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December 11, 2018

The Honorable Elise Stefanik
Chairman
House Committee on Armed Services
Subcommittee on Emerging Threats and
  Capabilities
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable James Langevin
Ranking Member
House Committee on Armed Services
Subcommittee on Emerging Threats and
  Capabilities
2216 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Stefanik and Ranking Member Langevin:

We write to you in advance of your hearing, *Department of Defense's Artificial Intelligence Structure, Investments, and Applications*.[1] We appreciate the Committee's interest in conducting oversight of the Department of Defense (DOD)'s use of Artificial Intelligence (AI) tools and urge you to ensure that future hearings include input from civil society and technical experts.

The Electronic Privacy Information Center (EPIC) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.[2] EPIC has promoted "algorithmic transparency" for several years and has litigated several cases on the frontlines of AI in the federal government.[3] EPIC successfully sued U.S. Customs and Border Protection for documents relating to its use of secret, analytic tools to assign "risk assessments" to U.S. travelers.[4] In EPIC v. DHS, EPIC sought to compel the Department of Homeland Security (DHS) to produce documents related to a program that assesses "physiological and behavioral signals" to determine the probability that an individual might commit a crime.[5] The DHS eventually dropped the program.[6] EPIC also sued the Department of Justice to produce documents concerning the use of "evidence-based risk assessment tools," algorithms that try to predict recidivism, in all stages of sentencing.[7] The algorithms at issue in these three lawsuits are examples of problematic uses of AI by the federal government.

EPIC has also made an open and inclusive process for the development of U.S. policy on AI a priority. Earlier this year, the White House held a summit on "Artificial Intelligence for American Industry."[8] According to the Office of Science and Technology Policy summary report, the

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[1] U.S. House Comm. on Armed Servs., *Department of Defense's Artificial Intelligence Structure, Investments, and Applications* (Dec. 11, 2018), https://armedservices.house.gov/hearings/department-defense-s-artificial-intelligence-structure-investments-and-applications-0.
[2] EPIC, *About EPIC*, https://epic.org/epic/about.html.
[3] EPIC, *Algorithmic Transparency*, https://epic.org/algorithmic-transparency.
[4] EPIC, *EPIC v. CBP (Analytical Framework for Intelligence)*, https://epic.org/foia/dhs/cbp/afi.
[5] EPIC, *EPIC v. DHS - FAST Program*, https://epic.org/foia/dhs/fast.
[6] *Id.*
[7] EPIC, *EPIC v. DOJ (Criminal Justice Algorithms)*, https://epic.org/foia/doj/criminal-justice-algorithms.
[8] Office of Sci. & Tech. Pol'y, *Summary of the White House Summit on Artificial Intelligence for American Industry* (May 10, 2018), https://www.whitehouse.gov/wp-content/uploads/2018/05/Summary-Report-of-White-House-AI-Summit.pdf.

participants discussed "the promise of [artificial intelligence] and the policies we will need to realize that promise for the American people and maintain U.S. leadership in the age of artificial intelligence."[9] However, the meeting was not open to the public and many critical issues in the AI field were not discussed.

At the summit, the White House also announced the creation of the Select Committee on Artificial Intelligence.[10] Despite the broad social implications of these topics, the Select Committee's charter identifies only the "private sector" as a source of advice. The first meeting of the Select Committee was also closed to the public. Particularly relevant to this hearing, one point from the readout raised a new concern—a proposal to "standup the Joint Artificial Intelligence Center (JAIC) in order to enable teams across DOD to swiftly deliver new AI-enabled capabilities."[11] Any new capabilities, including autonomous weapons systems, must be subject to full transparency and public review.

