

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

JUL 2 2010

RECEIVED

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
JUL -2 2010
CLERK

THE ELECTRONIC PRIVACY INFORMATION)
CENTER,)
CHIP PITTS, and BRUCE SCHNEIER,)
Petitioners,)

v.)

JANET NAPOLITANO, in her official capacity)
as Secretary of the United States Department of)
Homeland Security, MARY ELLEN)
CALLAHAN, in her official capacity as Chief)
Privacy Officer, and THE UNITED STATES)
DEPARTMENT OF HOMELAND SECURITY,)
Respondents.)

No. 10-1157

ORIGINAL

PETITION FOR REVIEW

Petitioners the Electronic Privacy Information Center (“EPIC”), Chip Pitts, and Bruce Schneier hereby petition the Court for review of three agency actions—one failure to act, one agency Order, and one agency Rule—of the Transportation Security Administration (“TSA”), a Department of Homeland Security (“DHS”) component.

First, Petitioners petition the Court for review of the TSA’s failure to act on EPIC’s May 31, 2009 5 U.S.C. § 553(e) petition. Second, Petitioners petition the Court for review of the May 28, 2010 Order of the TSA refusing to process of

EPIC's April 21, 2010 5 U.S.C. § 553(e) petition. Third, Petitioners petition the Court for review of the TSA Rule mandating the use of "full body scanners" at airport checkpoints as primary screening; the TSA entered this Rule recently, but failed to make public the text of the Rule or its date.

Petitioner EPIC filed a Section 553(e) petition on May 31, 2009 ("the First EPIC Petition"). The First EPIC Petition notes "the [TSA's] announced plan to deploy [full body scanners] as the primary means of screening airline passengers in the United States" and urges the DHS to undertake a "a 90-day formal public rulemaking process to receive public input on the agency's use of [full body scanners]." On June 19, 2009, the DHS wrote a letter to EPIC, but failed to grant or deny EPIC's petition for the formal rulemaking concerning TSA's use of full body scanners ("the DHS Letter").

Copies of the First EPIC Petition and the DHS Letter are attached as Exhibit 1 and Exhibit 2, respectively.

On April 21, 2010 Petitioner EPIC¹ filed a Section 553(e) petition ("the Second EPIC Petition") with the TSA seeking repeal of the TSA's "rule mandating the use of body scanners at airport checkpoints as primary screening." On May 28, 2010, the TSA issued an order refusing to process the Second EPIC Petition, asserting "TSA does not interpret your letter to seek a rulemaking or to constitute a

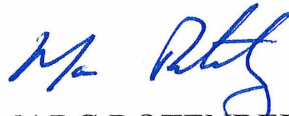
¹ Thirty organizations, including Petitioner EPIC, filed the April 21, 2010 petition. The other twenty-nine organizations are not petitioners in the present action.

petition under 5 U.S.C. §553.” (“the TSA Order”). The TSA Order is the final administrative action in this matter, and constitutes the final agency order.

Copies of the Second EPIC Petition and the TSA Order are attached as Exhibit 3 and Exhibit 4, respectively.

The TSA recently issued, on a date unknown to Petitioners, a Rule mandating the use of “full body scanners” at airport checkpoints as primary screening. This Rule is a final administrative action, and constitutes a final agency rule.

Respectfully Submitted,



MARC ROTENBERG
JOHN VERDI
Electronic Privacy Information Center
1718 Connecticut Ave. NW
Suite 200
Washington, DC 20009
(202) 483-1140
Counsel for Petitioners

Dated: July 2, 2010

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THE ELECTRONIC PRIVACY INFORMATION)
CENTER,)
CHIP PITTS, and BRUCE SCHNEIER,)
Petitioners,)

v.)

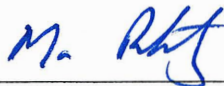
No. _____

JANET NAPOLITANO, in her official capacity)
as Secretary of the United States Department of)
Homeland Security, MARY ELLEN)
CALLAHAN, in her official capacity as Chief)
Privacy Officer, and THE UNITED STATES)
DEPARTMENT OF HOMELAND SECURITY,)
Respondents.)

F.R.A.P 26.1 CORPORATE DISCLOSURE STATEMENT

Petitioner the Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, D.C., which was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other Constitutional values. EPIC is a 501(c)(3) non-profit corporation. EPIC has no parent, subsidiary, or affiliate. EPIC has never issued shares or debt securities to the public.

Respectfully Submitted,



MARC ROTENBERG

JOHN VERDI
Electronic Privacy Information Center
1718 Connecticut Ave. NW
Suite 200
Washington, DC 20009
(202) 483-1140
Counsel for Petitioners

Dated: July 2, 2010

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 2nd day of July, 2010, he caused one copy each of the foregoing Petition for Review and F.R.A.P. 26.1

Corporate Disclosure Statement to be served by courier on the following:

The Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528

Francine J. Kerner
Chief Counsel
Transportation Security Administration
U.S. Department of Homeland Security
601 South 12th St.
Arlington, VA 20598

MARC ROTENBERG
JOHN VERDI
Electronic Privacy Information Center
1718 Connecticut Ave. NW
Suite 200
Washington, DC 20009
(202) 483-1140
Counsel for Petitioners