
No. 07-56424

**In The United States Court of Appeals
For The Ninth Circuit**

Robert M. Nelson, et al.

Plaintiffs - Appellants,

v.

National Aeronautics and Space Administration, an Agency of the United States; Michael Griffin, Director of NASA, in his official capacity only; Department of Commerce; Carlos M. Gutierrez, Secretary of Commerce, in his official capacity only; California Institute of Technology; and Does 1-100,

Defendants - Appellees.

On Appeal From the Order Denying Motion for Preliminary Injunction of the
United States District Court
For the Central District of California
Case No. CV-07-05669 ODW (VBKx)

**EXHIBITS IN SUPPORT OF CALIFORNIA INSTITUTE OF
TECHNOLOGY'S ("CALTECH") OPPOSITION TO EMERGENCY
MOTION FOR STAY AND EXPEDITED APPEAL UNDER CIRCUIT
RULE 27-3**

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EXHIBIT 1

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 Robert M. Nelson, William Bruce
13 Banerdt, Julia Bell, Josette Bellan,
14 Dennis V. Byrnes, George Carlisle, Kent
15 Robert Crossin, Larry R. D'Addario,
16 Riley M. Duren, Peter R. Eisenhardt,
17 Susan D.J. Foster, Matthew P.
18 Golombek, Varoujan Gorjian, Zareh
19 Gorjian, Robert J. Haw, James Kulleck,
20 Sharon L. Laubach, Christian A.
21 Lindensmith, Amanda Mainzer, Scott
22 Maxwell, Timothy P. McElrath, Susan
23 Paradise, Konstantin Penanen, Celeste
24 M. Satter, Peter M.B. Shames, Amy
25 Snyder Hale, William John Walker and
26 Paul R. Weissman,

27 Plaintiffs,

28 v.

29 National Aeronautical and Space
30 Agency, an Agency of the United States;
31 Michael Griffin, Director of NASA, in
32 his official capacity only; Department of
33 Commerce; Carlos M. Gutierrez,
34 Secretary of Commerce, in his official
35 capacity only; California Institute of
36 Technology; and Does 1-100.

37 Defendants.

38 07-000000 ODW(VBK)

39 Case No.

40 COMPLAINT FOR INJUNCTIVE
41 AND DECLARATORY RELIEF

42 I. VIOLATION OF FOURTH
43 AMENDMENT RIGHTS

44 II. VIOLATION OF FOURTEENTH
45 AMENDMENT RIGHTS

46 III. VIOLATION OF THE
47 ADMINISTRATIVE PROCEDURE
48 ACT, 5 U.S.C. § 706(2)(c)

49 IV. VIOLATION OF THE
50 PRIVACY ACT, 5 U.S.C. § 522a

51 V. VIOLATION OF RIGHTS
52 UNDER THE CALIFORNIA
53 CONSTITUTION

54 VI. INJUNCTIVE AND
55 DECLARATORY RELIEF

1 **I. INTRODUCTION AND SUMMARY OF THE ACTION**

2 1. Plaintiffs are leading scientists and engineers employed by the California
3 Institute of Technology (Caltech) as staff at the Jet Propulsion Laboratory. They bring
4 this action on behalf of themselves and a class of similarly situated employees to
5 challenge NASA's requirement, under pain of loss of their jobs, that JPL employees –
6 including senior scientists and engineers, many of whom have been employed there for
7 decades, and none of whom work on classified or national security materials or issues –
8 submit to 1) an open-ended background investigation prying into their protected
9 associational activities as well as myriad private and irrelevant personal information, and
10 2) a determination of their suitability for employment that includes such wrong-headed
11 and/or dangerously vague criteria as sexual orientation, sexual history, medical and
12 emotional history, financial history, "attitude," and "personality conflict." This action by
13 NASA is putatively based upon Homeland Security Presidential Directive 12, an
14 executive order concerned exclusively with the establishment of a common identification
15 standard for federal employees and contractors, and which contemplates no additional
16 background investigation or suitability determination beyond that already required by
17 law. NASA's action violates, *inter alia*, plaintiffs' Constitutional rights to be free of
18 unreasonable searches; to privacy; and violates the Administrative Procedure Act and the
19 Privacy Act, as well as California's constitutional protections. Plaintiffs seek declaratory
20 and injunctive relief, foreclosing further implementation of this background investigation
21 program against JPL employees in non-sensitive positions.

