To require the Secretary of Homeland Security to develop a comprehensive strategy to gain and maintain operational control of the international borders of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2013

Mr. McCaul (for himself, Mrs. Miller of Michigan, Ms. Jackson Lee, and Mr. Thompson of Mississippi) introduced the following bill; which was referred to the Committee on Homeland Security

MAY 20, 2013

Additional sponsors: Mr. Cuellar, Mr. Poe of Texas, Mr. King of New York, Mr. Duncan of South Carolina, Mr. Olson, Mr. Meehan, Mr. Hudson, Mr. Stewart, Mr. Franks of Arizona, Mr. Barber, Mrs. Brooks of Indiana, Mr. Farenthold, Mr. Kinzinger of Illinois, Mr. Brady of Texas, Mr. Messer, Mr. Long, and Mr. Bentivolio

MAY 20, 2013

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 9, 2013]
To require the Secretary of Homeland Security to develop a comprehensive strategy to gain and maintain operational control of the international borders of the United States, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Border Security Results
Act of 2013”.

SEC. 2. REPORTS ON CURRENT BORDER SECURITY STATUS.

(a) In General.—Not later than 90 days after the
date of the enactment of this Act, every 180 days thereafter
until the Comptroller General of the United States reports
on the results of the review described in section 3(k)(2)(B),
and every 365 days after the date of such report, the Sec-
cretary of Homeland Security shall submit to the appro-
priate congressional committees and the Government Ac-
countability Office a report that assesses and describes the
state of situational awareness and operational control. Such
reports shall include an identification of the high traffic
areas and the illegal border crossing effectiveness rate for
each sector along the northern and southern borders of the
United States that are within the responsibility of the Bor-
der Patrol.

(b) GAO Report.—Not later than 90 days after re-
ceiving the initial report required under subsection (a), the
Comptroller General of the United States shall report to the
appropriate congressional committees regarding the
verification of the data and methodology used to determine
high traffic areas and the illegal border crossing effectiveness rate.

SEC. 3. STRATEGY TO ACHIEVE SITUATIONAL AWARENESS AND OPERATIONAL CONTROL OF THE BORDER.

(a) STRATEGY TO SECURE THE BORDER.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive strategy for gaining and maintaining situational awareness, and operational control of high traffic areas, by the date that is not later than two years after the date of the submission of the implementation plan required under subsection (c), and operational control along the southwest border of the United States by the date that is not later than five years after such date of submission.

(b) CONTENTS OF STRATEGY.—The strategy required under subsection (a) shall include, at a minimum, a consideration of the following:

(1) An assessment of principal border security threats, including threats relating to the smuggling and trafficking of humans, weapons, and illicit drugs.

(2) Efforts to analyze and disseminate border security and border threat information between Department of Homeland Security border security compo-
ments and with other appropriate Federal departments and agencies with missions associated with the border.

(3) Efforts to increase situational awareness, in accordance with privacy, civil liberties, and civil rights protections, including—

(A) surveillance capabilities developed or utilized by the Department of Defense, including any technology determined to be excess by the Department of Defense; and

(B) use of manned aircraft and unmanned aerial systems, including camera and sensor technology deployed on such assets.

(4) Efforts to detect and prevent terrorists and instruments of terrorism from entering the United States.

(5) Efforts to ensure that any new border security technology can be operationally integrated with existing technologies in use by the Department of Homeland Security.

(6) An assessment of existing efforts and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, private property rights, privacy rights, and civil liberties.
(7) Technology required to maintain, support, and enhance security and facilitate trade at ports of entry, including nonintrusive detection equipment, radiation detection equipment, biometric technology, surveillance systems, and other sensors and technology that the Secretary of Homeland Security determines necessary.


(9) Lessons learned from Operation Jumpstart and Operation Phalanx.

(10) Cooperative agreements and information sharing with State, local, tribal, territorial, and other Federal law enforcement agencies that have jurisdiction on the northern or southern borders, or in the maritime environment.

(11) Border security information received from consultation with State, local, tribal, and Federal law enforcement agencies that have jurisdiction on the northern or southern border, or in the maritime environment, and from border community stakeholders (including through public meetings with such stakeholders), including representatives from border agricultural and ranching organizations and representa-
tives from business and civic organizations along the
northern or southern border.

(12) Agreements with foreign governments that
support the border security efforts of the United
States, including coordinated installation of stand-
ardized land border inspection technology, such as li-
cense plate readers and RFID readers.

(13) Staffing requirements for all border security
functions.

(14) A prioritized list of research and develop-
ment objectives to enhance the security of the inter-
national land and maritime borders of the United
States.