In response to the closed-door White House process for AI policy, EPIC, along with leading scientific organizations—including the American Association for the Advancement of Science (AAAS), the Institute of Electrical and Electronics Engineers (IEEE), and the Association for Computing Machinery (ACM)—and nearly 100 experts petitioned the White House to ensure public participation in the development of national AI policy.[12] As EPIC explained: "Unless the channels of public input are formally broadened and deepened substantially, the Select Committee will fail to understand and mitigate the risks of AI deployment."[13] Congress and this committee must also ensure that any decision-making process is open and accessible to the public.[14]

Secret meetings are not merely antithetical to democracy: they produce flawed policy. For example, despite wide public attention to the discriminatory effects of AI,[15] the words "accountability," "transparency," "ethics," and "fairness" do not appear in the report of the White House AI summit or the first meeting of the Select Committee.[16] The only reference to "privacy" is an assurance that personal data can be opened to research without compromising privacy. These oversights reflect the narrow understanding of AI policy. Meaningful national policy on AI requires a more inclusive process.

The foundation for U.S. policy should be a broad policy framework that recognizes both the opportunities and risks associated with AI. As this committee examines artificial intelligence and explores legislative proposals, EPIC recommends legislative solutions based on the Universal Guidelines for Artificial Intelligence (UGAI). The Guidelines are endorsed by nearly 300 experts

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[9] *Id.* at 2.

[10] *Id.* at Appendix A..

[11] Office of Sci. & Tech. Pol'y, *Readout from the Inaugural Meeting of the Select Committee on Artificial Intelligence* (June 27, 2018), https://epic.org/privacy/ai/WH- AI-Select-Committee-First-Meeting.pdf.

[12] Letter from EPIC et al. to Michael Kratsios, Deputy U.S. Chief Technology Officer (July 4, 2018), https://epic.org/privacy/ai/OSTP-AI-Petition.pdf.

[13] *Id.*

[14] *See* Letter from EPIC to Senators Jeff Flake and Christopher A. Coons (Nov. 30, 2018), https://epic.org/testimony/congress/EPIC-SJC-AIRoundtable-Nov2018.pdf (expressing concern about the lack of transparency in Senate Judiciary hearings on AI policy).

[15] *See, e.g.*, Jordan Weissmann, *Amazon Created a Hiring Tool Using A.I. It Immediately Started Discriminating Against Women*, Slate (Oct. 10, 2018), https://slate.com/business/2018/10/amazon-artificial-intelligence-hiring-discrimination-women.html.

[16] *See* Office of Sci. & Tech. Pol'y, *supra* note 8.

and civil society organizations globally, including the American Association for the Advancement of Science (AAAS), the Institute of Electrical and Electronics Engineers (IEEE), senior members of the Association for Computing Machinery (ACM), and many leading technical ethicists, including former world chess champion Garry Kasparov.[17]

The Universal Guidelines "are intended to maximize the benefits of AI, to minimize the risk, and to ensure the protection of human rights" and "should be incorporated into ethical standards, adopted in national law and international agreements, and built into the design of systems."[18] The Guidelines set forth twelve principles to guide the design, development, and deployment of AI. These principles can provide the framework for any successful legislative efforts. Broadly, the guidelines address the rights and obligations of AI systems to ensure 1) fairness, accountability, and transparency; 2) autonomy and human determination; 3) data accuracy and quality; 4) safety and security; and 5) minimization of scope. The guidelines are enclosed.

We ask that this statement be entered in the hearing record. EPIC appreciates your attention to this timely issue and look forward to working with the committee as it continues its work.

Sincerely,

/s/ *Marc Rotenberg*   /s/ *Caitriona Fitzgerald*
Marc Rotenberg   Caitriona Fitzgerald
EPIC President   EPIC Policy Director

/s/ *Jeff Gary*
Jeff Gary
EPIC Legislative Fellow

Enclosure:

Universal Guidelines for Artificial Intelligence

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[17] A full list of endorsers is available at The Public Voice, *Universal Guidelines for Artificial Intelligence: Endorsement*, https://thepublicvoice.org/AI-universal-guidelines/endorsement.
[18] The Public Voice, *Universal Guidelines for Artificial Intelligence*, https://thepublicvoice.org/AI-universal-guidelines.