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115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-308 }

DHS OVERSEAS PERSONNEL ENFORCEMENT
ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 4567

TO REQUIRE A DEPARTMENT OF HOMELAND SECURITY OVERSEAS
PERSONNEL ENHANCEMENT PLAN, AND FOR OTHER PURPOSES



JULY 30, 2018.—Ordered to be printed

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DHS OVERSEAS PERSONNEL ENFORCEMENT ACT OF 2017

JULY 30, 2018.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 4567]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 4567) to require a Department of Homeland Security overseas personnel enhancement plan, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 4567, the DHS Overseas Personnel Enhancement Act of 2017, requires the Department of Homeland Security (DHS or the Department) to provide Congress with a briefing within 90 days of submitting its comprehensive multi-year strategy on DHS's overseas personnel deployments, and every 180 days thereafter. Among other things, DHS is required to brief Congress on any barriers impeding information sharing and collaboration across DHS components and stakeholder entities to advance its counterterrorism mission. Within 90 days of the first overseas personnel briefing, the Act requires the Department to submit to Congress a plan to improve the effectiveness of personnel located at foreign locations.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Protecting the homeland against threats posed by international terrorist groups and transnational criminal organizations requires efficient and effective management of the nation's homeland security resources. Because many threats to the homeland originate overseas, DHS works closely with international partners and deploys personnel and resources to foreign locations to interdict potential security threats at the earliest possible point.¹ Overseas personnel are often responsible for sharing information with foreign and domestic partners, and establishing partnerships with foreign allies to prevent the spread of terrorist and other criminal activity to the homeland.² As of December 2017, the Department had an estimated 2,000 personnel deployed to over 70 countries.³

The Department's global reach advances its counterterrorism mission by preventing nefarious actors from entering the country.⁴ While stationed overseas, DHS personnel engage in a range of programs and activities in fulfillment of its counterterrorism, trade and travel missions.⁵ Specifically, DHS components, including the Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Transportation Security Administration, and Customs and Immigration Services, deploy personnel abroad to engage in interdiction and criminal investigation activities.⁶

DHS's overseas activities have led to the denial of the entry of known or suspected terrorists, seizure of drugs, interdiction of narcotics, and disruption of human smuggling rings.⁷ Among DHS components, CBP deploys the largest number of personnel, approximately 1,000, to overseas locations for the purposes of screening and vetting passengers at airports, conducting inspections of U.S.-bound cargo shipments, and training foreign customs officials at international airports to institute screening procedures consistent with those used by U.S. customs officials.⁸ Through its Immigration Advisory Program, CBP identifies "high-risk" travelers prior to boarding U.S.-bound flights.⁹ In Fiscal Year 2015, the program prevented "8,100 known or suspected terrorists, or individuals with connections to known or suspected terrorists" from boarding U.S.-bound flights.¹⁰

¹*The Office of International Engagement*, Dep't of Homeland Sec. (July 24, 2018), <https://www.dhs.gov/office-international-affairs>; *International Engagement*, Dep't of Homeland Sec., <https://www.dhs.gov/topic/international-engagement>; U.S. Gov't Accountability Office, GAO-17-216, *Border Security: CBP Aims to Prevent High-Risk Travelers from Boarding U.S.-Bound Flights but Needs to Evaluate Program Performance*, 1, (Jan. 2017), available at <https://www.gao.gov/products/GAO-17-216>.

²*Fact Sheet: DHS's International Footprint*, *supra* note 1; *International Engagement*, *supra* note 1.

³Ron Nixon, *Homeland Security Goes Abroad. Not Everyone is Grateful.*, N.Y. Times (Dec. 26, 2017), available at <https://www.nytimes.com/2017/12/26/world/americas/homeland-security-customs-border-patrol.html>.

⁴*Fact Sheet: DHS's International Footprint*, *supra* note 1.

⁵*Id.*; U.S. Gov't Accountability Office, GAO-13-681, *Combating Terrorism: DHS Should Take Action to Better Ensure Resources Abroad Align with Priorities 6-7*, (Sept. 2013), available at <https://www.gao.gov/assets/660/658132.pdf>; GAO-17-216, *supra* note 1 at 1.

⁶*Fact Sheet: DHS's International Footprint*, *supra* note 1; GAO-13-681, *Combating Terrorism: DHS Should Take Action to Better Ensure Resources Abroad Align with Priorities*, *supra* note 5; GAO-17-216, *supra* note 1.

⁷GAO-13-681, *supra* note 5 at 13-14; GAO-17-216, *supra* note 1 at 1.

⁸Ron Nixon, *supra* note 3; GAO-13-681, *supra* note 1, at 11-13; GAO-17-216, *supra* note 5 at 21-22.