(15) An assessment of training programs, in-
cluding training programs regarding—

(A) identifying and detecting fraudulent
documents;

(B) protecting the civil, constitutional,
human, and privacy rights of individuals;

(C) understanding the scope of enforcement
authorities and the use of force policies;

(D) screening, identifying, and addressing
vulnerable populations, such as children and vic-
tims of human trafficking; and
(E) social and cultural sensitivity toward border communities.

(16) Local crime indices of municipalities and counties along the Southern border.

(17) An assessment of how border security operations affect crossing times.

(18) Metrics required under subsections (e), (f), and (g).

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—Not later than 90 days after the submission of the strategy required under subsection (a), the Secretary of Homeland Security shall submit to the appropriate congressional committees and the Government Accountability Office an implementation plan for each of the Department of Homeland Security border security components to carry out such strategy. Such implementation plan shall, at a minimum—

(A) specify what protections will be put in place to ensure that staffing and resources necessary for the maintenance of operations at ports of entry are not diverted to the detriment of such operations in favor of operations between ports of entry; and

(B) include—
(i) an integrated master schedule and cost estimate, including lifecycle costs, for the activities contained in such implementation plan; and

(ii) a comprehensive border security technology plan to improve surveillance capabilities that includes—

(I) a documented justification and rationale for technology choices;

(II) deployment locations;

(III) fixed versus mobile assets;

(IV) a timetable for procurement and deployment;

(V) estimates of operation and maintenance costs;

(VI) an identification of any impediments to the deployment of such technologies; and

(VII) estimates of the relative cost effectiveness of various border security strategies and operations, including deployment of personnel and technology, and construction of new physical and virtual barriers.
(2) **Government Accountability Office Review.**—Not later than 90 days after receiving the implementation plan in accordance with paragraph (1), the Comptroller General of the United States shall submit to the appropriate congressional committees a report on such plan.

(d) **Periodic Updates.**—Not later than 180 days after the submission of each Quadrennial Homeland Security Review required under section 707 of the Homeland Security Act of 2002 (6 U.S.C. 347) beginning with the first such Review that is due after the implementation plan is submitted under subsection (c), the Secretary of Homeland Security shall submit to the appropriate congressional committees an updated—

(1) strategy under subsection (a); and

(2) implementation plan under subsection (c).

(e) **Metrics for Securing the Border Between Ports of Entry.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall implement metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry, which shall include, at a minimum, the following:

(1) An illegal border crossing effectiveness rate, informed by situational awareness.
(2) An illicit drugs seizure rate which measures the amount and type of illicit drugs seized by the Border Patrol in any fiscal year compared to an average of the amount and type of illicit drugs seized by the Border Patrol for the immediately preceding five fiscal years.

(3) A cocaine seizure effectiveness rate measured as a percentage that results from dividing the amount of cocaine seized by the Border Patrol by the total documented cocaine flow rate as contained in Federal drug databases.

(4) Estimates, using alternative methodologies, including recidivism data, survey data, known-flow data, and technologically-measured data, of total attempted illegal border crossings, total deaths and injuries resulting from such attempted illegal border crossings, the rate of apprehension of attempted illegal border crossers, and the inflow into the United States of illegal border crossers who evade apprehension.

(5) Estimates of the impact of the Border Patrol’s Consequence Delivery System on the rate of recidivism of illegal border crossers.

(f) METRICS FOR SECURING THE BORDER AT PORTS OF ENTRY.—
(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall implement metrics, informed by situational awareness, to measure the effectiveness of security at ports of entry, which shall include, at a minimum, the following:

   (A) An inadmissible border crossing rate which measures the number of known inadmissible border crossers who are apprehended, excluding those border crossers who voluntarily withdraw their applications for admission, against the total estimated number of inadmissible border crossers U.S. Customs and Border Protection fails to apprehend.

   (B) An illicit drugs seizure rate which measures the amount and type of illicit drugs seized by U.S. Customs and Border Protection in any fiscal year compared to an average of the amount and type of illicit drugs seized by U.S. Customs and Border Protection for the immediately preceding five fiscal years.

   (C) A cocaine seizure effectiveness rate measured as a percentage that results from dividing the amount of cocaine seized by U.S. Customs and Border Protection by the total docu-
mented cocaine flow rate as contained in Federal drug databases.

(D) Estimates, using alternative methodologies, including survey data and randomized secondary screening data, of total attempted inadmissible border crossers, the rate of apprehension of attempted inadmissible border crossers, and the inflow into the United States of inadmissible border crossers who evade apprehension.

(E) The number of infractions related to personnel and cargo committed by major violators who are apprehended by U.S. Customs and Border Protection at ports of entry, and the estimated number of such infractions committed by major violators who are not so apprehended.

(F) A measurement of how border security operations affect crossing times.

