

April 26, 2017

The Honorable John Katko, Chairman
The Honorable Bonnie Watson Coleman, Ranking Member
U.S. House Committee on Homeland Security
Subcommittee on Transportation and Protective Security
H2-176 Ford House Office Building
Washington, DC 20515

RE: Hearing on “Checkpoint of The Future: Evaluating TSA’s Innovation Task Force Initiative”

Dear Chairman Katko and Ranking Member Coleman:

We write to you regarding the upcoming hearing on “Checkpoint of The Future: Evaluating TSA’s Innovation Task Force Initiative.”¹ We welcome your continued leadership on transparency at TSA and look forward to opportunities to work with you and your staff.

EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.² Among our most significant undertakings was the litigation that led to the removal the backscatter x-ray devices from U.S. airports. Those devices were ineffective, invasive, and unlawful. In *EPIC v. DHS*, 653 F.3d 1 (D.C. Cir. 2011), the DC Circuit Court of Appeals held that the agency failed to conduct a public rulemaking as required by law and must also ensure that passengers are given the opportunity to opt-out if they so choose. Nonetheless, the agency has issued a final rule that takes away the opt-out option.³

We are continuing our litigation against the TSA.⁴ However, our case has been made substantially more difficult due to the agency’s refusal to release information that it has designated as “sensitive security information” (SSI). The use of this designation by the TSA has been roundly criticized by Congress.⁵ And now the agency, having issued an unlawful rule, is seeking to hide its decision making behind this cloak of secrecy.

¹ *Checkpoint of The Future: Evaluating TSA’s Innovation Task Force Initiative*, 115th Cong. (2017), H. Comm. on Homeland Security, Subcomm. on Transportation and Protective Security, <https://homeland.house.gov/hearing/checkpoint-future-evaluating-tsas-innovation-task-force-initiative/> (April 27, 2017).

² See *About EPIC*, EPIC.org, <https://epic.org/epic/about.html>.

³ *Passenger Screening Using Advanced Imaging Technology*, 81 Fed. Reg. 11,364 (Mar. 3, 2016).

⁴ *EPIC v. TSA*, No.16-1139 (D.C. Cir. 2016).

⁵ Joint Staff Report, Committee on Oversight and Government Reform, *Pseudo- Classification of Executive Branch Documents: Problems with the Transportation Security Administration’s Use of the Sensitive Security Information (SSI) Designation*, May 29, 2014, <https://oversight.house.gov/report/joint-staff-report-pseudo-classification-executive-branch-documents-problems-transportation-security-administrations-use-sensitive-security-information-designation/>.

EPIC is also trying to determine why US travelers, returning to the United States, are now subject to eye scanning at US airports.⁶ The legal basis for the program remains unclear as are the safeguards for these personal biometric identifiers.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Subcommittee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg
Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

/s/ Kim Miller
Kim Miller
EPIC Policy Fellow

⁶ *EPIC FOIA: EPIC Seeks Information about Airport Eye Scans of U.S. Travelers* (Mar. 2, 2017), <https://epic.org/2017/03/epic-foia-epic-seeks-informati-1.html>.