

LEGAL READER

Court Will Take Another Look at Decision to Protect TSA

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In a recent brief order, the 3rd U.S. Circuit Court of Appeals in Philadelphia said a 13-judge panel will take another look at a 2-1 decision made at a February 20 hearing which made it difficult for travelers to file lawsuits against U.S. airport screeners over allegations of abuse, in a rare review by the full court known as “en banc.” The court held on July 11 of this year that U.S. Transportation Security Administration (TSA) screeners were administrative employees of the federal government and did not qualify as “investigative or law enforcement officers” who could be liable for civil claims under the Federal Tort Claims Act (FTCA). The FTCA normally gives the government sovereign immunity when employees commit intentional torts.

After the February decision, the majority had said it was “sympathetic” to concerns that its stance would leave travelers with “very limited legal redress” for alleged mistreatment. “For most people, TSA screenings are an unavoidable feature of flying,” but it is “squarely in the realm” of Congress to expand liability for abuses, Circuit Judge Cheryl Ann Krause, appointed by former President Barack Obama, wrote.

Republican U.S. Attorney William McSwain in Philadelphia, whose office defended TSA screeners, said the decision reflected Congress’ desire to balance the government’s sovereign immunity and “duty to protect taxpayer dollars” against the need to provide remedies.

Circuit Judge Thomas Ambro, appointed by former President Bill Clinton, dissented from the court’s original decision, faulting the majority for disallowing victims of TSA abuses from receiving recoveries “by analogizing TSA searches to routine administrative inspections.” Ambro said that the decision would prevent passengers from obtaining “any meaningful remedy” for assaults, wrongful detentions, and fabricated criminal charges.

The case had been brought by Nadine Pellegrino, then 57 and a business consultant from Boca Raton, Florida, following a July 2006 screening at Philadelphia International Airport. Pellegrino, who represented herself in court, had objected to what she felt was an inappropriate and invasive

screening, and was subsequently jailed for approximately eighteen hours. Pellegrino was also criminally charged with assault, making terroristic threats, and other crimes, all of which she denied. She was eventually acquitted at a trial.

Pellegrino's case drew support from advocacy groups such as the Cato Institute and the American Civil Liberties Union (ACLU), who were willing to take a closer look at what happened. The case is Pellegrino et al v U.S. Transportation Security Administration et al, 3rd U.S. Circuit Court of Appeals, No. 15-3047.

In August 2017, the same court threw out a First Amendment claim by an architect, Roger Vanderklok, who said he was arrested in retaliation for asking to file a complaint against a bad-tempered TSA supervisor.

“We, of course, do not suggest that TSA screeners should act with disdain for passenger rights or that they can escape all the consequences of their bad behavior,” Circuit Judge Kent Jordan, appointed by former President George W. Bush, wrote for a three-judge panel. But, regarding a willingness to take a look at potential misconduct, Jordan added, “Ultimately, the role of the TSA in securing public safety is so significant that we ought not create a damages remedy in this context. The dangers associated with aircraft security are real and of high consequence.”