

BIOMETRIC IDENTIFICATION TRANSNATIONAL MIGRATION ALERT PROGRAM AUTHORIZATION ACT OF 2018

AUGUST 28, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6439]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 6439) to amend the Homeland Security Act of 2002 to establish in the Department of Homeland Security the Biometric Identification Transnational Migration Alert Program, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 6439, the “Biometric Identification Transnational Migration Alert Program Authorization Act of 2018” authorizes the Biometric Identification Transnational Migration Alert Program (BITMAP) within the Department of Homeland Security (DHS). This bill seeks to codify a U.S. Immigration and Customs Enforcement–Homeland Security Investigations (ICE–HSI) led program that was established in 2011 under then-President Barack Obama.

BACKGROUND AND NEED FOR LEGISLATION

BITMAP was established to equip international partner-country law enforcement officers to collect and share biometric and biographic data on special interest individuals and to identify potential threat actors transiting through participating countries. BITMAP further provides infrastructure and capability for host governments to collect biometric data on individuals they encounter transiting through illicit pathways. The information collected under the auspices of BITMAP is shared with U.S. law enforcement and Intelligence Community members; DHS in turn provides information back to the host countries concerning the individuals whom they enrolled. Through this process, ICE is able to track U.S. bound illegal migration patterns, take joint action with partner countries, and deter human smuggling through South and Central America. Comparisons of biometric data through BITMAP serve to identify criminal persons, wanted subjects (including international fugitives), and known or suspected terrorists. BITMAP is currently deployed to 14 countries, with near-term plans to expand to additional countries.

Transnational criminal organizations (TCOs) have actively competed for control of various illicit pathways. These pathways are used as a conduit for the illegal movement of people and goods into the United States. In particular, the illegal smuggling and trafficking of people via these pathways and the deliberate evasion of U.S. immigration laws has become a significant national security threat. In order to mitigate this threat, U.S. Immigration and Customs Enforcement–Homeland Security Investigations (ICE–HSI) established the Biometric Identification Transnational Migration Alert Program (BITMAP). BITMAP is an HSI-led initiative that fills biometric databases with data collected from special interest aliens, violent criminals, fugitives, and known or suspected terrorists encountered within illicit pathways. This data helps HSI form strategic pictures of the trends, networks, and individuals connected with these pathways and is a key tool for the broader DHS mission of pushing the border out. Former ICE Acting Director Homan testified before the Border and Maritime Security Subcommittee in May 2018, “As far as BITMAP, we are working with our attaché offices overseas, in Central America, in South America, on identifying those that are en route to the United States. There are many known terrorists that these other countries will enroll into BITMAP, take some prints, it feeds into our system, along

with the DOD and it gives us a shot of who's coming, who is on their way. Panama has been very successful. Panama has a great program down there. People that were known terrorists had been turned around in Panama and sent back before reaching our shores." This illustrates the critical role of this national security program in protecting the homeland.

As the largest investigative component at DHS, ICE-HSI protects U.S. borders by conducting multi-faceted, international law enforcement operations, by partnering with foreign and domestic counterparts to combat criminal organizations and prevent terrorist activities. ICE-HSI International Operations has a network of over 400 personnel, including over 180 special agents deployed to 67 attaché offices in 50 countries, who conduct investigations against TCOs, terrorist, and other criminal organizations that threaten our national security. ICE-HSI leverages its international footprint and partnerships to disrupt and dismantle TCOs that seek to exploit America's legitimate trade, travel and financial systems, and enforces U.S. customs and immigration laws at and beyond our Nation's borders to prevent threats from entering the United States. A key program that supports these efforts is BITMAP.

