

September 28, 2017

The Honorable Roy Blunt, Chairman  
The Honorable Maria Cantwell, Ranking Member  
U.S. Senate Committee on Commerce, Science & Transportation  
Subcommittee on Aviation Operations, Safety, and Security  
512 Dirksen Senate Office Building  
Washington, DC 20510

## RE: Hearing on “TSA Modernization: Improvements to Aviation Security”

Dear Chairman Blunt and Ranking Member Cantwell:

We write to you regarding today’s hearing on “TSA Modernization: Improvements to Aviation Security.”<sup>1</sup> We welcome your continued leadership on improvements that can be made at the 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.<sup>2</sup> Among our most significant undertakings was the litigation that led to the removal of 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.

We are currently trying to determine why US travelers, returning to the United States, are now subject to eye scanning and other forms of biometric collection at US airports.<sup>3</sup> President Trump’s Executive Order, “Protecting the Nation from Foreign Terrorist Entry into the United States,” explicitly calls to “expedite the completion and implementation of biometric entry exit tracking system.”<sup>4</sup>

Facial recognition poses significant threats to privacy and civil liberties. It can be done covertly, remotely, and on a mass scale. Additionally, there are a lack of well-defined federal regulations controlling the collection, use, dissemination, and retention of biometric identifiers. Ubiquitous and near effortless identification eliminates individual’s ability to control their identities and poses a specific risk to the First Amendment rights of free association and free expression.

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<sup>1</sup> *TSA Modernization: Improvements to Aviation Security*, 115<sup>th</sup> Cong. (2017), S. Comm. on Commerce, Science & Transportation, Sub. Comm. on Aviation, Operations, Safety, and Security

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

<sup>3</sup> *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>.

<sup>4</sup> Exec. Order No. 13,780 § 8.

The use of facial recognition at the border has real consequences for U.S. citizens as well as non-U.S. citizens. All people entering the U.S., including U.S. passport holders, could be subject to this new screening technique.

EPIC has filed a Freedom of Information Act lawsuit to obtain documents to determine if there are proper privacy safeguards in place for the collection of biometric information at US airports.<sup>5</sup> EPIC has previously obtained documents from the Federal Bureau of Investigation concerning their Next Generation Identification database which contains facial scans, fingerprints, and other biometrics of millions of Americans.<sup>6</sup> As a result of obtaining these documents it was revealed that biometric identification is often inaccurate.<sup>7</sup>

EPIC has also opposed the planned implementation of the REAL ID Act.<sup>8</sup> Recently, the TSA has indicated that they will no longer accept non-REAL ID compliant drivers licenses and identification cards to board airplanes.<sup>9</sup> Several states continue to oppose the implementation of the REAL ID Act which remains an unfunded, government mandate.<sup>10</sup> The TSA policy will make it practically impossible for residents from these states to board planes.<sup>11</sup> The TSA has failed to show why such a drastic change in airport protocol is necessary.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Committee 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

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<sup>5</sup> *EPIC v. CBP (Biometric Entry/Exit Program)*, EPIC, <https://epic.org/foia/dhs/cbp/biometric-entry-exit/default.html#legal>

<sup>6</sup> *EPIC v. FBI – Next Generation Identification*, EPIC, <https://epic.org/foia/fbi/ngi/>.

<sup>7</sup> DEPT. OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, NEXT GENERATION IDENTIFICATION (NGI) SYSTEM REQUIREMENTS DOCUMENT VERSION 4.4 at 244 (Oct. 1, 2010), <https://epic.org/foia/fbi/ngi/NGI-System-Requirements.pdf>.

<sup>8</sup> *National ID and the REAL ID Act*, EPIC, [https://epic.org/privacy/id\\_cards/](https://epic.org/privacy/id_cards/).

<sup>9</sup> *TSA to Notify Travelers of Upcoming 2018 Real ID Airport Enforcement – Signs at Airports to Inform Travelers of ID Requirements at Security Checkpoints*, DHS, Dec. 12, 2016, <https://www.dhs.gov/news/2016/12/12/tsa-notify-travelers-upcoming-2018-real-id-airport-enforcement>.

<sup>10</sup> Andrea Noble, *Several States Square Off With Homeland on Real ID Law*, Washington Times, Oct 13, 2016, <http://www.washingtontimes.com/news/2016/oct/13/real-id-law-facing-backlash-from-states-refusing-t/>.

<sup>11</sup> REAL ID Nonparticipation Act, 2012 Pa. ALS 38; 61-5-128, MCA (Legislative finding and direction to state agency not to implement REAL ID Act).