



January 9, 2015

Senator Chuck Grassley, Chairman
Committee on the Judiciary
437 Russell Senate Office Building
Washington, DC 20510

Senator Patrick J. Leahy, Ranking Member
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Dear Chairman Grassley and Ranking Member Leahy,

Thank you for your continued oversight of Federal Bureau of Investigation ("FBI") programs that impact the privacy rights of Americans. Senate oversight hearings promote transparency and accountability and help ensure that the Bureau fulfills its mission while upholding American values and Constitutional freedoms. We write today to bring your attention to a recent decision of a Federal Court concerning the FBI's Next Generation Identification ("NGI") system. We urge you to hold an oversight hearing on the NGI program in the 114th Congress.

The Electronic Privacy Information Center ("EPIC") is a non-partisan research organization established in 1994 to focus public attention on emerging privacy and civil liberties issues. Much of EPIC's work has focused on the surveillance technology and programs of the FBI. Through the Freedom of Information Act ("FOIA"), EPIC has obtained documents informing the public of the FBI's use of License Plate Readers,¹ Cell Site Simulators (often referred to as "Stingrays"),² and watchlists.³

Similarly, EPIC has obtained documents about the FBI's massive biometric database known as "Next Generation Identification."⁴ The NGI database contains biometric identifiers for fingerprints, iris scans, DNA profiles, voice identification, palm prints, and facial images. NGI has been described as the largest biometric databases in the world. During a Congressional hearing in July of 2012, the FBI committed to an updated privacy assessment of the NGI.⁵ Over two years later, there is no assessment that reflects the full capabilities of the system.

¹ EPIC FOIA: Automated License Plate Readers (FBI), <https://epic.org/foia/fbi/lpr/default.html>.

² EPIC v. FBI – Stingray / Cell Site Simulator, <http://epic.org/foia/fbi/stingray/>.

³ EPIC FOIA – FBI Watchlist, http://epic.org/foia/fbi_watchlist.html.

⁴ EPIC v. FBI – Next Generation Identification, <https://epic.org/foia/fbi/ngi/>.

⁵ *What Facial Recognition Technology Means for Privacy and Civil Liberties: Hearing Before the Subcomm. on Privacy, Technology and the Law of the S. Comm. on the Judiciary*, 112th Cong. 3 (2012) (statement for the record of Jerome Pender, Deputy Assistant Director, FBI), available at <http://www.judiciary.senate.gov/download/testimony-of-jerome-pender-pdf>.


EPIC and other public interest organizations have repeatedly called for the review of NGI. In 2011, 70 organizations—including EPIC—urged the Inspector General of the Department of Justice to investigate the privacy and civil liberties implications of the FBI's NGI program.⁶ Last year, as NGI neared full operational capacity, EPIC and a coalition of civil liberties groups urged Attorney General Eric Holder to review the NGI program and release an updated Privacy Impact Assessment as a first step to a robust review of the program.⁷ Since that letter, NGI has gone fully operational with no privacy assessment.⁸

Recently, EPIC prevailed in an important case against the FBI concerning the NGI program. *EPIC v. FBI*, No. 13-cv-00442, 2014 WL 5713859 (D.D.C. Nov. 5, 2014). In finding for EPIC's public interest claim, U.S. District Judge Tanya Chutkan stated, "There can be little dispute that the general public has a genuine, tangible interest in a system designed to store and manipulate significant quantities of its own biometric data, particularly given the great numbers of people from whom such data will be gathered."⁹

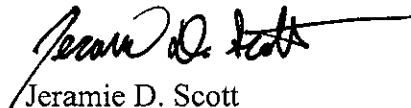
We urge the Senate Judiciary Committee to take up this issue in the new Congressional term and hold an oversight hearing to assess the privacy and civil liberties issues raised by the FBI's massive biometric database.

We would be pleased to work with your staff on this matter.

Sincerely,



Marc Rotenberg
EPIC Executive Director



Jeramie D. Scott
EPIC National Security Counsel

Encl.

⁶ Letter from EPIC and Coalition of Civil Liberties groups to Cynthia A. Schnedar, DOJ Acting Inspector General (Sept. 11, 2011), *available at* https://epic.org/privacy/secure_communities/DOJ-S-Comm-Letter.pdf.

⁷ Letter from EPIC and Coalition of Civil Liberties groups to Eric Holder, U.S. Attorney General (Jun. 24, 2014), *available at* <http://privacycoalition.org/Ltr-to-Review-FBI-NGI-Program.pdf>.

⁸ FBI Press Release: FBI Announces Full Operational Capability of the Next Generation Identification System (Sep. 15, 2014), *available at* <http://www.fbi.gov/news/pressrel/press-releases/fbi-announces-full-operational-capability-of-the-next-generation-identification-system>.

⁹ *EPIC v. FBI*, No. 13-cv-00442, 2014 WL 5713859 (D.D.C. Nov. 5, 2014), *available at* https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2013cv0442-20.