HEARINGS

The Committee did not hold any legislative hearings on H.R. 6439 in the 115th Congress. However, this legislation was informed by a Border and Maritime Security Subcommittee hearing on May 22, 2018 entitled "Stopping the Daily Border Caravan: Time to Build a Policy Wall." The Subcommittee received testimony from the Honorable Ronald Vitiello, Acting Deputy Commission of U.S. Customs and Border Protection at the Department of Homeland Security; the Honorable Thomas Homan, Acting Director of U.S. Immigration and Customs Enforcement at the Department of Homeland Security; and the Honorable Lee Francis Cissna, Director of U.S. Citizenship and Immigration Services at the Department of Homeland Security.

COMMITTEE CONSIDERATION

The Committee met on July 24, 2018, to consider H.R. 6439, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by a recorded vote of 20 yeas and 7 nays (Roll Call Vote No. 39).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

The Committee on Homeland Security considered H.R. 6439 on July 24, 2018, and took the following votes:

COMMITTEE ON HOMELAND SECURITY

Roll Call No. 39

H.R. 6439

On adopting adopted H.R. 6439 without amendment, by a recorded vote of 20 yeas and 7 nays (Roll Call Vote No. 39). The vote was as follows:

Representative	Yea	Nay	Representative	Yea	Nay
Mr. McCaul, Chair	X	.....	Mr. Thompson of Mississippi, Ranking Member .....	.....	X
Mr. Smith of Texas .....	.....	.....	Ms. Jackson Lee .....	.....	X
Mr. King of New York .....	.....	.....	Mr. Langevin	X	.....
Mr. Rogers of Alabama	X	.....	Mr. Richmond .....	.....	X
Mr. Barletta	X	.....	Mr. Keating	X	.....
Mr. Perry	X	.....	Mr. Payne .....	.....	.....
Mr. Katko	X	.....	Mr. Vela .....	.....	X
Mr. Hurd	X	.....	Mrs. Watson Coleman .....	.....	X
Ms. McCally	X	.....	Miss Rice of New York	X	.....
Mr. Ratcliffe	X	.....	Mr. Correa	X	.....
Mr. Donovan	X	.....	Mrs. Demings .....	.....	X
Mr. Gallagher	X	.....	Ms. Barragán .....	.....	X
Mr. Higgins of Louisiana	X	.....		
Mr. Garrett	X	.....		
Mr. Fitzpatrick	X	.....		
Mr. Estes	X	.....		
Mr. Bacon	X	.....		
Mrs. Lesko	X	.....		
			Vote Total	20	7

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 6439, the Biometric Identification Transnational Migration Alert Program Authorization Act of 2018, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 6, 2018.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for Department of Homeland Security legislation ordered reported by the Committee on Homeland Security on July 24, 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL,
Director.

Enclosure.

Department of Homeland Security Legislation

On July 24, the House Committee on Homeland Security ordered two bills to be reported. The bills are:

- H.R. 6198, the Countering Weapons of Mass Destruction Act of 2018; and
- H.R. 6439, the Biometric Identification Transnational Migration Alert Program Authorization Act of 2018.

Both bills would mostly codify programs that currently exist at the Department of Homeland Security (DHS). CBO estimates that enacting the bills would not significantly affect spending by DHS.

Enacting the bills would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting the bills would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Neither bill contains intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 6439 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The goal of this legislation is to authorize the Biometric Identification Transnational Migration Alert Program (BITMAP) within the Department of Homeland Security.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 6439 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED
TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 6439 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 6439 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Biometric Identification Transnational Migration Alert Program Authorization Act of 2018”.

Sec. 2. Authorization of the Biometric Identification Transnational Migration Alert Program Authorization Act

This section establishes the Biometric Identification Transnational Migration Alert Program (BITMAP) in the Department of Homeland Security (DHS). The Committee believes that the establishment of this program will address and reduce threats to national security, increase border security, and stop terrorist threats before such threats reach the border of the United States. In carrying out BITMAP operations, this section requires the DHS Secretary, acting through the Director of U.S. Immigration and Customs Enforcement (ICE), to coordinate—in consultation with the Secretary of State, appropriate representatives of foreign gov-

ernments, and other appropriate Federal agencies—the facilitation of voluntary sharing of biometric and biographic information collected from foreign nationals for the purpose of identifying and screening such nationals to identify those nationals who may pose a threat to the national security of the United States. By requiring the Secretary to act through the ICE Director in carrying out BITMAP, the bill preserves the Secretary’s authority and discretion as the head of the Department, while ensuring that BITMAP operations are executed by the proper law enforcement component.

