

13-894 DEPT. OF HOMELAND SECURITY V. MACLEAN

DECISION BELOW: 714 F.3d 1301

LOWER COURT CASE NUMBER: 2011-3231

QUESTION PRESENTED:

Congress has directed that the Transportation Security Administration "shall prescribe regulations prohibiting" the "disclosure of information obtained or developed" in carrying out certain transportation security functions, if the agency "decides" that "disclosing the information would * * * be detrimental" to transportation security. Aviation and Transportation Security Act, Pub. L. No. 107-71, § 101(e), 115 Stat. 603; Homeland Security Act of 2002, Pub. L. No. 107-296, Tit. XVI, § 1601(b), 116 Stat. 2312. Such information is referred to in the regulations as "Sensitive Security Information." See, *e.g.*, 67 Fed. Reg. 8351 (Feb. 22, 2002).

The question presented is whether certain statutory protections codified at 5 U.S.C. 2302(b)(8)(A), which are inapplicable when an employee makes a disclosure "specifically prohibited by law," can bar an agency from taking an enforcement action against an employee who intentionally discloses Sensitive Security Information.

CERT. GRANTED 5/19/2014