

Calendar No. 158

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-59

COUNTERTERRORISM ADVISORY BOARD
ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 411

TO ESTABLISH A COUNTERTERRORISM ADVISORY BOARD, AND
FOR OTHER PURPOSES



JULY 22, 2019.—Ordered to be printed

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

R E P O R T

[To accompany S. 411]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 411) to establish a Counterterrorism Advisory Board, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and an amendment to the title and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 411, the Counter Threats Advisory Board Act of 2019, is to establish within the Department of Homeland Security (DHS or the Department) a Counter Threats Advisory Board (CTAB) to coordinate the Department's intelligence activities, policy, and information related to the mission and functions of the Department that counter threats. The bill requires the CTAB to meet on a regular basis to discuss intelligence and coordinate the Department's threat mitigation efforts. In addition, the bill requires the CTAB to focus on the current threat environment and advise the Secretary on the issuance of Terror Alerts. The CTAB is re-

quired to report to Congress its activities, and the Secretary must provide written notification and a briefing on any changes to or new mechanisms to coordinate threats across the Department. The CTAB terminates two years after enactment of this bill.

II. BACKGROUND AND THE NEED FOR LEGISLATION

In November 2010, DHS established the Counterterrorism Advisory Board (the Board) in response to the attempted bombing of Northwest Flight 253 on December 25, 2009.¹ The mission of the Board is to “further improve coordination on counterterrorism activities for the Department and components” and “prevent terrorist attacks and enhance security.”² This bill codifies the activities of the Counterterrorism Advisory Board, and renames it the Counter Threats Advisory Board to ensure that the activities undertaken by the Board position the Department to coordinate and respond to ever-changing security threats and vulnerabilities.

On December 25, 2009, Umar Farouk Abdulmutallab, a Nigerian national, boarded flight 253 from Amsterdam to Detroit, Michigan.³ While on board, Mr. Abdulmutallab attempted to detonate an explosive device located in his underwear.⁴ The device did not explode, but did ignite injuring Mr. Abdulmutallab and two additional passengers.⁵ Mr. Abdulmutallab was taken into custody by the U.S. Customs and Border Protection and subsequently questioned by the Federal Bureau of Investigation.⁶ In the immediate aftermath of the incident, the Federal Government determined that while Mr. Abdulmutallab was known to the U.S. intelligence community and was in the Terrorist Identities Datamart Environment (a database of known or appropriately suspected terrorists), he was not on the terrorist watchlist which may have prevented him from boarding the flight to the United States.⁷

This incident prompted the White House to conduct a preliminary assessment of the events that led to the attempted attack. In January 2010, the White House released the findings of its review of the terrorist watchlisting system and intelligence community’s actions preceding and following the attempted terrorist attack.⁸ The review found that “human errors and a series of systematic breakdowns failed to stop Mr. Abdulmutallab before he was able to detonate an explosive device on board flight 253.”⁹ Specifically, the review found, among other things, that the counterterrorism community (of which DHS is a member) failed to “connect the dots” by identifying, correlating, and fusing together information relating to the terrorist plot; assign responsibility within the counterterrorism

¹*Ten Years After 9/11: Can Terrorists Still Exploit Our Visa System?: Hearing Before Subcomm. on Border & Mar. Sec. of the H. Comm. on Homeland Sec.*, 112th Cong. (2011) (statement of John Cohen, Principal Deputy Coordinator for Counterterrorism, Department of Homeland Security), <https://www.dhs.gov/news/2011/09/12/statement-john-cohen-principal-deputy-coordinator-counterterrorism-house-homeland>.

²*Id.*

³Press Release, The White House Office, White House Review Summary Regarding 12/25/2009 Attempted Terrorist Attack (Jan. 7, 2010), <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/white-house-review-summary-regarding-12252009-attempted-terrorist-attack>.

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Id.*

⁹*Id.*

community for following up on high priority threat streams; and identify intelligence information that would have placed Mr. Abdulmutallab on the watchlist.¹⁰

During the 111th Congress, the Committee held hearings on the lessons learned and implications of the attempted 2009 Christmas Day terrorist attack against Northwest Airlines Flight 253, also known as the “Underwear Bomber” incident.¹¹ In January 2010, Mr. Michael E. Leiter, then-Director of the National Counterterrorism Center, testified about the counterterrorism system’s failure to prevent the attack:

The counterterrorism system collectively failed . . . [l]et me be clear again. Had all of the information the United States had available been linked together, his name undoubtedly would have been watchlisted, and, thus, he would have been on the visa screening list and the border inspection list. And whether he would have been placed on the No Fly or Selectee List then, would have been based on the existing strength of the analytic judgments at the time.¹²