22 **II. JURISDICTION and VENUE**

23 2. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. §1331
24 (federal question jurisdiction).

25 **III. PARTIES**

26 **A. The Plaintiffs**

27 3. Dr. Robert Nelson is currently employed by Caltech as a Senior Research
28 Scientist at NASA's Jet Propulsion Lab and has been employed at JPL for twenty seven

1 years. He holds the rank of a Principal Scientist, the highest research classification at
2 JPL, and currently leads NASA's New Millennium Program which tests or validates all
3 new technology that NASA will use in space. Dr. Nelson is also a member of the nine
4 person Senior Research Scientist Council at JPL, which represents the interests of the
5 research community at JPL to the JPL Chief Scientist and to the Director of JPL. Dr.
6 Nelson is a resident of Los Angeles County. Dr. Nelson brings this suit on behalf of
7 himself and all other similarly situated non-sensitive personnel employed by Caltech at
8 JPL.

9 4. Dr. William Bruce Banerdt is currently employed as a Principal Scientist at
10 NASA's Jet Propulsion Laboratory, where he has worked since 1983. He serves as
11 Project Scientist for the Mars Exploration Rovers Project, which involves both
12 coordinating the scientists working on the mission, helping to develop and achieve the
13 scientific goals for the mission, representing the needs of the mission scientists to project
14 management and NASA and representing the project to the public. He has held various
15 management positions at JPL, including Group Supervisor for Geophysics and Planetary
16 Dynamics Group; Lead Scientist and Discipline Program Manager. Dr. Banerdt brings
17 this suit on behalf of himself and all others similarly situated non-sensitive personnel
18 employed by Caltech at JPL.

19 5. Dr. Julia Bell is currently employed by Caltech as a Senior Engineer in the
20 Systems Engineering Section of the Systems and Software Division at NASA's Jet
21 Propulsion Lab and has been employed there for the past 11 years. She has served as a
22 member of the navigation team for the Mars Odyssey mission and the Mars Exploration
23 Rover project, as well as a systems engineer on several other missions, including the
24 Phoenix mission. Dr. Bell brings this suit on behalf of herself and all other similarly
25 situated non-sensitive personnel employed by Caltech at JPL.

26 6. Dr. Josette Bellan is currently employed by Caltech as a Senior Research
27 Scientist at JPL, where she has been employed since 1980. Dr. Bellan also holds a
28 teaching position in Caltech in the Division of Engineering and Applied Sciences. For

1 the past three years she has served as a member of the nine person Senior Research
2 Scientist Council at JPL, which represents the interests of the research community at JPL
3 to the JPL Chief Scientist and to the Director of JPL. Dr. Bellan brings this suit on
4 behalf of herself and all other similarly situated non-sensitive personnel employed by
5 Caltech at JPL.

6 7. Dennis Byrnes is currently employed by Caltech as a Chief Engineer for Flight
7 Dynamics at JPL, where he has worked for the past 30 years. This is the highest
8 technical classification at JPL in the engineering field. He was one of the lead trajectory
9 designers for numerous missions including the Galileo Project and the Apollo moon
10 landings. Mr. Byrnes brings this suit on behalf of himself and all other similarly situated
11 non-sensitive personnel employed by Caltech at JPL.

12 8. George Carlisle is currently employed by Caltech as a Senior Member
13 Technical Staff, Mission Design Section, at NASA's Jet Propulsion Laboratory, where
14 he has worked since 1974. As a member of the Mission Design Section at JPL, he works
15 with a team of scientists and engineers to determine what trajectory a spacecraft should
16 travel to accomplish the goals set for it by mission scientists. Mr. Carlisle brings this
17 suit on behalf of himself and all other similarly situated non-sensitive personnel
18 employed by Caltech at JPL.

19 9. Kent Crossin is currently employed as an Associate Engineer by Caltech at
20 NASA's Jet Propulsion Laboratory, where he has worked since 2006. He performs
21 hardware testing on the Multi-Mission System Architecture Platform, and provides
22 support to the Mars Science Laboratory, a flagship mission scheduled to launch in 2009.
23 Mr. Crossin brings this suit on behalf of himself and all other similarly situated non-
24 sensitive personnel employed by Caltech at JPL.

