

BIOMETRIC IDENTIFICATION
TRANSNATIONAL MIGRATION ALERT
PROGRAM AUTHORIZATION ACT OF 2018

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

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



DECEMBER 5, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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BIOMETRIC IDENTIFICATION TRANSNATIONAL MIGRATION ALERT PROGRAM AUTHORIZATION ACT OF 2018

DECEMBER 5, 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. 6439]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which 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, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of H.R. 6439, the Biometric Identification Transnational Migration Alert Program Authorization Act of 2018, is to authorize the Biometric Identification Transnational Migration Alert Program (BITMAP) within the Department of Homeland Security (DHS or the Department). This Act codifies a program that already exists within U.S. Immigration and Customs Enforcement-Homeland Security Investigations (ICE-HSI). This Act instructs the Secretary of Homeland Security (Secretary) to establish

partnerships with foreign governments for the voluntary collection and sharing of biometric and biographic information. It also requires the Secretary to train partner countries' law enforcement officials to properly collect and disseminate biometric and biographic information, and to compare collected information with certain U.S. data sources. The goal of BITMAP is to reduce and address national security, border security, and terrorism threats before those threats reach U.S. borders.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The U.S. Government is responsible for “securing approximately 7,000 miles of land border, 95,000 miles of shoreline, 328 ports of entry, and the associated air and maritime space.”¹ Millions of foreign nationals enter the U.S. every year.² The vast majority of those entering the United States are entering legally for business and tourism. However, some foreign nationals entering the United States pose a potential threat to national security or public safety. Human traffickers, drug smugglers, and potential terrorists attempt to enter the U.S.—both legally and illegally.³

One way that the United States works to prevent the entry of potential threat actors is to form partnerships with foreign governments to prevent them from ever reaching the U.S. border.⁴ The BITMAP is an extension of these partnerships and security operations that go beyond U.S. borders. Participating BITMAP countries collect biographical and biometric data from individuals they have identified as being a potential threat.⁵

The data collected through BITMAP is shared with U.S. and partner countries' law enforcement and intelligence community members to assess and monitor potential threats.⁶ These threats include human traffickers, drug smugglers, and terrorists who are bound for the U.S. border or port of entry.⁷ This data is used to assess migration trends of special interest individuals and assist DHS in developing more refined strategies for preventing threats from reaching U.S. borders.⁸ In 2018, more than a dozen countries

¹*The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2018) (statement of Robert E. Perez, Acting Deputy Comm'r, Dep't of Homeland Sec.), available at <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Perez-2018-09-18.pdf>.

²Int'l Trade Admin., Nat'l Travel & Tourism Office, Fast Facts: United States Travel and Tourism Industry (2017), available at http://tinet.ita.doc.gov/outreachpages/download_data_table/Fast_Facts_2017.pdf; see also Lori Robertson, Illegal Immigration Statistics, Fact Check (June 28, 2018), <https://www.factcheck.org/2018/06/illegal-immigration-statistics/>.

³See generally U.S. Gov't Accountability Office, GAO-17-170, DHS Has Made Progress in Planning for a Biometric Air Exit System and Reporting Overstays, but Challenges Remain (2017), available at <https://www.gao.gov/assets/690/683036.pdf> (“[visa] overstays could pose significant homeland security risks. 5 of the 19 September 11, 2001, hijackers were overstays”); *Securing the Border: Biometric Entry and Exit at our Ports of Entry: Roundtable Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); see generally U.S. Immigration & Customs Enforcement, Human Trafficking and Smuggling, available at <https://www.ice.gov/factsheets/human-trafficking> (highlighting specific instances where people are trafficked into the U.S. illegally or with legal visas for the purpose of exploitation).

⁴U.S. Immigration and Customs Enforcement, International Operations (2018), available at <https://www.ice.gov/international-operations>.

⁵Dep't of Homeland Sec., Operations Analysis—Biometric Identification Transnational Migration Alert Program (BITMAP) Project, (2016), available at https://www.dhs.gov/sites/default/files/publications/BITMAP_2016%2009%2027.pdf.

⁶*Id.*

⁷Marc R. Rosenblum et al., Cong. Research Serv., R42969, *Border Security: Understanding Threats at U.S. Borders* (Feb 21, 2013), available at <https://fas.org/sgp/crs/row/R41349.pdf>.