⁹GAO-17-216, *supra* note 1 at 2,6.

¹⁰*Id.*

For its part, ICE's Homeland Security Investigations (HSI) division deploys nearly 300 investigators to 50 countries.¹¹ HSI advances the Department's mission overseas by coordinating with foreign counterparts on investigations, interdicting transnational criminal organizations seeking to smuggle drugs, traffic humans and wildlife, and building international outreach and training partnerships.¹² HSI's International Operations Division is responsible for executing a number of activities and programs.¹³ For instance, within its Transnational Criminal Investigative Units, HSI investigators work on teams with foreign law enforcement officials.¹⁴ The Visa Security Program (VSP) deploys HSI special agents to U.S. embassies determined to be high-risk to advise Department of State consular officers.¹⁵ Through the VSP, HSI investigators advance DHS's counterterrorism mission by screening visa applications and making recommendations to consular officers regarding visa refusal and revocations.¹⁶

While DHS's overseas functions are critical to achieving its counterterrorism mission and protecting the homeland, questions have been raised about the effectiveness of the programs and the activities supported by the deployment and use of personnel stationed abroad.¹⁷ According to a 2017 report by the U.S. Government Accountability Office (GAO), although CBP's pre-departure programs have resulted in the identification and interdiction of high-risk travelers, "CBP has not fully evaluated the overall effectiveness of these programs using performance measures and baselines."¹⁸ DHS concurred with GAO's recommendation to develop and implement performance measures, including the establishment of performance baselines, as a means of assessing the effectiveness of its programs.¹⁹ DHS has created a working group comprised of individuals from each of its pre-departure programs to address this recommendation.²⁰ However, the recommendation has not been fully addressed.²¹ Absent appropriate measures, CBP and relevant stakeholders cannot assess whether pre-departure programs are achieving their intended goals.

In the Explanatory Statement accompanying the Homeland Security Appropriations bill for Fiscal Year 2018, the Senate Committee on Appropriations encouraged HSI to prioritize its efforts to collaborate with CBP on investigations supporting trade enforcement activities.²² In doing so, HSI will be better positioned to assess the cost and benefits of expanding its overseas investigative activi-

¹¹ *International Operations*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/international-operations#wcm-survey-target-id>; U.S. Immigration and Customs Enforcement, Dept of Homeland Sec., *Budget Overview* (Feb. 27, 2018), available at <https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf>.

¹² *International Operations*, *supra* note 11.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ GAO-17-216, *Border Security: CBP Aims to Prevent High-Risk Travelers from Boarding U.S.-Bound Flights but Needs to Evaluate Program Performance* 24, 35-36, *supra* note 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² S. Comm. on Appropriations, *Explanatory Statement for the Homeland Security Appropriations Bill*, 2018 (Nov. 21, 2017), available at <https://www.appropriations.senate.gov/imo/media/doc/FY2018-Homeland-Security-Explanatory-Statement.pdf>.

ties.²³ The Senate Committee on Appropriations acknowledged the importance of impeding the flow of individuals posing a threat and illicit contraband, but encouraged HSI to continue reviewing the cost and benefit of overseas agents, noting that “the annual cost of an overseas agent can be four times the cost of an agent deployed domestically.”²⁴

Oversight of DHS’s international counterterrorism programs has raised questions about the need for additional overseas personnel.²⁵ Specially, during a September 2017 hearing before the House Committee on Homeland Security’s Subcommittee on Transportation and Protective Security, Mr. Anthony Reardon, National President of the National Treasury Employees Union, expressed concerns with the Department’s proposal to increase the number of CBP personnel stationed abroad in support of the Department’s efforts to expand its Preclearance Program citing “critical staffing shortages at the nation’s ports of entry.”²⁶

DHS should deploy its personnel and resources in a manner that is consistent with the nation’s homeland security priorities. In January 2017, the President issued a series of Executive Orders aimed at stemming the flow of illegal entrants along the U.S. border with Mexico.²⁷ Under these Executive Orders, CBP and ICE, DHS components with large international footprints, are to execute hiring plans that would significantly increase the number of Border Patrol and ICE agents.²⁸ As the Department develops its staffing models and budget requests for its international programs, consideration should be given to whether proposed staffing increases advance current homeland security priorities and provide intended security benefits.²⁹

This Act provides transparency into the use and effectiveness of overseas personnel. Specifically, the briefing and plan required by this Act will enable Congress to hold the Department accountable for ensuring that the costs associated with overseas personnel do not outweigh the derived security benefits.

