

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-1135

September Term, 2016

FILED ON: MAY 26, 2017

COMPETITIVE ENTERPRISE INSTITUTE, ET AL.,
PETITIONERS

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL.,
RESPONDENTS

Consolidated with 16-1139

On Petitions for Review of a Final Rule of Transportation Security Administration

Before: TATEL and WILKINS, Circuit Judges, and SILBERMAN, Senior Circuit Judge

J U D G M E N T

These cases were considered on the record from the agency and on the briefs of the parties. The court has accorded the issues full consideration and determined that they do not warrant a published opinion. See D.C. Cir. Rule 36(d). It is

ORDERED AND ADJUDGED that the petitions for review be denied for the reasons stated in the memorandum accompanying this judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. See FED R. APP. P. 41(b); D.C. Cir. R. 41.

PER CURIAM

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Ken Meadows

Deputy Clerk

Competitive Enterprise Institute, et al., v. DHS – No. 16-1135 (consolidated with 16-1139)

MEMORANDUM

Several petitioners challenge TSA's regulation adopting body scanners to screen airline passengers. *Passenger Screening Using Advanced Imaging Technology*, 81 Fed. Reg. 11,364 (March 3, 2016). We think none of the arguments presented are sufficiently meritorious to justify a published opinion.

Petitioners essentially oppose the encroachment into individual privacy the body scanners present. They argue, generally, that the TSA insufficiently considered the privacy interests of passengers. Specifically, it was also contended that the agency inadequately responded to the proposition that passengers who did not wish to experience the body scanner might choose to drive—which is statistically more dangerous than airline travel—and that the TSA did not provide evidence that body scanners were the best method of screening passengers. Finally, one of the petitioners contended that the final agency rule, which did not provide a pat-down option in *all* cases, was not a “logical outgrowth” of the Notice of Proposed Rulemaking.

We think the agency adequately responded to petitioners' contentions in the final rule. We defer to TSA's judgment on such an issue of national security. *E.g., Olivares v. TSA*, 819 F.3d 454, 462 (D.C. Cir. 2016). And the final rule was indeed a logical outgrowth of the Notice of Proposed Rulemaking; the opt-out notion was expressly at issue.