To implement a comprehensive border security plan to combat illegal immigration, drug and alien smuggling, and violent activity in the southwest border of the United States.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2011

Mr. Mccain (for himself and Mr. Kyl) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To implement a comprehensive border security plan to combat illegal immigration, drug and alien smuggling, and violent activity in the southwest border of the United States.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Border Security En-
5 forcement Act of 2011”.

6 SEC. 2. DEFINITIONS.

7 In this Act:
(1) **RURAL, HIGH-TRAFFICKED AREAS.**—The term “rural, high-trafficked areas” means rural areas through which drugs and undocumented aliens are routinely smuggled, as designated by the Commissioner of U.S. Customs and Border Protection.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(3) **SOUTHWEST BORDER REGION.**—The term “Southwest Border region” means the area in the United States that is within 150 miles of the international border between the United States and Mexico.

**SEC. 3. NATIONAL GUARD SUPPORT TO SECURE THE SOUTHERN LAND BORDER OF THE UNITED STATES.**

(a) **IN GENERAL.**—The Secretary of Defense shall deploy not fewer than 6,000 National Guard personnel to perform operations and missions under section 502(f) of title 32, United States Code, in the Southwest Border region for the purposes of assisting U.S. Customs and Border Protection in securing the international border between the United States and Mexico.

(b) **ASSIGNMENT OF OPERATIONS AND MISSIONS.**—

(1) **IN GENERAL.**—National Guard units and personnel deployed under subsection (a) may be as-
signed such operations and missions as are neces-
sary to secure the international border between the
United States and Mexico.

(2) NATURE OF DUTY.—Duty by National
Guard personnel performing such operations and
missions shall be full-time National Guard duty
under title 32, United States Code.

(c) RANGE OF OPERATIONS AND MISSIONS.—The op-
erations and missions assigned under subsection (b) shall
include the temporary authority to—

(1) construct fencing, including double-layer
and triple-layer fencing;

(2) increase ground-based mobile surveillance
systems;

(3) deploy additional unmanned aerial systems
and manned aircraft sufficient to maintain contin-
uous surveillance of the international border between
the United States and Mexico;

(4) deploy and provide capability for radio com-
munications interoperability between U.S. Customs
and Border Protection and State, local, and tribal
law enforcement agencies;

(5) construct checkpoints along the border to
bridge the gap to long-term permanent checkpoints;
and
(6) conduct mobile patrols and provide assistance to U.S. Customs and Border Protection, particularly in rural, high-trafficked areas, as designated by the Commissioner, U.S. Customs and Border Protection.

(d) Materiel and Logistical Support.—The Secretary of Defense shall deploy such materiel and equipment and logistics support as is necessary to ensure success of the operations and missions conducted by the National Guard under subsection (a).

(e) Exclusion from National Guard Personnel Strength Limitations.—National Guard personnel deployed under subsection (a) shall not be included in the calculation to determine compliance with limits on end strength for National Guard personnel or on limits on the number of National Guard personal that may be placed on active duty for operational support under section 115 of title 10, United States Code.

(f) Authorization of Appropriations.—There is authorized to be appropriated $600,000,000 to carry out this section during the 5-year period ending on September 30, 2016.

SEC. 4. PERSONNEL ENHANCEMENTS.

(a) U.S. Customs and Border Protection.—Not later than September 30, 2016, the Secretary shall in-
crease the number of trained Border Patrol agents sta-
tioned in the Southwest Border region by 5,000, compared
to the number of agents at such locations as of the date
of the enactment of this Act. The Secretary shall make
progress in increasing such number of trained Border Pa-
trol agents during each of the fiscal years 2012 through
2016.

(b) HARDSHIP DUTY PAY.—In addition to compensa-
tion to which Border Patrol agents are otherwise entitled,
Border Patrol agents who are assigned to rural, high-traf-
ficked areas shall be entitled to receive hardship duty pay,
in an amount determined by the Commissioner, U.S. Cus-
toms and Border Protection, which may not exceed the
rate of special pay to which members of a uniformed serv-
ice are entitled under section 310 of title 37, United
States Code.

(c) DANGER PAY FOR UNITED STATES MARSHALS
SERVICE AND BUREAU OF ALCOHOL, TOBACCO, FIRE-
ARMS AND EXPLOSIVES PERSONNEL.—Section 151 of the
Foreign Relations Authorization Act, Fiscal Years 1990
and 1991 (Public Law 101–246; 5 U.S.C. 5928 note) is
amended by striking “or Federal Bureau of Investigation”
and inserting “the Federal Bureau of Investigation, the
United States Marshals Service, or the Bureau of Alcohol,
Tobacco, Firearms and Explosives”.
(d) Authorization of Appropriations.—

(1) Border patrol personnel.—There are authorized to be appropriated $300,000,000 for each of the fiscal years 2012 through 2016 to carry out subsection (a).

