

JPL Employees vs. NASA, Department of Commerce, and Caltech; Homeland Security Presidential Directive 12

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Contact: Robert M. Nelson, Lead Plaintiff. 818-635-5536, rmnelson2@earthlink.net
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Appeals Court Hearing on Injunction Restricting Background Investigations of JPL Employees

When: Wednesday, Dec 5, 2007 9:30 AM.

Where: Courtroom #1 United States Court of Appeals Building,
125 S Grand Ave
Pasadena, CA 91105
(626) 229-7250

Attorneys and Plaintiffs will be available for media interviews following the hearing

A three-judge panel of the Ninth Circuit Court of Appeals will hear arguments Dec. 5, 2007, on an injunction pending appeal in the case of 28 Caltech employees at NASA's Jet Propulsion Laboratory who filed suit to prevent unreasonable personal background checks. The JPL employees -- all of whom work on non-classified space exploration projects -- sued NASA, the Department of Commerce, and their employer, Caltech, to prevent intrusive, open-ended background investigations imposed by NASA Administrator Michael Griffin in support of Homeland Security Presidential Directive 12. The background investigations were associated with issuing new identification cards to employees in order for them to access the JPL facility. HSPD12 mandates new identification documents but does not mention background investigations. None of the plaintiffs have security clearances.

On October 5 the appeals court issued an emergency temporary injunction preventing Caltech from further implementation of the HSPD12 process at JPL. The injunction was extended on October 11, in a ruling where the court recognized the right to informational privacy and found "...serious privacy concerns..." in this matter. The court said, "Moreover, the need for the information to be collected is questionable in general, given the absence of any apparent relationship between its collection and the production of reliable identification cards for these employees."

In papers filed with the court for argument on December 5, attorneys for the 28 employees described the investigation procedures of Caltech and NASA as being "...overly broad, dangerously vague, and ill-designed." The plaintiff's attorneys argued furthermore that the process, "...violated the Fourth Amendment and the constitutional right to privacy as well as raising serious First and Fifth Amendment concerns."

One issue raised in the case is the ability of federal facilities to recruit top-level scientists and engineers in the harsh investigatory climate of HSPD12. The plaintiffs argue, "...NASA will be deprived of the talents of other scientists and engineers who will be

deterred from applying to work at JPL because of the newly-required background investigation and waiver of privacy rights, both of which are antithetical to the type of autonomy and academic freedom needed to maintain JPL's status as the preeminent research institution for space exploration." They continued, "JPL is currently experiencing a shortage of experience in Mars science and has faced difficulties recruiting senior talented scientists in this area, a problem which will be compounded by any change which deters new hires."

In opposition to this argument, JPL's Human Resources Director, Cozette Hart, told the court on October 1 that JPL has 5000 applicants each year that she considered to be minimally qualified to fill vacancies in the staff. She added, "Caltech is capable of finding suitable replacements for employees that leave JPL." However, the lead plaintiff in the case, Robert M. Nelson, notes that a few weeks later Hart contradicted her earlier assertion in an interview with the JPL in-house newspaper. "(W)e are in a talent war," Hart said. "We are going to have increased difficulty in finding and retaining talent to replace our older workers as they retire."

Nelson, a Senior Research Scientist with 28 years of service at JPL, noted that Hart's remarks are indicative of a Caltech management that is willing to "...change its story to suit whatever circumstance is most convenient." He added, "NASA has had a long-standing reputation of stating the truth even in the few instances when the truth is not complimentary to NASA." He added, "Hart's contradictory remarks are an affront to every employee who works at JPL. Her comments are a harbinger of the mediocrity that HSPD#12 threatens to bring to American science and engineering."

Other issues raised by the lawsuit include the threat to intellectual freedom inherent in excessive background investigations, the unfettered nature of the investigations, and the requirement to waive privacy rights as a condition of employment.

The plaintiffs have received broad support for their legal actions, including amicus curiae briefs filed by the Electronic Frontier Foundation and the Union of Concerned Scientists.

Comments from plaintiffs - 818-635-5536.

Comments from Plaintiffs Attorneys- 626-585-9600

Further information and all court documents are at the website hspd12jpl.org



Plaintiffs and supporters recently donned T-shirts with an anti HSPD#12 logo and gathered in front of JPL's administration building to demonstrate concern about