

September 18, 2019

The Honorable Jim Risch, Chairman  
The Honorable Bob Menendez, Ranking Member  
US Senate Committee on Foreign Relations  
423 Dirksen Senate Office Building  
Washington, DC 20510

## Re: Nomination of Marshall Billingslea

Dear Chairman Risch and Ranking Member Menendez:

We write to you regarding your upcoming nomination hearing of Marshall Billingslea to be Under Secretary of State for Civilian Security, Democracy, and Human Rights.<sup>1</sup> This is a critical position in the U.S. government for human rights and should be filled by a person with a deep regard for international law and fundamental rights, such as a constitutional scholar. Mr. Billingslea simply lacks the necessary qualifications for this post. The Senate Foreign Relations Committee should reject this nomination.

EPIC has long been interested in the work of the office of Civilian Security, Democracy, and Human Rights. EPIC's original *Privacy and Human Rights report*<sup>2</sup> was based on the annual human rights report of this office, which follows from the International Covenant on Civil and Political Rights and includes explicit reporting on privacy. Over many years, we have worked with nominees from both parties who have advanced a human rights agenda on behalf of the United States. It is crucial to fill this position with an individual who respects and understands international law and human rights.

In the 21st Century, the United States must lead in defending rule of law and human dignity around the world. Supporting international law is a necessary condition for securing human rights but is also essential to the national security and international influence of the United States. As the National Security Strategy states: "government must do a better job of protecting data to safeguard information and the privacy of the American people."<sup>3</sup>

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<sup>1</sup> *Nominations*, 116th Cong. (2019), S. Comm. on Foreign Relations, <https://www.foreign.senate.gov/hearings/nominationsa> (Sept. 19, 2019).

<sup>2</sup> EPIC, *Privacy & Human Rights: An International Survey of Privacy Laws and Practices 1999*, <https://epic.org/bookstore/phr1999/>; see also EPIC, *Privacy & Human Rights: An International Survey of Privacy Laws and Practices 2016*, <https://epic.org/phr06/>.

<sup>3</sup> White House, *National Security Strategy of the United States of America* (Dec. 2017), <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905-1.pdf>.

The United States should ratify the International Privacy Convention 108+, the most-well established legal framework for international privacy protection.<sup>4</sup> The Convention is recently modernized to establish such new challenges as biometric identification, algorithmic transparency, and the role of supervisory authorities.<sup>5</sup> Because of the global reach of new technologies, international agreements provide the best opportunity to establish data protection standards.<sup>6</sup> The Privacy Convention would establish a global bias to safeguard personal information and enable the continued growth of the Internet economy. Many US companies have already indicated their support for the General Data Protection (GDPR) of the European Union.<sup>7</sup> But there is no mechanism for the United States to accede to the EU Regulation. However, the United States is an Observer to the Council of Europe and has formally ratified COE conventions in the past, most notably the Cybercrime Convention.<sup>8</sup> The Privacy Convention provides the opportunity for the United States to back a well known and well regarded international framework that would both protect privacy and preserve cross border data flows.

EPIC renews our request to your Committee that the United States begin the ratification process for Council of Europe Convention 108.<sup>9</sup> As we wrote in 2010, “The protection of privacy is a fundamental human right. In the 21st century, it may become one of the most critical human rights of all. Civil society organizations from around the world have recently asked that countries which have not yet ratified the Council of European Convention 108 and the Protocol of 2001 to do so as expeditiously as possible.”<sup>10</sup>

There is today a growing consensus on both sides of the Atlantic, supported by consumer groups and business leaders, to recognize that privacy is a fundamental human right. Our laws should reflect that, and the individuals confirmed to senior positions should as well.

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<sup>4</sup> See generally, EPIC, Council of Europe Privacy Convention (2015), <https://epic.org/privacy/intl/coeconvention/>.

<sup>5</sup> Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, May 2018, ETS No. 108.

<sup>6</sup> Brief for EPIC and Thirty-Seven Technical Experts and Legal Scholars as Amici Curiae in Support of Respondent 12-20, *United States v. Microsoft*, No. 17-2 (Jan. 18, 2018), <https://epic.org/amicus/ecpa/microsoft/US-v-Microsoft-amicus-EPIC.pdf>.

<sup>7</sup> Rachel England, *Tim Cook calls for GDPR-style privacy laws in the US*, Engadget (Oct. 24, 2018), <https://www.engadget.com/2018/10/24/tim-cook-calls-for-gdpr-style-privacy-laws-in-the-us/>; Isobel Asher Hamilton, *Microsoft CEO Satya Nadella made a global call for countries to come together to create new GDPR-style data privacy laws*, Business Insider (Jan. 24, 2019), <https://www.businessinsider.com/satya-nadella-on-gdpr-2019-1>.

<sup>8</sup> TechNet, *Senate Ratifies Convention on Cybercrime*, Aug. 3, 2006 (“The Senate ratified by unanimous consent without amendment Treaty 108-11, which is titled “Council of Europe Convention on Cybercrime.” This convention requires the nations that are parties to it to enact laws criminalizing certain activity in the nature of computer hacking, and other cyber crimes.”), <http://www.techlawjournal.com/topstories/2006/20060803b.asp>

<sup>9</sup> See Letter from EPIC to Secretary Clinton Re: US Ratification of COE Convention 108 (Jan. 28, 2010), [https://epic.org/privacy/intl/EPIC\\_Clinton\\_ltr\\_1-10.pdf](https://epic.org/privacy/intl/EPIC_Clinton_ltr_1-10.pdf); Letter from EPIC to Senator Corker and Senator Menendez, Senate Foreign Relations Committee (Apr. 13, 2018), <https://epic.org/EPIC-SFR-Pompeo-April2018.pdf>.

<sup>10</sup> Id. See The Public Voice, *The Madrid Privacy Declaration* (2009), <http://www.thepublicvoice.org/Madrid-declaration/>.

We ask that this Statement from EPIC be entered in the hearing record. We look forward to working with you 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/ Eleni Kyriakides

Eleni Kyriakides  
EPIC International Counsel