Similarly, then-Secretary of Homeland Security Janet Napolitano testified that “. . . Umar Abdulmutallab should have never been allowed to board this U.S.-bound plane with explosives.” She outlined improvements to the Department’s aviation security screening processes and efforts to enhance coordination with its inter-agency partners “to reevaluate and modify the way the terrorist watchlist is created, including . . . how names are added to the No Fly and Selectee Lists.”¹³ Secretary Napolitano later established the position of Counterterrorism Advisor and subsequently the Counterterrorism Advisory Board to improve coordination of the Department’s counterterrorism activities. The mission of the Board aligns with the Department’s central mission—to prevent terrorist attacks and enhance security.¹⁴ The Board is composed of senior representatives of operational and headquarters components, and aims to facilitate coordinated operational response to deter and disrupt terrorist operations.¹⁵

In the years since the Board’s creation, DHS has been inundated by new, persistent, and emerging threats far beyond those posed by international terrorist organizations that executed the September 11 and Christmas Day attacks. Today’s threats to the homeland can be best characterized by pervasive and relentless threats from transnational criminal organizations, cybercriminals, and nation-state actors. In March 2019, Kirstjen Nielsen, then-Secretary of Homeland Security remarked on the current state of homeland security:

Today, I am more worried about the ability of bad guys to hijack our networks than their ability to hijack our flights. And I am concerned about them holding our infra-

¹⁰*Id.*

¹¹*Intelligence Reform: The Lessons and Implications of the Christmas Day Attack-Part 1: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs, 111th Cong. (2010), available at https://fas.org/irp/congress/2010_hr/reform.pdf.*

¹²*Id.* at 6.

¹³*Id.* at 10.

¹⁴*Ten Years After 9/11” Can Terrorists Still Exploit Our Visa System?, supra note 1.*

¹⁵*Id.*

structure hostage . . . stealing our money and secrets . . . exploiting children online . . . and even hacking our democracy.¹⁶

In May 2018, then-Secretary Nielsen testified before the Committee about DHS's need for additional authorities to counter emerging threats such as those posed by malicious unmanned aircraft systems, or drones.¹⁷ Ms. Nielsen noted that, "We have already seen transnational criminals adopt this technology to move drugs across the border. Terrorist groups overseas have used drones to conduct attacks on the battlefield and have plotted to use them in terrorist attacks elsewhere."¹⁸

S. 411 codifies the Counterterrorism Advisory Board and renames it the Counter Threats Advisory Board to better position the Department's leadership and its components to address new and emerging threats. The legislation sets requirements for the membership of the CTAB, frequency of meetings to discuss intelligence and coordinate ongoing threat mitigation efforts and departmental activities, and directs the CTAB to focus on the current threat environment. The legislation requires a report to Congress on the status and activities of the CTAB, which will facilitate stakeholders' understanding of any new mechanisms DHS may develop to coordinate threats across the Department.

III. LEGISLATIVE HISTORY

Senators Marco Rubio and Margaret Wood Hassan introduced S. 411 on February 7, 2019, and the bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 411 at a business meeting on May 15, 2019. During the business meeting, two amendments by Senator Margaret Wood Hassan were offered and adopted. The amendments made minor technical corrections and changed the bill's title. The Committee ordered the bill, as modified by the two amendments, reported favorably by voice vote en bloc. Senators present for the vote were: Johnson, Paul, Lankford, Scott, Peters, Carper, Hassan, and Rosen. For the record only, Senators Portman, Romney, Hawley, and Sinema later asked to be recorded as "yes" by unanimous consent.

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

Section 1. Short title

This section provides the short title of the bill, the "Counter Threats Advisory Board Act of 2019."

Section 2. Department of Homeland Security Counter Threats Advisory Board

This section authorizes the establishment of a Counter Threats Advisory Board within the Department for a period of two years

¹⁶ Press Release, Dep't of Homeland Sec., Sec'y Nielsen Remarks on the State of Homeland Sec.: As Prepared for Delivery (Mar. 18, 2019), <https://www.dhs.gov/news/2019/03/18/secretary-nielsen-remarks-state-homeland-security-prepared-delivery>.

¹⁷ *Authorities and Resources Needed to protect and Secure the United States: Hearing Before S. Comm. on Homeland Sec. and Governmental Affairs*, 115th Cong. (2018) (statement of Kirstjen M. Nielsen, Secretary, U.S. Dept. of Homeland Sec.), <https://www.hsgac.senate.gov/hearings/authorities-and-resources-needed-to-protect-and-secure-the-united-states>.

¹⁸ *Id.*

following the enactment of this bill, requires the CTAB to be composed of senior officials representing the Department's operational components and headquarters elements, and to coordinate intelligence activities and policy and information to counter threats.

The Department must develop a charter to govern the CTAB's structure and mission. The charter will direct the CTAB to focus on the current threat environment and aligning the departmental activities to counter threats with guidance from the Secretary. The charter is to be reviewed and updated as appropriate.

