



January 17, 2017

The Honorable Richard Burr, Chairman
The Honorable Mark Warner, Ranking Member
U.S. Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

RE: Nomination hearing for Rep. Mike Pompeo as CIA Director

Dear Chairman Burr and Ranking Member Warner:

We write to you regarding the nomination of Rep. Mike Pompeo for Director of the Central Intelligence Agency. The incoming CIA Director will have enormous powers with significant implications for the safety, security, and privacy of the American people. The CIA Director should uphold our Constitutional freedoms and must not turn the enormous surveillance capabilities of the agency against the American people. This concern is central to the work of our organization.

The Electronic Privacy Information Center was established in 1994 to focus public attention on emerging privacy and civil liberties issues. EPIC engages in a wide range of public policy and litigation activities. EPIC testified before the 9-11 Commission on "Security and Liberty: Protecting Privacy, Preventing Terrorism."¹

EPIC has also pursued Freedom of Information cases with the CIA concerning the agency's unlawful embedding of agents with the NYPD to spy on Muslims and persons of Arab descent, and the agency's unconstitutional spying on the staff members of this Committee.² In

¹ Statement of EPIC President Marc Rotenberg, *Security and Liberty: Protecting Privacy, Preventing Terrorism*, Hearing Before the National Commission on Terrorist Attacks Upon the United States, United States Senate, Dec. 8, 2003, <https://epic.org/privacy/terrorism/911commtest.pdf>

² *EPIC v. CIA – Domestic Surveillance*, EPIC, <http://epic.org/foia/cia/>; *EPIC v. CIA – CIA Spying on Congress*, EPIC, <http://epic.org/foia/cia/congresssspying/>. See also Charlie Savage, *C.I.A. Report Finds Concerns With Ties to New York Police*, NY Times (June 26, 2013),

the first matter, EPIC obtained the Inspector General's report which disproved the agency's claim that there was no unlawful domestic surveillance by the CIA. In the second, the Inspector General concluded the agency "improperly" accessed the computers of Senate staff.³ It was EPIC's lawsuit that facilitated the public release of that report.⁴

There are always good reasons to closely monitor the CIA. EPIC is now concerned about the views expressed by the nominee Mr. Pompeo and David Rivkin in the January 2016 editorial for the *Wall Street Journal*.⁵ In that editorial, Mr. Pompeo wrote that "Congress should pass a law re-establishing collection of all metadata, and combining it with publicly available financial and lifestyle information into a comprehensive, searchable database. Legal and bureaucratic impediments to surveillance should be removed." That proposal poses a direct threat to the privacy and security of Americans. The CIA must not get into the business of profiling Americans, based on the posts they make to friends on social media or their "lifestyles."

Mr. Pompeo also expressed the view that Congress should remove Presidential Policy Directive-28, which "bestows privacy rights on foreigners and imposes burdensome requirements to justify data collection."⁶ PPD-28, a modest reform adopted to restore trust with foreign allies, is also the lynchpin of the Privacy Shield, a key agreement between the United States and Europe that enables the transfer of personal information across the Atlantic. If PDD-28 is altered or removed, it is almost certain that there will be a backlash from many of America's closest allies.

And EPIC is concerned about Mr. Pompeo's views that "reasonable warrantless searches are compatible with the Fourth Amendment."⁷ It is well settled that the government may not engage in surveillance without a lawful basis, anchored in the public laws, enacted by the Congress. And the tracking of "social media" by the CIA, proposed by the Mr. Pompeo, would necessarily implicate Privacy Act concerns.

We do support Mr. Pompeo's view that it would be a mistake for the U.S. government to promote weakened encryption. As Mr. Pompeo explains, "terrorists would simply switch to foreign or home-built encryption [and] new technologies can cloak messages in background noise, rendering them difficult to detect."⁸ And we appreciate Mr. Pompeo's statement that

<http://www.nytimes.com/2013/06/27/nyregion/cia-sees-concerns-on-ties-to-new-york-police.html>

³ *Feinstein Statement on CIA IG Report*, U.S. Senator Dianne Feinstein, <http://www.feinstein.senate.gov/public/index.cfm/2014/7/feinstein-statement-on-cia-ig-report> (last visited January 12, 2017).

⁴ <http://epic.org/foia/cia/07-2014-CIA-OIG-Rpt.pdf>

⁵ Mike Pompeo And David B. Rivkin Jr., *Time for a Rigorous National Debate About Surveillance: Post-9/11 measures have been weakened or discarded. A coherent new approach is needed*, *Wall Street Journal* (Jan. 3, 2016), <http://www.wsj.com/articles/time-for-a-rigorous-national-debate-about-surveillance-1451856106>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

“Enhanced congressional oversight—a true partnership between the executive and Congress—is needed.” But the public and the press are also part of the oversight process and we urge the CIA (and the oversight Committee) to ensure that it does not withhold information that should be made to the public.

But in the end, Mr. Pompeo’s editorial is not reassuring, as it signals an effort to extend the government’s surveillance authority. Over the past several years, the United States has made significant progress protecting the nation against terrorist threat while safeguarding the Constitutional freedoms our public officials are sworn to uphold. It is vitally important that the CIA Director, as he pursues the agency’s mission, not turn the clock back and undo important protections for Americans.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Senate Intelligence Committee on these issues.

Sincerely,

Marc Rotenberg

Marc Rotenberg
EPIC President

Caitriona Fitzgerald

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EPIC Policy Director