

March 22, 2017

The Honorable Ron Johnson, Chairman
The Honorable Claire McCaskill, Ranking Member
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

RE: Hearing on “Perspectives from the DHS Frontline: Evaluating Staffing Resource and Requirements”

Dear Chairman Johnson and Ranking Member McCaskill:

We write to you regarding your Committee’s hearing on “Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements.”¹ EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues. As the Committee evaluates DHS programs, there are some issues that we urge the Committee to consider.

EPIC recently filed a Freedom of Information Act request with U.S. Customs and Border Patrol (CBP) to obtain details on eye scans being conducted on U.S. citizens traveling internationally.² The legal basis for this program and the safeguards to protect these personal biometric identifiers remain unclear. EPIC has also recently filed a FOIA request seeking information following Secretary Kelly’s statement to Congress indicating that CBP is considering collecting social media usernames and passwords from individuals seeking to enter the country.³

EPIC is currently pursuing litigation with the TSA concerning the agency’s use of body scanners as the primary method of screening at airports.⁴ Despite a lack of evidence that body scanners are necessary for security, congressional skepticism, and the strong opposition of airline passengers and privacy groups, the TSA has effectively made body scanner screening mandatory for all passengers.⁵

¹ *Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements*, 115th Cong. (2017), S. Comm. on Homeland Security & Gov’t Affairs, <https://www.hsgac.senate.gov/hearings/perspectives-from-the-dhs-frontline-evaluating-staffing-resources-and-requirements> (Mar. 22, 2017).

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

³ *EPIC Pursued FOIA Requests at DHS Concerning Aerial Surveillance, Social Media Monitoring, and ID Theft*, EPIC, Feb. 8, 2017, <https://epic.org/2017/02/epic-pursues-foia-requests-at-.html>.

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

⁵ Brief for Petitioner at 19, *EPIC v. TSA*, No. 1601139 (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 is a national identification system that the DHS was specifically prohibited from establishing. As the law establishing the Department of Homeland Security plainly stated:

SEC. 554. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.
Nothing in this Act shall be construed to authorize the development of a national identification system or card.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

⁶ *National ID and the REAL ID Act*, EPIC, https://epic.org/privacy/id_cards/.

⁷ *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>.

⁸ 6 U.S.C. §554.

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).