

Supreme Court to decide if JPL background checks can continue

By Emma Gallegos Staff Writer

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The U.S. Supreme Court announced Monday it will review a court injunction that temporarily barred federal background checks on Jet Propulsion Laboratory employees.

The decision by the court, expected in June 2011, could affect how the federal government investigates the background of current and future JPL employees.

The justices agreed to hear an appeal from NASA, which had its worker investigations at JPL blocked after the 9th U.S. Circuit Court of Appeals said background questions threatened the constitutional rights of employees.

The appeal filed by the Obama administration said the Court of Appeals decision to suspend the background checks hampered the government's security efforts.

"The (ruling) restricts the government's ability to gather information, including of the most routine kind, in circumstances never before thought to raise any issues," U.S. Solicitor General Elena Kagan wrote in her petition for certiorari to the Supreme Court.

In 2007, 28 JPL scientists and engineers sued the federal government after NASA required them to submit to background checks. They said the agency was invading their privacy by requiring the investigations, which included probes into medical records and questioning of friends about everything from their finances to their sex lives.

If the workers didn't agree to the checks, they were to be barred by Caltech from the 177-acre campus in La Cañada Flintridge and fired.

Dan Stormer, attorney for the JPL employees, said Kagan's appeal was excessive.

"It's shocking that the government would continue to take such an extreme position - the idea that somehow the government needs to know about employees of subcontractors who are working on low-risk, non-sensitive, transparent projects," Stormer said.

NASA implemented strict new checks in 2007 in accordance with an executive order by President George W. Bush to create secure identification for federal employees in the wake of the 9/11 terrorist attacks.

The Ninth Circuit Court of Appeals upheld its previous ruling from January of 2008, which said JPL employees did not have to submit to background checks to continue their employment.

The injunction applied to all of JPL's nearly 5,000

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low-security employees, not just the 28 listed in the case.

Upon hearing that the U.S. Supreme Court would undertake a review of the case both parties seemed to agree Monday that - in Kagan's words - the case "casts a constitutional shadow far beyond JPL."

Kagan wrote that a decision to prevent government investigations at JPL would call into question the constitutionality of other federal background checks.

JPL employees have argued that the background checks give the government carte blanche to look into their private lives, including their sex lives, finances and drug and alcohol use.

The employees based their argument on a document called the suitability matrix that JPL provided to them before they filed their case in August of 2007.

The solicitor general said in her reply that NASA denied using the information listed in the suitability matrix and that its background checks seek only "employment-related information."

"It would be nice if they would tell us what our criteria were," said Scott Maxwell, a plaintiff listed in the case, who operates the Mars rovers at JPL.

Robert Nelson, a JPL scientist and the lead plaintiff in the case, said background checks

threaten American citizens' right to privacy.

"(Americans) have a long tradition of keeping our noses out of other people's private business and a strong tradition of the government keeping its nose out of people's private business," said Nelson, who works on the Cassini mission exploring Saturn.

The engineers, researchers and administrative officials at JPL are not like other employees at NASA centers around the country, such as the Kennedy Space Center in Cape Canaveral, Fla.

JPL employees work for Caltech, which is an independent contractor for NASA, so the plaintiffs have argued that because they are contractors, they are not subject to the same background checks as federal employees.

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