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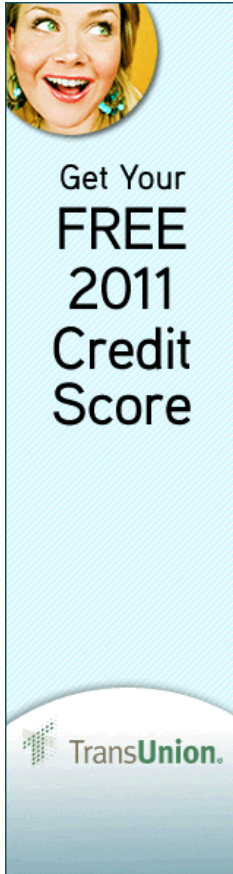
National Aeronautics and Space Administration [NASA] v. Nelson (09-530)

NASA's background investigations do not violate federal contract employees' constitutional right to informational privacy


Decided January 19, 2011

[\[Opinion full text\]](#)

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The US Supreme Court unanimously decided that NASA's standard background check, as applied to contract employees, does not violate a constitutional right to informational privacy.

Current employees of contractors working at NASA's Jet Propulsion Laboratory must complete a standard background check (which has long been used for prospective federal civil servants). The process includes a questionnaire asking whether the employee has "used, possessed, supplied, or manufactured illegal drugs" during the past year; if so, the employee must supply information about "treatment or counseling received." Employees must also sign a release allowing the Government to inquire of references about "any reason to question" the employee's "honesty or trustworthiness."

The Court held that the background checks are similar to those used in the public and private sectors for many years, and are reasonable in light of the Government interests at stake. The Court rejected arguments that the Government must show that the questions are "necessary" or are the least restrictive means of furthering its interests. Any information collected is protected from unwarranted disclosure by the Privacy Act.

[\[Detailed analysis from SCOTUSblog\]](#)

Case below: [Nelson v. NASA](#), 530 F.3d 865 (9th Cir 01/11/2008); [Order denying petition for rehearing \[includes concurring and dissenting opinions\]](#) (9th Cir 06/04/2009)

[Official docket sheet](#)

Certiorari granted March 8, 2010.

Oral argument: October 5, 2010. Justice Kagan did not participate. [\[Transcript\]](#) [\[Audio\]](#)

Questions presented:

Respondents are contract employees working at the Jet Propulsion Laboratory, a multi-billion-dollar federal research facility. Like all federal contract employees requiring

- [AT&T v Concepcion](#)
- [Borough of Duryea v Guarnieri](#)
- [Chamber of Comm v Whiting](#)
- [CIGNA v Amera](#)
- [CSX Transportation v McBride](#)
- [Hosanna-Tabor v EEOC](#)
- [Kasten v Saint-Gobain](#)
- [Mayo Foundation v US](#)
- [NASA v Nelson](#)
- [Novartis v Lopes](#)
- [Staub v Proctor Hosp](#)
- [Stok & Assoc v Citibank](#)
- [Thompson v North Amer Stainless](#)
- [Wal-Mart Stores v. Dukes](#)

long-term access to federally controlled facilities and information systems, they are required to undergo background checks. Respondents object to these background checks because, in their view, the government's use of standard forms to collect employment-related information about them would violate their constitutional right to informational privacy. The court of appeals agreed with respect to two inquiries on the standard background-check forms. The questions presented are:

1. Whether the government violates a federal contract employee's constitutional right to informational privacy when it asks in the course of a background investigation whether the employee has received counseling or treatment for illegal drug use that has occurred within the past year, and the employee's response is used only for employment purposes and is protected under the Privacy Act, 5 U.S.C. 552a.

2. Whether the government violates a federal contract employee's constitutional right to informational privacy when it asks the employee's designated references for any adverse information that may have a bearing on the employee's suitability for employment at a federal facility, the reference's response is used only for employment purposes, and the information obtained is protected under the Privacy Act, 5 U.S.C. 552a.

Certiorari Documents:

- [Petition for certiorari](#)
- [Brief in opposition](#)
- [Petitioner's reply](#)

Briefs on the merits:

- [Brief for Petitioners National Aeronautics and Space Administration et al.](#)
- [Brief for Respondent Robert M. Nelson, et al.](#)
- [Reply Brief for Petitioner National Aeronautics and Space Administration, et al.](#)
- [Brief for Consumer Data Industry Association, The National Association of Professional Background Screeners, Reed Elsevier Inc., and The National Association of Screening Agencies in Support of Petitioner](#)
- [Brief for The American Civil Liberties Union in Support of Respondent](#)
- [Brief for Union of Concerned Scientists in Support of Respondent](#)
- [Brief for Drug Policy Alliance in Support of Respondent](#)
- [Brief for the American Astronomical Society in Support of Respondent](#)
- [Brief for California Employment Lawyers Association in Support of Respondent](#)
- [Brief for the Electronic Frontier Foundation in Support of Respondent](#)
- [Brief for the Electronic Privacy Information Center in Support of Respondent](#)

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