

SHADOW WOLVES ENHANCEMENT ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2541

TO AUTHORIZE THE RECLASSIFICATION OF THE
TACTICAL ENFORCEMENT OFFICERS (COMMONLY KNOWN
AS THE "SHADOW WOLVES") IN THE HOMELAND
SECURITY INVESTIGATIONS TACTICAL PATROL UNIT
OPERATING ON THE LANDS OF THE TOHONO O'ODHAM NATION
AS SPECIAL AGENTS



DECEMBER 7, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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SHADOW WOLVES ENHANCEMENT ACT

DECEMBER 7, 2022.—Ordered to be printed

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

R E P O R T

[To accompany S. 2541]

Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2541), to authorize the reclassification of the tactical enforcement officers (commonly known as the “Shadow Wolves”) in the Homeland Security Investigations tactical patrol unit operating on the lands of the Tohono O’odham Nation as special agents, having considered the same, reports favorably thereon with an amendment, in the native of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2541, the Shadow Wolves Enhancement Act, authorizes U.S. Immigration and Customs Enforcement (ICE) to reclassify officers assigned to the tactical patrol unit on Tohono O’odham Nation land, commonly known as Shadow Wolves, as ICE special agents, upon the completion of certain training obligations. The bill also requires the Department of Homeland Security (DHS) to develop a strategy for retaining and recruiting Shadow Wolves, and for expanding comparable units. The bill then requires the Government

Accountability Office (GAO) to assess the effectiveness of the DHS strategy and provide recommendations for improvements.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Native American nations are vital to the security, livelihoods, and culture along the United States' borders. There are approximately seven Tribal nations that span the U.S.-Mexico border, including the Tohono O'odham Nation, which governs the second largest Indigenous land holding in the United States.¹ The Nation spans 2.8 million acres in southern Arizona's Sonoran Desert, including 76 miles along the U.S.-Mexico border.² The Tohono O'odham Nation's ancestral lands pre-date the Gadsden Purchase of 1853 that established the current U.S.-Mexico border, which did not take into consideration the effect that such a national border would have on native populations.³ Today, the Tohono O'odham Nation straddles the border, stretching into the Mexican state of Sonora, where about 2,000 of the tribe's 34,000 members live.⁴

With the increasing focus of enforcement of the Southern border in the past century, the relationship between the U.S. government and the Tohono O'odham Nation has at times become strained.⁵ Both the Tohono O'odham Nation and U.S. Border Patrol have faced the mounting challenges of human trafficking, drug and weapons smuggling, and other illegal activities in their territory but have struggled to find a balance of prioritizing security while respecting the sovereignty of the Tohono O'odham Nation.⁶

In an effort to strike this balance, the Shadow Wolves law enforcement unit was established by an Act of Congress in 1974 to create a native hiring preference for DHS patrol units that operate on Tribal lands. Shadow Wolves are members of the Tohono O'odham Nation who work for the Homeland Security Investigations (HSI) division of ICE.⁷ Shadow Wolves patrol the 76-mile stretch of land the Nation shares with Mexico and are known for their ability to track drug smugglers.⁸ The name "Shadow Wolves" refers to the way the unit hunts like a wolf pack, which includes searching for any kind of physical evidence (footprints, clothing, tire tracks, thread, etc.) to track smugglers.⁹ To be eligible for membership in the Shadow Wolves, individuals must have at least one-quarter Native American ancestry, which is determined and approved by the Tohono O'odham Nation.¹⁰ The unit improves relationships between DHS and Tribal communities, which have suffered historically from broken promises from the U.S. government,

¹ Indigenous Alliance Without Borders, Handbook on Indigenous Peoples' Border Crossing Rights Between the United States and Mexico (www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Call/IndigenousAllianceWithoutBorders.pdf) (accessed Jan. 17, 2022).

² Tohono O'odham Nation, History and Culture (www.tonation-nsn.gov/history-culture/) (accessed Jan. 17, 2022).

³ *Id.*

⁴ *A border tribe, and the wall that will divide it*, USA Today Network (Sept. 20, 2017) (www.usatoday.com/story/border-wall/story/tohono-oodham-nation-arizona-tribe/582487001).

