

The New American

Friday, 03 August 2012

Court Orders TSA to Explain Lawless Use of Naked Body Scanners

Written by Alex Newman

About a year ago, a federal appeals court [ordered](#) the deeply unpopular Transportation Security Administration (TSA) to obey the law and hold public hearings on its widely loathed “naked body scanners.” The massive bureaucracy flouted the judicial order and has so far failed to comply. This week, however, the court [demanded](#) that the Department of Homeland Security explain itself by the end of the month.

A coalition of TSA critics including the Electronic Privacy Information Center (EPIC) originally sought to have the nude scanners removed from airports on constitutional grounds, alleging a clear violation of the Fourth Amendment’s protection from “unreasonable searches and seizures.” Other opponents also said the pornographic machines violate the right to privacy.

Because the controversial TSA devices use a type of radiation to peer through people’s clothes, many experts and activists worry about health dangers, too — not to mention the fact that federal bureaucrats are ogling naked men, women, and children. Besides, the machines were exposed as completely useless by an engineer last year.

As expected, the appeals court stopped short of ordering the rogue agency to stop using the porno scanners in its July 2011 ruling last July — federal courts are not exactly known for limiting federal power, regardless of what the Constitution states. It did rule, however, that the airport “safety” outfit had failed to hold the lawfully required 90-day public-comment hearings and that the law had to be obeyed “promptly.”

“This rulemaking is the only way to determine whether TSA’s air travel security regime is worth its huge costs and adverse effects on the public’s well-being,” [noted](#) former American Airlines chief Robert Crandall and transportation policy analyst Marc Scribner with the Competitive Enterprise Institute. “Several independent analyses have found that TSA’s use of these machines would be economically wasteful even if they worked as well as TSA

claims, but may actually make us less safe.”

According to analysts, the public comments and the TSA's responses would also create a new avenue to challenge the use of naked body scanners, already in use at some 200 airports. But the arrogant and bloated federal bureaucracy, which was [blasted as a useless and even counter-productive waste](#) of taxpayer money last year in a blistering congressional report, has so far decided to keep breaking the law and ignoring the court's order.

So, last month, EPIC again asked the Washington, D.C., appeals court to make the TSA explain itself and comply with last year's ruling. The judges had already denied similar requests to enforce their order twice before. But on August 1, in a [very brief decision](#), the three-judge panel ordered Homeland Security to respond by August 30.

According to the judges, TSA violated the “Administrative Procedures Act,” a federal statute that requires federal agencies to allow time for public comments before adopting new schemes. In essence, the agency “deployed” its porno scanners across America unlawfully, wasting hundreds of millions of dollars in the process.

The “theatrics”-based screening agency, however, complained that obeying the law might hinder its alleged efforts to “protect” the public from supposed “ever-evolving threats” (despite the fact that the TSA has never caught a single terrorist). Incredibly, despite squandering some \$60 billion in 10 years — the equivalent of the entire GDP of Vermont and North Dakota combined — the TSA also cited budgetary constraints for failing to obey the law by holding public hearings.

Apparently the appeals court did not buy TSA's half-baked excuses. And, unsurprisingly, very few serious observers believe the agency's justifications for the lawlessness either.

“It's a widely held belief that the agency's hasty embrace of expensive, X-rated x-ray machines has more to do with closed-door lobbying efforts of manufacturers than a deliberate consideration of the devices' merits,” the *Washington Times* [observed](#) in an editorial, echoing [widespread suspicions](#) that the TSA's decision had more to do with enriching politically connected “crony capitalists” like Michael Chertoff and George Soros than protecting anything.

“The last thing TSA wants is the public-relations disaster of having to collect and publish the

horror tales from Americans subjected to humiliation from the nude photography and intrusive 'pat-down' groping sessions," the *Times* continued, even calling for an end to the TSA itself. "Scanner manufacturer Rapiscan Systems, which has invested \$2.2 million in wining and dining administration officials and lawmakers since 2007, probably isn't keen on broader public discussion either."

While the broad coalition of organizations continues to seek relief from the courts to make the TSA obey the law, information policy director Jim Harper with the liberty-minded Cato Institute started a petition on Obama's White House website to solicit a response from the president himself. If it gets a few thousand more signatures over the next week, administration policy requires that the grievances be addressed.

"Defying the court, the TSA has not satisfied public concerns about privacy, about costs and delays, security weaknesses, and the potential health effects of these machines," the petition [states](#). "If the government is going to 'body-scan' Americans at U.S. airports, President Obama should force the TSA to begin the public process the court ordered."

Separately, the TSA is also [being sued in federal court by the American Civil Liberties Union](#) (ACLU) for its unconstitutional "no-fly list." The controversial scheme, which has come under fire from both sides of the aisle as a violation of due process, purports to bar citizens from getting on airplanes based on secret criteria — all with no chance to clear their names or even know what "evidence" was used to justify the violation of their liberty.

After initially being rejected by a lower court, a separate U.S. appeals court ruled last month that the case should be allowed to proceed. Activists and victims of the TSA's "no-fly list" — ironically Senator Ted Kennedy once found himself on it — celebrated the news.

"More than two years ago, our clients were placed on a secret government blacklist that denied their right to travel without an explanation or chance to confront the evidence against them," ACLU attorney Nusrat Choudhury said in a statement. "The Constitution requires the government to provide our clients a fair chance to clear their names and a court will finally hear their claims."

While the TSA continues to squander taxpayer money defending its myriad abuses in court, however, a growing coalition of activists and lawmakers is hoping to abolish the unconstitutional entity altogether. Even Congress, which created the agency in 2001, has

slammed its creature.

Instead of focusing on security, the TSA has become “an enormous, inflexible and distracted bureaucracy, more concerned with human resource management and consolidating power,” a congressional investigation released late last year [revealed](#). “Today, TSA's screening policies are based in theatrics. They are typical, bureaucratic responses to failed security policies meant to assuage the concerns of the traveling public.”

States are getting involved in the battle, too, seeking to nullify the federal statutes purporting to authorize the routine violation of citizens' rights. The state of Texas, for example, [almost criminalized the TSA's “screening” procedures as sexual assault](#) in a recent showdown. Lawmakers finally backed down when the Obama administration threatened to essentially impose a no-fly zone over the state.

But despite the administration's best efforts to preserve — and now unionize — the bloated bureaucracy, Americans are increasingly getting fed up with having their children fondled by federal bureaucrats just to get on an airplane. And with the latest news about the TSA flaunting laws and court orders, the effort to rein in and eventually abolish the screening agency will almost certainly continue to build.