25 10. Dr. Larry D'Addario is currently employed by Caltech as a Principal Engineer
26 at NASA's Jet Propulsion Laboratory. He is an engineer in the Tracking Systems and
27 Applications System, where his work focuses on designing new technologies for the
28 Deep Space Network. Dr. D'Addario brings this suit on behalf of himself and all other

1 similarly situated non-sensitive personnel employed by Caltech at JPL.

2 11. Riley Duren is currently employed by Caltech at NASA's Jet Propulsion
3 Laboratory as a Principal Systems Engineer, one of the highest rankings for engineers at
4 JPL, where he has worked since 1996. He has served as Avionics Manager for the
5 Champollion Comet Lander mission; and Chief Engineer for the Attitude and Orbit
6 Determination Avionics subsystem on the Shuttle Radar Topography Mission, which
7 generated a near-global map of the earth's surface to 10 meter vertical accuracy in a
8 single 11 day flight. He has also served as the Project System Engineer for the Kepler
9 space observatory, which will launch in 2009, where he leads a team of twenty senior
10 engineers and scientists at JPL and other institutions. Mr. Duren brings this suit on
11 behalf of himself and all other similarly situated non-sensitive personnel employed by
12 Caltech at JPL.

13 12. Peter Eisenhardt is currently employed by Caltech as a Principal Scientist at
14 NASA's Jet Propulsion Laboratory, where he has worked since 1990. He is one of the
15 principal scientists working on a mission known as Wide-Field Infrared Survey Explorer,
16 which will carry out an infrared survey of the entire sky and is planned for launch in
17 2009. Dr. Eisenhardt brings this suit on behalf of himself and all other similarly situated
18 non-sensitive personnel employed by Caltech at JPL.

19 13. Susan D.J. Foster is currently employed by Caltech as a Senior Technical
20 Writer Specialist at NASA's Jet Propulsion Laboratory, where she has worked since
21 1968. Since 1978, she has served as technical editor and technical writer in JPL's
22 Technical Information Section. Ms. Foster brings this suit on behalf of herself and all
23 other similarly situated non-sensitive personnel employed by Caltech at JPL.

24 14. Dr. Matthew Golombek is currently employed by Caltech as a Senior Research
25 Scientist and Principal Scientist at NASA's Jet Propulsion Laboratory, where he has
26 worked since 1983. Since 1983, he has been a continuously funded Principal
27 Investigator in NASA's Planetary Geology and Geophysics and/or Mars Data Analysis
28 programs; his work focuses on Mars geology and the prediction of surface characteristics

1 from orbital remotely sensed data. Dr. Golombek is also a member of the nine person
2 Senior Research Scientist Council at JPL, which represents the interests of the research
3 community at JPL to the JPL Chief Scientist and to the Director of JPL. Dr. Golombek
4 brings this suit on behalf of himself and all other similarly situated non-sensitive
5 personnel employed by Caltech at JPL.

6 15. Dr. Varoujan Gorjian is currently employed by Caltech as a research
7 astronomer working primarily on the Spitzer Space Telescope at NASA's Jet Propulsion
8 Laboratory, where he has worked since 2000. His research focuses on the study of black
9 holes and the star formation history of the universe. Dr. Gorjian brings this suit on behalf
10 of himself and all other similarly situated non-sensitive personnel employed by Caltech
11 at JPL.

12 16. Zareh Gorjian is currently employed by Caltech as a Senior Programmer at
13 NASA's Jet Propulsion Laboratory, where he has worked since 1990. He works in JPL's
14 Digital Image Animation Laboratory, creating graphics for teams who are writing
15 mission proposals, preparing mission visualizations for the public and creating
16 visualizations of actual movements and activities of spacecraft in flight or at their
17 destination. Mr. Gorjian brings this suit on behalf of himself and all other similarly
18 situated non-sensitive personnel employed by Caltech at JPL.

19 17. Dr. Amy Snyder Hale is currently employed by Caltech as a Technical Staff
20 member at NASA's Jet Propulsion Laboratory, where she has worked since 2000. She
21 has worked as an engineer on the Mars Global Surveyor mission, among other Mars
22 missions, and has focused her scientific research on Mars atmospheric studies and Mars
23 polar studies. Dr. Hale brings this suit on behalf of herself and all other similarly
24 situated non-sensitive personnel employed by Caltech at JPL.