This section also requires the Secretary to provide capabilities, including training and equipment, to partner countries in order to collect biographic and biometric information to identify, prevent, detect, and interdict high risk individuals, as well as provide capabilities, including training and equipment, to partner countries to compare foreign data against appropriate U.S. national security, border security, terrorist, immigration, and counterterrorism databases maintained by the Federal Bureau of Investigation (FBI), the Department of Defense, DHS, and others. In addition, the section directs the Secretary to ensure that BITMAP operations include participation from relevant components of DHS, and request participation from other Federal agencies, as appropriate.

Additionally, the section requires the Secretary, in consultation with the Secretary of State, to enter into agreements or arrangements with governments of foreign countries that outline operations in those countries. It also requires the Secretary to notify Congress at least 60 days before an agreement with a foreign government enters into force.

Lastly, the bill requires the Secretary, 180 days after the date of enactment and for the subsequent five years, to submit a report to Congress on the effectiveness of BITMAP operations in enhancing national security, border security, and counterterrorism operations.

The Committee believes that BITMAP is a valuable program that facilitates the voluntary sharing of critical information among Federal and international partners, which allows for the identification, detection, and interdiction of high risk individuals who may attempt to enter the United States utilizing illicit pathways. The Committee believes that ICE–Homeland Security Investigations (HSI), notwithstanding the Secretary’s discretion to assign specific authorities or responsibilities to components within the Department, should execute operations of BITMAP. The Committee believes that ICE–HSI is uniquely positioned to contribute to the success of BITMAP because its international workforce is the Department’s largest investigative presence abroad, which gives it one of the largest international footprints in U.S. law enforcement. ICE–HSI has broad legal authority to enforce a diverse array of federal statutes and protect the homeland from numerous threats. It uses these authorities to investigate all types of cross-border criminal activity and to promote national security.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * *

Sec. 2. Definitions.

TITLE IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY

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Subtitle D—Immigration Enforcement Functions

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Sec. 447. *Biometric Identification Transnational Migration Alert Program.*

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TITLE IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY

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Subtitle D—Immigration Enforcement Functions

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SEC. 447. BIOMETRIC IDENTIFICATION TRANSNATIONAL MIGRATION ALERT PROGRAM.

(a) **ESTABLISHMENT.**—*There is established in the Department a program to be known as the Biometric Identification Transnational Migration Alert Program (referred to in this section as “BITMAP”) to address and reduce national security, border security, and terrorist threats before such threats reach the international border of the United States.*

(b) **DUTIES.**—*In carrying out BITMAP operations, the Secretary, acting through the Director of U.S. Immigration and Customs Enforcement, shall—*

(1) *coordinate, in consultation with the Secretary of State, appropriate representatives of foreign governments, and the heads of other Federal agencies, as appropriate, to facilitate the voluntary sharing of biometric and biographic information collected from foreign nationals for the purpose of identifying and screening such nationals to identify those nationals who may pose a terrorist threat or a threat to national security or border security;*

(2) *provide capabilities, including training and equipment, to partner countries to voluntarily collect biometric and biographic identification data from individuals to identify, prevent, detect, and interdict high risk individuals identified as national security, border security, or terrorist threats who may attempt to enter the United States utilizing illicit pathways;*

(3) provide capabilities, including training and equipment, to partner countries to compare foreign data against appropriate United States national security, border security, terrorist, immigration, and counter-terrorism data, including—

(A) the Federal Bureau of Investigation’s Terrorist Screening Database, or successor database;

(B) the Federal Bureau of Investigation’s Next Generation Identification database, or successor database;

(C) the Department of Defense Automated Biometric Identification System (commonly known as “ABIS”), or successor database;

(D) the Department’s Automated Biometric Identification System (commonly known as “IDENT”), or successor database; and

(E) any other database, notice, or means that the Secretary, in consultation with the heads of other Federal departments and agencies responsible for such databases, notices, or means, designates; and

(4) ensure biometric and biographic identification data collected pursuant to BITMAP are incorporated into appropriate United States Government databases, in compliance with the policies and procedures established by the Privacy Officer appointed under section 222.