⁸Dep't of Homeland Sec., *supra* note 5.

are participating in BITMAP, with additional countries regularly joining.⁹

The 9/11 Commission Report and the Implementing Recommendations of the 9/11 Commission Act of 2007 stressed the importance and value of collecting biometric data at U.S. border entry locations to keep the nation safe.¹⁰ BITMAP has taken the very same principles of the biometric data collection in the U.S. and expanded those capabilities to partner countries.¹¹

The BITMAP program is a vital component of DHS's ability to detect potential threats beyond our borders. H.R. 6439 codifies the program to solidify the role BITMAP is already playing in identifying and tracking members of transnational criminal organizations, smugglers, and terrorists.¹² To ensure appropriate congressional oversight, the bill requires the DHS Secretary to submit reports and brief the appropriate congressional committees on BITMAP's progress and implementation.¹³

III. LEGISLATIVE HISTORY

Rep. Michael McCaul, (R-TX-10) introduced H.R. 6439 on July 19, 2018, with Representatives Don Bacon (R-NE-2), John Katko (R-NY-24), Debbie Lesko (R-AZ-8), Brian K. Fitzpatrick (R-PA-8), Clay Higgins (R-LA-3), Mike Rogers (R-AL-3), Peter T. King (R-NY-2), Martha McSally (R-AZ-2), William R. Keating (D-MA-9), and Daniel M. Donovan Jr. (R-NY-11). Representatives John Ratcliffe (R-TX-4), and Mike Gallagher (R-WI-8) joined as cosponsors on July 23, 2018.

The Act passed the House Committee on Homeland Security on July 24, 2018. The Act passed the House on September 4, 2018 by a vote of 272 to 119.

The Act was referred to the Committee on Homeland Security and Governmental Affairs on September 5, 2018. The Committee considered H.R. 6439 at a business meeting on September 26, 2018. During the business meeting, Senators Doug Jones and Tom Carper offered an amendment that made several changes, including requiring: (1) the program to expunge erroneously-captured U.S. citizen data from the BITMAP database; (2) a Government Accountability Office (GAO) audit; (3) detailed information for the written report the Secretary must provide to Congress; and (4) a six-year sunset on the authorization.

Senators Jones and Carper offered a modification to the amendment. The modification made the following changes: (1) created an exception in the expungement provision that allows law enforcement to retain U.S. citizen data that is captured for a specific law enforcement purpose; (2) consolidated the details required in the

⁹Combating Transnational Gangs Through Information Sharing: Hearing Before the H. Comm. on Homeland Sec., Subcomm. on Counterterrorism and Intelligence, 115th Cong. (2018) (statement of Raymond Villanueva, Ass. Dir. of Int'l Operations, U.S. Immigration and Customs Enforcement), *available at* <https://www.ice.gov/sites/default/files/documents/Speech/2018/180523villanueva.pdf>.

¹⁰Dep't of Homeland Sec., Privacy Impact Assessment Update for the Biometric Exit Mobile Program (2018), *available at* <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp026a-bemobile-june2018.pdf>.

¹¹*Threats to the Homeland: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2018) (statement of Elaine C. Duke, Acting Sec'y of Homeland Sec., Dep't of Homeland Sec.) *available at* <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Duke-2017-09-27.pdf>.

¹²See *Combating Transnational Gangs Through Information Sharing*, *supra* note 9.

¹³H.R. 6439, 115th Cong. (2018).

written report the Secretary must provide to Congress; (3) requires the Secretary to brief the appropriate congressional committees; and (4) changed the GAO audit requirement from every two years to every three years. The amendment as modified was adopted by voice vote with Senators Johnson, Portman, Lankford, Enzi, Hoeven, McCaskill, Carper, Heitkamp, Peters, Hassan, Harris, and Jones present.

The Act, as amended, was ordered reported favorably by a voice vote en bloc. The Senators present for voice vote were Johnson, Portman, Lankford, Enzi, Hoeven, McCaskill, Carper, Heitkamp, Peters, Hassan, Harris, and Jones. Senator Kamala Harris asked to be recorded as voting “no” for the record.

