

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-1337

September Term, 2017

TSA-07/28/16 Letter

Filed On: April 25, 2018

Douglas Kidd,

Petitioner

v.

Transportation Security Administration,

Respondent

**PETITION FOR REVIEW OF A DECISION OF THE TRANSPORTATION SECURITY
ADMINISTRATION**

BEFORE: Henderson, Griffith, and Srinivasan, Circuit Judges

J U D G M E N T

This petition for review of a decision of the Transportation Security Administration (TSA) was considered on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion to file portions of the administrative record under seal and portions of the administrative record under seal and ex parte, it is

ORDERED that the motion to file portions of the administrative record under seal and portions of the administrative record under seal and ex parte be granted. The Clerk is directed to file Volumes 2 and 3 of the administrative record under seal, to file Volumes 4A through 4E of the administrative record under seal and ex parte, and to file Volume 5 of the administrative record in accordance with the court's policies and procedures regarding the handling of classified materials. It is

FURTHER ORDERED AND ADJUDGED that the petition for review of the July 28, 2016 letter denying the petitions for rulemaking regarding TSA's final rule permitting the use of Advanced Imaging Technology (AIT) be denied. TSA's decision not to reopen the rule or rescind its "opt-out" policy is not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Elec. Privacy Info. Ctr. v. DHS, 653 F.3d 1, 3 (D.C. Cir. 2011). TSA acted in accordance with its "broad authority over civil aviation security," Amerijet Int'l, Inc. v. Pistole, 753 F.3d 1343, 1350 (D.C. Cir. 2014) (internal quotation marks and citation omitted), and petitioner has not shown "compelling cause, such as plain error of law or a fundamental change in the factual

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-1337

September Term, 2017

premises previously considered by the agency,” sufficient to “overturn the agency’s decision.” Flyers Rights Educ. Fund, Inc. v. FAA, 864 F.3d 738, 743 (D.C. Cir. 2017) (internal quotation marks and citation omitted); see also Competitive Enter. Inst. v. DHS, 688 F. App’x 20, 21 (D.C. Cir. 2017) (denying petitions for review of the AIT rule, “defer[ing] to TSA’s judgment on such an issue of national security” and concluding that “the agency adequately responded” to challenges to the effectiveness of AIT and to the “opt-out” issue).

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 petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam