “proactively reduce crime and traffic incidents before they occur.”

The U.S. Supreme Court has already weighed in on these issues and found that the Fourth Amendment protects the privacy of one's physical location and movements. People do not surrender that privacy right simply because they are moving along public roads or are otherwise venturing into the public sphere. While government surveillance of individuals for short periods as they travel in public does not implicate the Fourth Amendment, the surveillance becomes a “search” when the government gathers information about an individual for an extended period of time—and thereby opens an intimate window into a person's life. Such searches are presumptively unlawful unless the police first obtain a judicial warrant supported by probable cause. The Florida Constitution was amended in 1980 to provide even stronger privacy protection than the Fourth Amendment does.

NCLA released the following statements:

“Marco Island is rapidly accumulating a large database that provides a detailed picture of Plaintiffs' daily movements. Although those traveling in public must accept that other individuals, including police officials, may be watching them for some portion of their travels, they may legitimately expect that they will not be subject to continuous electronic monitoring.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

“There is simply no need to retain data collected by the ALPR systems for up to three years, as Marco Island does. Such a wealth of information enables the city to piece together details of each resident’s personal habits and movements, and thus its retention constitutes a violation of those residents’ constitutionally protected privacy rights.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the case page [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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