25 18. Robert Haw is currently employed by Caltech as an engineer at NASA's Jet
26 Propulsion Laboratory, where he has worked since 1987. While at JPL, he has
27 participated in the navigation engineering team for the Magellan and Galileo Projects, as
28 well as various new pre-launch mission design teams. Mr. Haw brings this suit on behalf

1 of himself and all other similarly situated non-sensitive personnel employed by Caltech
2 at JPL.

3 19. Dr. James Kulleck is currently employed by Caltech as a senior member of the
4 technical staff at NASA's Jet Propulsion Laboratory, where he has worked for more than
5 15 years. Dr. Kulleck provides materials analysis support for all of JPL's flight projects.
6 Dr. Kulleck brings this suit on behalf of himself and all other similarly situated non-
7 sensitive personnel employed by Caltech at JPL.

8 20. Dr. Sharon Laubach is currently employed by Caltech as a Project Manager at
9 NASA's Jet Propulsion Laboratory, where she has been employed since 1999. Since
10 2005, she has been the Mars Exploration Rover (MER) Integrated Sequencing Team
11 Chief (Project Manager I), leading a team of 40 engineers who design, validate and
12 compile all the command sequences used to operate the Mars rovers. Dr. Laubach brings
13 this suit on behalf of herself and all other similarly situated non-sensitive personnel
14 employed by Caltech at JPL.

15 21. Dr. Christian Lindensmith is currently employed by Caltech as a Senior-A
16 Member of the Technical Staff at NASA's Jet Propulsion Laboratory, where he has
17 worked since 1996. His work at JPL focuses on the development of missions and
18 instruments for the detection and characterization of Earth-like planets orbiting other
19 stars, including leading the design of the Terrestrial Planet Finder mission. Dr.
20 Lindensmith brings this suit on behalf of himself and all other similarly situated non-
21 sensitive personnel employed by Caltech at JPL.

22 22. Dr. Amanda Mainzer is currently employed by Caltech as a Research Scientist
23 at NASA's Jet Propulsion Laboratory, where she has worked since 2003. She currently
24 serves as the Deputy Project Scientist for the Wide Field Infrared Survey Explorer
25 (WISE) mission, a NASA space telescope that will launch in 2009. Dr. Mainzer brings
26 this suit on behalf of herself and all other similarly situated non-sensitive personnel
27 employed by Caltech at JPL.

28 23. Scott Maxwell is currently employed by Caltech as a Senior Member of the

1 Technical Staff at NASA's Jet Propulsion Laboratory, where he has worked for the past
2 13 years. For the past five years, he has worked on the Multi Mission Ground Data
3 System, an extensive collection of software that provides data analysis and spacecraft
4 commanding capabilities for most JPL projects. Mr. Maxwell brings this suit on behalf
5 of himself and all other similarly situated non-sensitive personnel employed by Caltech
6 at JPL.

7 24. Timothy McElrath is currently employed by Caltech as Technical Group
8 Supervisor and Principal Engineer at NASA's Jet Propulsion Laboratory, where he has
9 been employed since 1988. His work at JPL has primarily consisted of orbit
10 determination analysis on numerous spacecraft, including Galileo and the Mars
11 Exploration Rovers. Mr. McElrath brings this suit on behalf of himself and all other
12 similarly situated non-sensitive personnel employed by Caltech at JPL.

13 25. Susan Paradise is currently employed by Caltech at NASA's Jet Propulsion
14 Laboratory, where she has been employed for over 22 years. After many years as the lead
15 software developer for the MISR (Multi-angle Imaging Spectro-Radiometer) Project, she
16 was promoted to Project Element Manager in 2001 for the Tropospheric Emission
17 Spectrometer Project, where she managed the design, development and testing of ground
18 data system software for five years. In April 2006, she returned to the MISR to continue
19 to manage the Level 2 Aerosol/Surface Team and in April 2007, joined the Aerosol
20 Measurement Processing System as a scientific programmer and analyst. Ms. Paradise
21 brings this suit on behalf of herself and all other similarly situated non-sensitive
22 personnel employed by Caltech at JPL.

23 26. Dr. Konstantin Penanen is currently employed by Caltech as a scientist at
24 NASA's Jet Propulsion Laboratory, where he has worked since 2004. He is the JPL Co-
25 Principal Investigator on a project studying the fundamental properties of quantum fluids
26 at low temperatures and is working to develop a light-weight, low power MRI with
27 potential spin-off uses in mobile hospitals. Dr. Penanen brings this suit on behalf of
28 himself and all other similarly situated non-sensitive personnel employed by Caltech at