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

Section 1. Short title

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

Section 2. Biometric Identification Transnational Migration Alert Program

Subsection (a) codifies BITMAP. BITMAP is established to identify, track, and reduce national security, terrorist, or border security threats before they reach the U.S. international border.

The subsection establishes the Secretary’s obligations, acting through the Director of Immigration and Customs Enforcement, to carry out BITMAP. The Secretary must work with the Secretary of State, the heads of other Federal agencies, and foreign government officials to encourage voluntary sharing of biometric and biographic data to help determine which foreign nationals pose a security threat. Under this subsection, the Secretary must also provide training and equipment to partner countries so that they can voluntarily collect the necessary BITMAP data and learn to collect the data properly. Partner countries must also be trained and equipped to compare BITMAP data to U.S. databases. The subsection also requires the Secretary to ensure that the data collected for BITMAP is in compliance with policies established by the Privacy Officer.

The subsection establishes that the Secretary is required to include relevant parts of the Department in BITMAP and seek out participation from other Federal agencies. It also establishes the requirements for the Secretary to follow when incorporating a new partner country into BITMAP. When entering into new BITMAP agreements with foreign countries the agreements must include specific information, objectives, and training. The new agreements must also be made in consultation with the Secretary of State.

There are congressional reporting requirements for BITMAP. Sixty days prior to entering into a new agreement, the Secretary must provide the appropriate congressional committees a copy of the agreement.

The subsection also requires that all data collected on U.S. citizens for BITMAP be expunged from all databases unless the information was gathered for law enforcement purposes.

Subsection (b) requires the Secretary to provide a report to the appropriate congressional committees and specifies what information must be provided in that report. The report must be provided within the first 180 days of the Act's enactment and then annually for the following five years.

Subsection (c) requires the Secretary to brief the appropriate congressional committees promptly after providing the reports required by subsection (b). The briefing must specify the individuals enrolled in BITMAP who were arrested and of any asylum claims made by individuals enrolled in BITMAP.

Subsection (d) requires GAO to conduct an audit of BITMAP no later than six months after the enactment of this Act and every three years thereafter. The audit must study the effectiveness of BITMAP.

Subsection (e) sunsets the authorization of the program six years after it is enacted.

Subsection (f) amends the table of contents of the Homeland Security Act of 2002.

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 statement 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, October 3, 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 Department of Homeland Security legislation ordered reported by the Committee on Homeland Security and Governmental Affairs on September 26, 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 September 26, the Senate Committee on Homeland Security and Governmental Affairs ordered two pieces of legislation to be reported:

- H.R. 5206, the Office of Biometric Identity Management Authorization Act of 2018; and

- H.R. 6439, the Biometric Identification Transnational Migration Alert Program Authorization Act of 2018.

Each act would mostly codify a current program in the Department of Homeland Security (DHS). CBO estimates that enacting the legislation would not significantly affect spending by DHS.

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

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

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

On June 28, 2018, CBO transmitted a cost estimate for H.R. 5206 as reported by the House Committee on Homeland Security on June 21, 2018. On August 6, 2018, CBO transmitted a cost estimate for H.R. 6439 as ordered reported by the House Committee on Homeland Security on July 24, 2018. CBO's estimates of the two versions for each piece of 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

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, 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

* * * * *

SEC. 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. * * *

* * * * *

TITLE IV—BORDER, MARITIME, AND TRANSPORTATION SECURITY

* * * * *

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

* * * * *

Subtitle D—Immigration Enforcement Functions

* * * * *

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;

(4) provide partner countries with training, guidance, and best practices recommendations regarding the enrollment of individuals in BITMAP; and

(5) 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 sets forth program goals for such country, includes training, guidance, and best practices recommendations regarding the enrollment of individuals in BITMAP, and 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;
- (3) goals for BITMAP operations in the foreign country; and
- (4) the terms and conditions for Department personnel operating at such location.

(f) *CAPTURED INFORMATION OF UNITED STATES CITIZENS.*—The Secretary shall ensure that any biometric and biographic identification data of United States citizens that is captured by BITMAP operations is expunged from all databases to which such data was uploaded, unless the information is retained for specific law enforcement or intelligence purposes.