

Article

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High court to rule on federal background probes

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The U.S. Supreme Court agreed Monday to decide how far the government can go in looking into the backgrounds of NASA scientists and engineers, a Southern California case that also affects employees at the Ames Research Center in Mountain View.

The court granted the Obama administration's request to hear an appeal of a lower-court ruling that barred the National Aeronautics and Space Administration from conducting far-reaching inquiries into the lives of 28 workers at the Jet Propulsion Laboratory in Pasadena.

The justices will hear the case in the term that starts in October, with a ruling due by June 2011.

The 28 scientists and engineers, most of them with at least 20 years' service, work for the California Institute of Technology under contract to the NASA-funded laboratory and have no access to classified information. They passed routine background checks when they were hired, but were ordered to undergo further reviews under a 2004 homeland security directive by President George W. Bush.

The directive required workers at affected agencies to authorize the government to seek information about them from any source. The sources are asked for any negative information about an employee's work, truthfulness, finances, alcohol or drug use, emotional stability or unspecified additional issues.

The 28 employees refused to submit to the checks and were about to be fired when the Ninth U.S. Circuit Court of Appeals in San Francisco intervened in October 2007, blocked the firings and ruled three months later that the inquiries were too intrusive and unrelated to national security.

The employees "face a stark choice - either violation of their constitutional rights or loss of their jobs," the court said in a 3-0 ruling. It described the background checks as a "broad inquisition" with no safeguards.

The prohibition also applied to Ames and other NASA installations in California and the eight other Western states over which the Ninth Circuit has jurisdiction.



Opposing sides in the case disputed the scope of the ruling.

"The decision prevents the routine background checks of many government contract employees and it casts a constitutional cloud over the background-check process the government has used for federal civil service employees for over 50 years," Justice Department lawyers said in seeking Supreme Court review.

But Dan Stormer, a lawyer for the employees, said the case had nothing to do with routine checks and instead involved maximum-security screening of low-risk employees. He accused the Obama administration of "pandering to the right" out of fear of looking soft on security.

The case is NASA vs. Nelson, 09-530. E-mail Bob Egelko at begeko@sfchronicle.com.

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