This section also specifies the membership and composition of the CTAB. The bill requires the Under Secretary for Intelligence and Analysis to serve as the Chair of the CTAB. The Secretary is required to appoint senior representatives from each of the following operational and headquarters components; the Transportation Security Administration, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, Federal Emergency Management Agency, U.S. Coast Guard, U.S. Citizenship and Immigration Services, U.S. Secret Service, Cybersecurity and Infrastructure Security Agency, Office of Operations Coordination, Office of the General Counsel, Office of Intelligence and Analysis, Office of Policy, the Science and Technology Directorate, and the Office for State and Local Law Enforcement. At the Secretary's discretion, other departmental offices or programs may become members of the CTAB.

The CTAB is required to meet regularly to discuss intelligence and coordinate ongoing threat mitigation efforts and departmental activities. Coordination efforts are to include other Federal, State, local, tribal, territorial, and private sector partners. The CTAB is required to make recommendations to the Secretary for action if required.

This section requires the CTAB to advise the Secretary on the issuance of terrorism alerts, and to provide a report to Congress within 90 days of the enactment of this legislation on the activities of the CTAB. In addition, the Secretary is required to provide written notification to Congress and briefings on any changes to or identification of new mechanisms to coordinate threats.

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 bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill 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, May 22, 2019.

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 S. 411, the Counter Threats Advisory Board Act of 2019.

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.

Enclosure.

S. 411, Counter Threats Advisory Board Act of 2019			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 15, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	n.e.
Pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

n.e. = not estimated; * = between zero and \$500,000.

S. 411 would establish an advisory board in the Department of Homeland Security (DHS). The board would consist of senior representatives of operational agencies within DHS (such as Customs and Border Protection and the Coast Guard) and offices in DHS headquarters, including the Office of Intelligence and Analysis. The board would meet on a regular basis to coordinate departmental activities to counter threats for two years.

DHS is currently carrying out activities similar to those required by the bill, and thus CBO estimates that implementing S. 411 would have no significant effect on DHS spending.

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 BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 411 as reported are shown as follows (existing law proposed to be omitted

is enclosed in brackets, 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) * * *

(b) * * *

Sec. 1. * * *

* * * * *

Sec. 210F. Departmental coordination on counter threats.

* * * * *

TITLE II—INFORMATION ANALYSIS

* * * * *

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

* * * * *

SEC. 210F. DEPARTMENTAL COORDINATION ON COUNTER THREATS.

(a) *ESTABLISHMENT.*—There is authorized in the Department, for a period of 2 years beginning after the date of enactment of this section, a Counter Threats Advisory Board (in this section referred to as the “Board”) which shall—

(1) be composed of senior representatives of departmental operational components and headquarters elements; and

(2) coordinate departmental intelligence activities and policy and information related to the mission and functions of the Department that counter threats.

(b) *CHARTER.*—There shall be a charter to govern the structure and mission of the Board, which shall—

(1) direct the Board to focus on the current threat environment and the importance of aligning departmental activities to counter threats under the guidance of the Secretary; and

(2) be reviewed and updated as appropriate.

(c) *MEMBERS.*—

(1) *IN GENERAL.*—The Board shall be composed of senior representatives of departmental operational components and headquarters elements.

(2) *CHAIR.*—The Under Secretary for Intelligence and Analysis shall serve as the Chair of the Board.

(3) *MEMBERS.*—The Secretary shall appoint additional members of the Board from among the following:

(A) The Transportation Security Administration.

(B) U.S. Customs and Border Protection.

(C) U.S. Immigration and Customs Enforcement.

(D) The Federal Emergency Management Agency.

(E) The Coast Guard.

(F) U.S. Citizenship and Immigration Services.

(G) The United States Secret Service.

(H) The Cybersecurity and Infrastructure Security Agency.

(I) The Office of Operations Coordination.

(J) The Office of the General Counsel.

(K) The Office of Intelligence and Analysis.

(L) The Office of Strategy, Policy, and Plans.

(M) The Science and Technology Directorate.

(N) The Office for State and Local Law Enforcement.

(O) The Privacy Office.

(P) The Office for Civil Rights and Civil Liberties.

(Q) Other departmental offices and programs as determined appropriate by the Secretary.

(d) MEETINGS.—The Board shall—

(1) meet on a regular basis to discuss intelligence and coordinate ongoing threat mitigation efforts and departmental activities, including coordination with other Federal, State, local, tribal, territorial, and private sector partners; and

(2) make recommendations to the Secretary.

(e) TERRORISM ALERTS.—The Board shall advise the Secretary on the issuance of terrorism alerts under section 203.

(f) PROHIBITION ON ADDITIONAL FUNDS.—No additional funds are authorized to carry out this section.