March 2, 2017

The Honorable Jason Chaffetz, Chairman
The Honorable Elijah Cummings, Ranking Member
U.S. House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

RE: Hearing on “Transparency at TSA”

Dear Chairman Chaffetz and Ranking Member Cummings:

We write to you regarding the upcoming hearing on “Transparency at TSA” that will be held on March 2, 2017. 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. 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.

We are continuing our litigation against the TSA. However, our case has been made substantially harder 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 this Committee. And now the agency, having issued an unlawful rule, is seeking to hide its decision making behind this cloak of secrecy.

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

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1 See About EPIC, EPIC.org, https://epic.org/epic/about.html.
3 EPIC v. TSA, No.16-1139 (D.C. Cir. 2016).
EPIC has also opposed the planned implementation of the REAL ID Act.\(^6\) Recently, the TSA has indicated that they will no longer accept non-REAL ID compliant drivers licenses and identification cards to board airplanes.\(^7\) Several states continue to oppose the implementation of the REAL ID Act which remains an unfunded government mandate.\(^8\) The TSA policy will make it practically impossible for residents from these states to board planes.\(^9\) 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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\(^6\) National ID and the REAL ID Act, EPIC, https://epic.org/privacy/id_cards/.


\(^9\) 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).