(2) U.S. Marshals Service.—In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated $15,000,000 for each of the fiscal years 2012 through 2016, for salaries and benefits of United States Marshals Service personnel.

(3) Other personnel.—There are authorized to be appropriated, during the 5-year period ending on September 30, 2016—

(A) $110,000,000 for salaries and benefits for 500 new U.S. Customs and Border Protection officers; and

(B) $17,000,000 for 144 new Office of Air and Marine pilots, vessel commanders, and support personnel.

SEC. 5. ENHANCING EXISTING BORDER SECURITY OPERATIONS.

(a) Operation Streamline.—
(1) IMPLEMENTATION.—The Attorney General, the Secretary, and the Director of the Administrative Office of the United States Courts shall—

(A) fully implement Operation Streamline in the Southwest Border region; and

(B) reimburse State, local, and tribal law enforcement for any detention costs related to such implementation.

(2) ADDITIONAL MAGISTRATE JUDGES TO ASSIST WITH INCREASED CASELOAD ALONG SOUTHWEST BORDER.—The chief judge of each Federal judicial district in the Southwest Border region is authorized to appoint additional full-time magistrate judges, who shall have the authority to hear all cases and controversies in the district in which the respective judges are appointed.

(b) OPERATION STONEGARDEN.—

(1) IN GENERAL.—The Federal Emergency Management Agency shall enhance law enforcement preparedness and operational readiness in the borders of the United States through Operation Stonegarden.

(2) ALLOCATION.—Of the amounts appropriated pursuant to subsection (c), not less than 90 percent shall be allocated for grants and reimburse-
ment to law enforcement agencies in the States in
the Southwest Border region for personnel, overtime,
travel, and other costs related to illegal immigration
and drug smuggling in the Southwest Border region.
(c) **INFRASTRUCTURE IMPROVEMENTS.**—

(1) ** BORDER PATROL STATIONS.**—The Secretary
shall—

- (A) construct additional Border Patrol sta-
tions in the Southwest Border region, as need-
ed, to provide full operational support in rural,
high-trafficked areas; and
- (B) analyze the feasibility of creating addi-
tional Border Patrol sectors along the inter-
national border between the United States and
Mexico to interrupt drug trafficking operations.

(2) **FORWARD OPERATING BASES.**—The Sec-
retary shall enhance the security of the Southwest
Border region by—

- (A) establishing additional permanent for-
ward operating bases for the Border Patrol, as
needed;
- (B) upgrading the existing forward oper-
ating bases to include modular buildings, elec-
tricity, and potable water; and
(C) ensuring that forward operating bases
surveil and interdict individuals entering the
United States unlawfully immediately after
such an individual crosses the international bor-
der between the United States and Mexico.

(3) CHECKPOINTS.—The Secretary shall—

(A) complete the construction of a perma-
nent checkpoint near Tubac, Arizona; and

(B) deploy additional temporary roving
checkpoints in the Southwest Border region.

(4) BORDER FENCE.—Section 102(b)(1)(A) of
the Illegal Immigration Reform and Immigrant Re-
sponsibility Act of 1996 (8 U.S.C. 1103 note) is
amended—

(A) by inserting “, not later than Decem-
ber 31, 2011,” after “shall”; and

(B) by adding at the end the following:
“The Secretary shall replace landing mat fenc-
ing and construct double- and triple-layer fenc-
ing in the Southwest Border region (as defined
in section 2 of the Border Security Enforce-
ment Act of 2011), at locations determined by
the Secretary, after consultation with the gov-
ernors of the States in the Southwest Border
region and representatives of State, tribal, and
local law enforcement agencies.”.

(d) **Border Security on Certain Federal Land.**—

(1) **Definitions.**—In this subsection:

(A) **Secretary Concerned.**—The term
“Secretary concerned” means—

(i) with respect to land under the ju-
risdiction of the Secretary of Agriculture,
the Secretary of Agriculture; and

(ii) with respect to land under the ju-
risdiction of the Secretary of the Interior,
the Secretary of the Interior.

(B) **Federal Lands.**—The term “Federal
lands” includes all land, including a component
of the National Wilderness Preservation Sys-
tem, under the control of the Secretary con-
cerned that is located within 150 miles of the
Southwest border region.

(2) **Support for Border Security Needs.**—

(A) **In General.**—To achieve operational
control of Federal lands—

(i) the Secretary concerned shall au-
thorize and provide U.S. Customs and
Border Protection personnel with imme-
mediate access to Federal lands for security activities, including—

(I) routine motorized patrols; and

(II) the deployment of temporary tactical infrastructure; and

(ii) the security activities described in clause (i) shall be conducted, to the maximum extent practicable, in a manner that the Secretary of Homeland Security determines will best protect the natural and cultural resources on Federal lands.