(c) *COLLABORATION.*—The Secretary shall ensure that BITMAP operations include participation from relevant components of the Department, and request participation from other Federal agencies, as appropriate.

(d) *AGREEMENTS.*—Before carrying out BITMAP operations in a foreign country that, as of the date of the enactment of this section, was not a partner country described in this section, the Secretary, in consultation with the Secretary of State, shall enter into agreement or arrangement with the government of such country that outlines such operations in such country, including related departmental operations. Such country shall be a partner country described in this section pursuant to and for purposes of such agreement or arrangement.

(e) *NOTIFICATION TO CONGRESS.*—Not later than 60 days before an agreement with the government of a foreign country to carry out BITMAP operations in such foreign country enters into force, the Secretary shall provide the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate with a copy of the agreement to establish such operations, which shall include—

(1) the identification of the foreign country with which the Secretary intends to enter into such an agreement;

(2) the location at which such operations will be conducted; and

(3) the terms and conditions for Department personnel operating at such location.

* * * * *

DISSENTING VIEWS

Department of Homeland Security's (DHS) programs to push border security out beyond our air, land, and maritime boundaries make our nation more secure. Two mature examples of effective and tailored programs are U.S. Customs and Border Protection's (CBP) Preclearance program, where CBP officers inspect travelers prior to boarding U.S.-bound flights, and Immigration and Customs Enforcement's (ICE) Visa Security program, where ICE special agents are deployed to overseas consulates to assist in visa vetting. To date, information provided to Congress regarding the Biometric Identification Transnational Migration Alert Program, or BITMAP program, which ICE has been piloting overseas since 2010, is insufficient to assess whether it, too, is effective and tailored. As such, I opposed H.R. 6439, the "Biometric Identification Transnational Migration Alert Program (BITMAP) Authorization Act of 2018," a bill to permanently authorizing this unproven program.

Prior to Committee consideration of H.R. 6439, on June 1, 2018, I wrote to Acting ICE Director Thomas Homan and requested basic information to help the Committee assess this pilot program that DHS officials have said anecdotally is effective. I received a written response on July 12, 2018 that did not fully address the questions I raised to help identify whether there is evidence to support permanently authorizing BITMAP. Given that DHS only began capturing significant amounts of biometric data in 2016, it has not been able to furnish Congress with an evidence-based analysis that justifies the program as a counterterrorism tool. Basic questions about the program remain unanswered. How are international partners selected? After checks against databases, what does the U.S. government do with the vast majority of records it collects on migrants that are not found to have terrorist ties? What, if any, protections exist to guard against ICE collecting highly-personal and sensitive information from migrants who are encountered nowhere near the U.S.-Mexico border and have no intention of coming anywhere close to it?

At this time when mistrust of the Trump Administration regarding border and immigration policies is high, it is critical that Congress be provided answers to basic questions about BITMAP. H.R. 6439 should not be presented to the full House for consideration until such time as evidence has been presented to Congress to establish the efficacy of the program as a counterterrorism tool.

For the record, Congress does not need to act on authorizing legislation for the BITMAP pilot to continue. Even if no further action is taken on H.R. 6439, there is nothing preventing DHS from continuing the BITMAP pilot and gathering more data to come back to a future Congress with a comprehensive account of the benefits of this program and its accomplishments. BITMAP may very well

prove to be an effective counterterrorism program but the facts, as they currently stand, do not support permanently authorizing it.

BENNIE G. THOMPSON,
Ranking Member.