(2) COVERT TESTING.—The Inspector General of the Department of Homeland Security shall carry out covert testing at ports of entry and submit to the Secretary of Homeland Security and the appropriate congressional committees a report that contains the results of such testing. The Secretary shall use such results to inform activities under this subsection.
(g) **Metrics for Securing the Maritime Border.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall implement metrics, informed by situational awareness, to measure the effectiveness of security in the maritime environment, which shall include, at a minimum, the following:

1. An estimate of the total number of undocumented migrants the Department of Homeland Security’s maritime security components fail to interdict.

2. An undocumented migrant interdiction rate which measures the number of undocumented migrants interdicted against the total estimated number of undocumented migrants the Department of Homeland Security’s maritime security components fail to interdict.

3. An illicit drugs removal rate which measures the amount and type of illicit drugs removed by the Department of Homeland Security’s maritime security components inside a transit zone in any fiscal year compared to an average of the amount and type of illicit drugs removed by the Department of Homeland Security’s maritime security components inside a transit zone for the immediately preceding five fiscal years.
(4) An illicit drugs removal rate which measures the amount of illicit drugs removed by the Department of Homeland Security’s maritime security components outside a transit zone in any fiscal year compared to an average of the amount of illicit drugs removed by the Department of Homeland Security’s maritime security components outside a transit zone for the immediately preceding five fiscal years.

(5) A cocaine removal effectiveness rate inside a transit zone.

(6) A cocaine removal effectiveness rate outside a transit zone.

(7) A response rate which measures the Department of Homeland Security’s ability to respond to and resolve known maritime threats, both inside and outside a transit zone, by placing assets on-scene, compared to the total number of events with respect to which the Department has known threat information.

(h) COLLABORATION.—The Secretary of Homeland Security shall collaborate with the head of a national laboratory within the Department of Homeland Security laboratory network with prior expertise in border security and the head of a border security university-based center within the Department of Homeland Security centers of excellence.
network to develop the metrics required under subsections (e), (f), and (g) to ensure the suitability and statistical validity of each such metric. Such collaboration shall also include consultation by the Secretary with the Governors of every border State and representatives of the Border Patrol and U.S. Customs and Border Protection.

(i) Recommendations Relating to Certain Other Metrics.—In carrying out subsection (h), the head of the national laboratory and the head of a border security university-based center referred to in such subsection shall make recommendations to the Secretary of Homeland Security for other suitable metrics that may be used to measure the effectiveness of border security.

(j) Evaluation by the Government Accountability Office.—

(1) In General.—The Secretary of Homeland Security shall make available to the Government Accountability Office the data and methodology used to develop the metrics implemented under subsections (e), (f), and (g).

(2) Report.—Not later than 270 days after receiving the data and methodology referred to in paragraph (1), the Comptroller General of the United States shall submit to the appropriate congressional
committees a report on the suitability and statistical validity of such data and methodology.

(k) CERTIFICATIONS AND REPORTS RELATING TO OPERATIONAL CONTROL.—

(1) BY THE SECRETARY OF HOMELAND SECURITY.—

(A) TWO YEARS.—If the Secretary of Homeland Security determines that situational awareness and operational control of high traffic areas have been achieved by the date that is not later than two years after the date of the submission of the implementation plan required under subsection (c), the Secretary shall submit to the appropriate congressional committees and the Comptroller General of the United States a certification that so attests.

(B) FIVE YEARS.—If the Secretary of Homeland Security determines that operational control along the southwest border of the United States has been achieved by the date that is not later than five years after the date of the submission of the implementation plan required under subsection (c), the Secretary shall submit to the appropriate congressional committees and the
Comptroller General of the United States a certification that so attests.

(C) ANNUAL UPDATES.—Every year beginning with the year after the Secretary of Homeland Security submits the certification under subparagraph (B), if the Secretary determines that operational control along the southwest border of the United States is being maintained, the Secretary shall submit to the appropriate congressional committees and the Comptroller General of the United States a certification that so attests.

(2) BY THE COMPTROLLER GENERAL.—

(A) REVIEWS.—The Comptroller General of the United States shall review the certifications of the Secretary of Homeland Security under subparagraphs (A), (B), and (C) of paragraph (1) to assess the certifications of the Secretary relating to the achievement of situational awareness, operational control, or both, as the case may be, in accordance with such subparagraphs.

(B) REPORTS.—Not later than 120 days after conducting the reviews described in subparagraph (A), the Comptroller General of the United States shall submit to the appropriate
congressional committees a report on the results of each such review.

(l) **Failure to Achieve Situational Awareness or Operational Control.**—If the Secretary of Homeland Security determines that situational awareness, operational control, or both, as the case may be, has not been achieved by the dates referred to in subparagraphs (A) and (B) of subsection (k)(1), as the case may be, or if the Secretary determines that operational control is not being annually maintained pursuant to subparagraph (C) of such subsection, the Secretary shall, not later than 60 days after such dates, submit to the appropriate congressional committees a report that describes why situational awareness or operational control, or both, as the case may be, was not achieved. Such report shall include, at a minimum, impediments incurred, potential remedies, and recommendations to achieve situational awareness, operational control, or both, as the case may be.