(3) INVENTORY OF COSTS AND ACTIVITIES.—The Secretary shall—

(A) coordinate with the Secretary concerned to develop an inventory of costs incurred by the agencies relating to illegal border activity on Federal lands; and

(B) annually submit the inventory developed under subparagraph (A) to—

(i) the Committee on Homeland Security and Governmental Affairs of the Senate;

(ii) the Committee on the Judiciary of the Senate;
(iii) the Committee on Appropriations of the Senate;

(iv) the Committee on Homeland Security of the House of Representatives;

(v) the Committee on the Judiciary of the House of Representatives; and

(vi) the Committee on Appropriations of the House of Representatives.

(4) **INTERMINGLED PRIVATE AND STATE LAND.**—This subsection shall not apply to any private or State-owned land within the boundaries of Federal lands.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **ANNUAL APPROPRIATIONS.**—There are authorized to be appropriated, for each of the fiscal years 2012 through 2016—

(A) $50,000,000 to carry out subsection (a);

(B) $100,000,000 to carry out subsection (b);

(C) $20,000,000 to carry out subsection (c)(2); and

(D) $50,000,000 to carry out section 102(b)(1)(A) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 VerDate Mar 15 2010 05:39 Apr 14, 2011 Jkt 099200 PO 00000 Frm 00012 Fmt 6652 Sfmt 6201 E:\BILLS\S803.IS S803smartinez on DSKB9S0YB1PROD with BILLS
U.S.C. 1103 note), as amended by subsection 
(e)(4).

(2) **Permanent checkpoint construction.**—There is authorized to be appropriated 
$30,000,000 to carry out subsection (e)(3)(A).

(3) **Detention upgrades at courthouses.**—There is authorized to be appropriated, 
for each of the fiscal years 2012 through 2016, 
$4,000,000, which shall be used to construct deten-
tion upgrades at Federal courthouses located in the 
Southwest border region.

**SEC. 6. EQUIPMENT AND TECHNOLOGY.**

(a) **Enhancements.**—The Commissioner, U.S. Cus-
toms and Border Protection, shall—

(1) deploy additional mobile, video, and agent- 
portable surveillance systems, and unmanned aerial 
vehicles in the Southwest Border region as necessary 
to provide 24-hour operation and surveillance;

(2) operate unmanned aerial vehicles along such 
borders for 24 hours per day and for 7 days per 
week;

(3) deploy additional fixed-wing aircraft and 
helicopters along such borders;

(4) acquire new, rotocraft and make upgrades 
to the existing helicopter fleet; and
(5) increase horse patrols in the Southwest Border region.

(b) Authorization of Appropriations.—In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated $335,000,000 to U.S. Customs and Border Protection to carry out subsection (a) during fiscal year 2012.

SEC. 7. ACCESS TO EMERGENCY PERSONNEL.

(a) Southwest Border Emergency Communications Grants.—

(1) In general.—The Secretary, in consultation with the governors of the States in the Southwest Border region, shall establish a 2-year grant program, to be administered by the Secretary, to improve emergency communications in the Southwest Border region.

(2) Eligibility for grants.—An individual is eligible to receive a grant under this subsection if the individual demonstrates that he or she—

(A) regularly resides or works in the Southwest Border region;

(B) is at greater risk of border violence due to the lack of cellular service at his or her residence or business and his or her proximity to such border.
(3) Use of grants.—Grants awarded under this subsection may be used to purchase satellite telephone communications systems and service that—

(A) can provide access to 9–1–1 service; and

(B) are equipped with global positioning systems.

(4) Authorization of appropriations.—There is authorized to be appropriated $3,000,000 to carry out the grant program established under this subsection.

(b) Interoperable communications for law enforcement.—

(1) Federal law enforcement.—There are authorized to be appropriated, to the Department of Homeland Security, the Department of Justice, and the Department of the Interior, during the 5-year period ending on September 30, 2016, $35,000,000, which may be used—

(A) to purchase, through a competitive procurement process, P25-compliant radios, which may include a multi-band option, for Federal law enforcement agents working in the Southwest border region in support of the ac-
activities of U.S. Customs and Border Protection
and U.S. Immigration and Customs Enforcement, including law enforcement agents of the
Drug Enforcement Administration, the Bureau
of Alcohol, Tobacco, Firearms and Explosives,
the Department of the Interior, and the Forest
Service; and

(B) to upgrade, through a competitive procure-
ment process, the communications network
of the Department of Justice to ensure coverage
and capacity, particularly when immediate ac-
cess is needed in times of crisis, in the South-
west Border region for appropriate law enforce-
ment personnel of the Department of Justice
(including the Drug Enforcement Administra-
tion and the Bureau of Alcohol, Tobacco, Fire-
arms and Explosives), the Department of
Homeland Security (including U.S. Immigration
and Customs Enforcement and U.S. Customs
and Border Protection), the United States
Marshals Service, other Federal agencies, the
State of Arizona, tribes, and local governments.