III. LEGISLATIVE HISTORY

Representative John Katko (R–NY) introduced H.R. 4567, the DHS Overseas Personnel Enhancement Act, on December 6, 2017. The Act passed the House unanimously on January 10, 2018, and

²³ *Id.*

²⁴ *Id.*

²⁵ *Raising the Standard: DHS’s Efforts to Improve Aviation Security around the Globe*, Hearing before the Subcomm. on Transp. & Protective Sec. of the H. Comm. on Homeland Sec. (Sept. 26, 2017), available at <https://docs.house.gov/meetings/HM/HM07/20170926/106421/HMTG-115-HM07-Transcript-20170926.pdf>; *Securing Air Cargo: Industry Perspectives*, Hearing before the Subcomm. on Transp. & Protective Sec. of the H. Comm. on Homeland Sec. (July 25, 2017), available at <https://homeland.house.gov/hearing/securing-air-cargo-industry-perspectives/>; *The Future of the Transportation Security Administration*, Hearing before the Subcomm. on Transp. & Protective Sec. of the H. Comm. on Homeland Sec. (Feb. 2, 2017), available at <https://homeland.house.gov/hearing/future-transportation-security-administration/>; *Examining TSA’s Global Efforts to Protect the Homeland from Aviation Threats and Enhance Security at Last Point of Departure Airports*, Hearing before the Subcomm. on Transp. & Protective Sec. of the H. Comm. on Homeland Sec. (Dec. 8, 2015), available at <https://www.tsa.gov/news/testimony/2015/12/08/testimony-hearing-%E2%80%9CExamining-tsas-global-efforts-protect-homeland>.

²⁶ *Raising the Standard: DHS’s Efforts to Improve Aviation Security around the Globe*, Hearing before the Subcomm. on Transp. & Protective Sec. of the H. Comm. on Homeland Sec., *supra* note 25, at 30.

²⁷ Exec. Order No. 13,767, 82 Fed. Reg. 8793 (Jan. 2017); Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 2017).

²⁸ Exec. Order No. 13,767, *supra* note 27; Exec. Order No. 13,768, *supra* note 27.

²⁹ Exec. Order No. 13,767, *supra* note 27; Exec. Order No. 13,768, *supra* note 27.

was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 4567 at a business meeting on June 13, 2018. The Committee reported the Act favorably by voice vote en bloc. Senators present for the vote were Johnson, Portman, Lankford, Enzi, McCaskill, Carper, Peters, Hassan, Harris, and Jones.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Short title

This section provides the short title of Act, the “DHS Overseas Personnel Enhancement Act of 2017.”

Section 2. Overseas personnel briefing

Subsection (a) requires the Secretary of the DHS to brief Congress regarding personnel stationed abroad. The first briefing is to occur 90 days after the submission of the strategy required under section 1910 of the National Defense Authorization Act for Fiscal Year 2017, P.L. 114–328. Subsequent briefings are to be provided to the aforementioned Committees every 180 days.

Subsection (b) specifies the content requirements for the briefing in subsection (a). The briefing is to include information on the types of overseas positions, including how the geographical and regional locations and position-specific training provided to overseas personnel support the Department’s counterterrorism mission. The briefing is also to include information on the challenges impeding the sharing of counterterrorism information between DHS personnel at foreign locations and DHS personnel within the United States. The subsection also requires the Department to provide a status update on the implementation of the strategy in subsection (a) and the enhancement plan discussed under section 3.

Section 3. Overseas personnel enhancement plan

Subsection (a) requires the Secretary, within 90 days of the first briefing required in section 2, to submit to Congress an effectiveness enhancement plan for DHS overseas personnel.

Subsection (b) outlines the contents required to be included within the plan. The plan is to include proposals to improve foreign partner capacity development; the use of threat information to re-deploy personnel; enhance coordination with partners, including DHS entities within the U.S. and foreign partners; and practices for preventing counter-espionage activities.

Section 4. Termination

This section sunsets the briefing required under section 2 of this Act 4 years after the submission of the strategy required in Public Law Number 114–328.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s state-

ment that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2018.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4567, the DHS Overseas Personnel Enhancement Act of 2017.

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.

H.R. 4567—DHS Overseas Personnel Enhancement Act of 2017

H.R. 4567 would require the Department of Homeland Security (DHS) to devise a plan to improve the effectiveness of DHS personnel who are stationed at foreign locations. The act also would require DHS—about twice a year over the next four years—to provide briefings to the Congress on department personnel with primary duties outside the United States. Using information from DHS, CBO estimates that implementing those provisions would cost less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 4567 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4567 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 4567 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On January 18, 2018, CBO transmitted a cost estimate for H.R. 4567 as passed by the House of Representatives on January 10, 2018. CBO estimates of the budgetary effects of the two versions of the legislation are the same.

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

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would not make changes in existing law within

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the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

○