(m) **Government Accountability Office Report on Border Security Duplication and Cost Effectiveness.**—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report addressing areas of overlap in responsibilities within the border security functions of the Department...
of Homeland Security and the relative cost effectiveness of border security strategies, including deployment of additional personnel and technology, and construction of virtual and physical barriers.

(n) REPORTS.—Not later than 60 days after the date of the enactment of this Act and annually thereafter, the Secretary of Homeland Security shall submit to the appropriate congressional committees a report on the following:

(1) A resource allocation model for current and future year staffing requirements that includes optimal staffing levels at all land, air, and sea ports of entry, and an explanation of U.S. Customs and Border Protection methodology for aligning staffing levels and workload to threats and vulnerabilities and their effects on cross border trade and passenger travel across all mission areas.

(2) Detailed information on the level of manpower available at all land, air, and sea ports of entry and between ports of entry, including the number of canine and agricultural specialists assigned to each such port of entry.

(3) Detailed information that describes the difference between the staffing the model suggests and the actual staffing at each port of entry and between the ports of entry.
(4) Detailed information that examines both the security impacts and competitive impacts of entering into a reimbursement agreement with foreign governments for U.S. Customs and Border Protection preclearance facilities.

(o) DEFINITIONS.—In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

(2) COCAINE REMOVAL EFFECTIVENESS RATE.—The term “cocaine removal effectiveness rate” means the percentage that results from dividing the amount of cocaine removed by the Department of Homeland Security’s maritime security components inside or outside a transit zone, as the case may be, by the total documented cocaine flow rate as contained in Federal drug databases.

(3) CONSEQUENCE DELIVERY SYSTEM.—The term “Consequence Delivery System” means the series of consequences applied to persons illegally entering the United States by the Border Patrol to prevent illegal border crossing recidivism.
(4) Got away.—The term “got away” means an illegal border crosser who, after making an illegal entry into the United States, is not turned back or apprehended.

(5) High traffic areas.—The term “high traffic areas” means sectors along the northern and southern borders of the United States that are within the responsibility of the Border Patrol that have the most illicit cross-border activity, informed through situational awareness.

(6) Illegal border crossing effectiveness rate.—The term “illegal border crossing effectiveness rate” means the percentage that results from dividing the number of apprehensions and turn backs by the number of apprehensions, turn backs, and got aways. The data used by the Secretary of Homeland Security to determine such rate shall be collected and reported in a consistent and standardized manner across all Border Patrol sectors.

(7) Major violator.—The term “major violator” means a person or entity that has engaged in serious criminal activities at any land, air, or sea port of entry, including possession of illicit drugs, smuggling of prohibited products, human smuggling, weapons possession, use of fraudulent United States docu-
ments, or other offenses serious enough to result in arrest.

(8) **Operational Control.**—The term “operational control” means a condition in which there is a not lower than 90 percent illegal border crossing effectiveness rate, informed by situational awareness, and a significant reduction in the movement of illicit drugs and other contraband through such areas is being achieved.

(9) **Situational Awareness.**—The term “situational awareness” means knowledge and an understanding of current illicit cross-border activity, including cross-border threats and trends concerning illicit trafficking and unlawful crossings along the international borders of the United States and in the maritime environment, and the ability to forecast future shifts in such threats and trends.

(10) **Transit Zone.**—The term “transit zone” means the sea corridors of the western Atlantic Ocean, the Gulf of Mexico, the Caribbean Sea, and the eastern Pacific Ocean through which undocumented migrants and illicit drugs transit, either directly or indirectly, to the United States.

(11) **Turn Back.**—The term “turn back” means an illegal border crosser who, after making an illegal
entry into the United States, returns to the country from which such crosser entered.

SEC. 4. US-VISIT IMPLEMENTATION.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a plan to implement immediately a biometric exit capability at ports of entry under the US-VISIT program, in accordance with the Enhanced Security and Visa Entry Reform Act of 2002 (Public Law 107–173). If the Secretary determines that development of such a system is not feasible, the Secretary shall, not later than 180 days after the date of the enactment of this Act, submit to the appropriate congressional committees a plan to implement, not later than two years after such date of enactment, an alternative program to provide the same level of security.

SEC. 5. PROHIBITION ON LAND BORDER CROSSING FEE STUDY.

The Secretary of Homeland Security may not conduct any study relating to the imposition of a border crossing fee for pedestrians or passenger vehicles at land ports of entry along the southern border or the northern border of the United States.
A BILL

[Report No. 113-87]

H. R. 1417

113TH CONGRESS

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