(2) STATE AND LOCAL LAW ENFORCEMENT.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated
to the Department of Justice, during the 5-year period ending on September 30, 2016, $35,000,000 to purchase, through a competitive procurement process, P25-compliant radios, which may include a multi-band option, for State and local law enforcement agents working in the Southwest Border region.

(B) Access to Federal Spectrum.—If a State, tribal, or local law enforcement agency in the Southwest Border region experiences an emergency situation that necessitates immediate communication with the Department of Justice, the Department of Homeland Security, the Department of the Interior, or any of their respective subagencies, such law enforcement agency shall have access to the spectrum assigned to such Federal agency for the duration of such emergency situation.

SEC. 8. SOUTHWEST BORDER PROSECUTION INITIATIVE.

(a) Reimbursement to State and Local Prosecutors for Federally Initiated Criminal Cases.—The Attorney General shall reimburse State, county, tribal, and municipal governments for costs associated with the prosecution and pre-trial detention of federal-
ally initiated criminal cases declined by local offices of the
United States Attorneys.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is
authorized to be appropriated $50,000,000 for each of the
fiscal years 2012 through 2016 to carry out subsection
(a).

SEC. 9. DEFINITION OF AIRCRAFT UNDER AVIATION SMUG-
GLING PROVISIONS OF THE TARIFF ACT OF
1930.

(a) IN GENERAL.—Section 590 of the Tariff Act of
1930 (19 U.S.C. 1590) is amended—

(1) by redesignating subsection (g) as sub-
section (h); and

(2) by inserting after subsection (f) the fol-
lowing:

“(g) DEFINITION OF AIRCRAFT.—As used in this sec-
tion, the term ‘aircraft’ includes an ultralight vehicle, as
defined by the Administrator of the Federal Aviation Ad-
ministration.”.

(b) EFFECTIVE DATE.—The amendments made by
subsection (a) apply with respect to violations of any pro-
vision of section 590 of the Tariff Act of 1930 on or after
the 30th day after the date of the enactment of this Act.
SEC. 10. INTERAGENCY COLLABORATION.

The Assistant Secretary of Defense for Research and Engineering shall collaborate with the Under Secretary for Science and Technology of the Department of Homeland Security in identifying equipment and technology used by the Department of Defense that could be used by U.S. Customs and Border Protection to improve the security of the international border between the United States and Mexico by—

(1) detecting border tunnels;

(2) detecting the use of ultralight aircraft;

(3) enhancing wide aerial surveillance; and

(4) otherwise improving the enforcement of such border.

SEC. 11. REPORTS.

(a) GOVERNMENT ACCOUNTABILITY OFFICE.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives that includes—

(1) an analysis of the number of additional forward operating bases and checkpoints that are necessary along the international border between the
United States and Mexico to assist in improving border security; and

(2) the number of additional personnel, infrastructure, and technology needed at land ports of entry along the Southwest border to address current levels of northbound and southbound cross-border inspections.

(b) DEPARTMENT OF HOMELAND SECURITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives that includes—

(1) an audit of the equipment and technology that was procured to be used through the SBInet program; and

(2) an analysis of whether the procured equipment and technology can continue to be used by U.S. Customs and Border Protection.

(c) JOINT EQUIPMENT AND TECHNOLOGY REPORT.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary for Science and Technology of the Department of Homeland Security shall submit a joint report on the results of the collaboration under section 10 to—
(1) the Committee on Armed Services of the Senate;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committee on Armed Services of the House of Representatives; and

(4) the Committee on Homeland Security of the House of Representatives.

SEC. 12. RESCISSION OF UNSPENT FEDERAL FUNDS TO OFFSET LOSS IN REVENUES.

(a) IN GENERAL.—Notwithstanding any other provision of law, of all available unobligated funds, $4,030,000,000 in appropriated discretionary funds are rescinded.

(b) IMPLEMENTATION.—The Director of the Office of Management and Budget shall determine and identify—

(1) the appropriation accounts from which the rescission under subsection (a) shall apply; and

(2) the amount of such rescission that shall be applied to each such account.

(c) REPORT.—Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to Congress and the Secretary of the Treasury that describes the
accounts and amounts determined and identified for rescission under subsection (b).

(d) EXCEPTION.—This section shall not apply to the unobligated funds of—

(1) the Department of Defense;

(2) the Department of Veterans Affairs; or

(3) the National Nuclear Security Administration Weapons Activities and Naval Reactors Accounts.