⁵ *Id.*

⁶ *In Arizona Desert, Indian Trackers vs. Smugglers*, New York Times (March 7, 2007) (www.nytimes.com/2007/03/07/washington/07wolves.html?_r=1&hp&oref=slogin).

⁷ U.S. Customs and Immigration Enforcement, *ICE Shadow Wolves* (Oct. 2021) (www.ice.gov/factsheets/shadow-wolves#:~:text=The%20Shadow%20the,of%20land%20shared%20with%20Mexico).

⁸ *Id.*

⁹ *Id.*

¹⁰ *In Arizona Desert, Indian Trackers vs. Smugglers*, New York Times (March 7, 2007) (www.nytimes.com/2007/03/07/washington/07wolves.html?_r=1&hp&oref=slogin).

over-policing, and most recently, the border wall construction that damaged Tribal cultural sites and separated members of the Nation across the border.¹¹

In addition to being accepted by the Tohono O’odham Nation, the Shadow Wolves units have proven to be highly effective in disrupting cross-border smuggling activities on Tribal lands.¹² Shadow Wolves have led and participated in interdiction and investigative efforts that have resulted in 437 drug and immigration arrests and the seizure of over 117,264 pounds of drugs, 45 weapons, 251 vehicles and \$847,928 in U.S. currency, between 2010 and 2020.¹³

They are a key component of the Native American Targeted Investigations of Violent Enterprises (NATIVE) Task Force, a High Intensity Drug Trafficking Area (HIDTA) initiative formed in August 2013, to disrupt and dismantle drug trafficking organizations operating within the Tohono O’odham Nation.¹⁴ As part of the NATIVE Task Force, the Shadow Wolves played an important role in Operation Rocky Top 2, which dismantled a component of the Sinaloa Cartel.¹⁵

This bill reclassifies Shadow Wolves from tactical officers to special agents, which allows them to better investigate and track cross-border criminal activity. Currently, Shadow Wolves are classified as tactical officers under HSI. However, HSI has phased out tactical officers in favor of special agents who can carry out a broader range of border security activities, including but not limited to investigating terrorism, human trafficking, drug smuggling, and child exploitation.¹⁶ HSI gave other tactical officers the option to become special agents, but Shadow Wolves were not afforded the same opportunity due to their special classification. This bill seeks to rectify this disparity and modernize the Shadow Wolves units. This bill also provides the ability to expand the Shadow Wolves program to other parts of the Southern border, as well as expanding comparable units at the U.S.-Mexico and U.S.-Canada borders. This bill enhances border security while preserving the important legacy of this unit.

III. LEGISLATIVE HISTORY

Senator Kyrsten Sinema (D–AZ) introduced S. 2541, the Shadow Wolves Enhancement Act, on July 29, 2021, with Senator John Hoeven (R–ND). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2541 at a business meeting on November 3, 2021. During the business meeting, a substitute amendment, which made technical corrections, was offered by Senator Sinema and adopted by voice vote *en bloc*. Senators present for the vote on the substitute amendment were: Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley. The bill, as amended by the Sinema Substitute

¹¹A *border tribe, and the wall that will divide it*, USA Today Network (Sept. 20, 2017) (www.usatoday.com/story/tohono-oodham-nation-arizona-tribe/582487001).

¹²U.S. Customs and Immigration Enforcement, *ICE Shadow Wolves* (Oct. 2021) (www.ice.gov/factsheets/shadow-wolves#:text=The%20Shadow%20Wolves%20are%20the,of%20land%20shared%20with%20Mexico).

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶U.S. Customs and Immigration Enforcement, *ICE Criminal Investigator* (Oct. 2021) (www.ice.gov/careers/criminal-investigator).

Amendment, was ordered reported favorably by voice vote *en bloc*. Senators present for the vote on the bill were: Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley.

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

Section 1. Short title

This section provides the short title for the bill as the “Shadow Wolves Enhancement Act”.

Sec. 2. Reclassification of Shadow Wolves as GS-1811 special agents

This section gives authority to the Director of ICE to reclassify Shadow Wolves from GS-1801 tactical enforcement to GS-1811 special agents upon successful completion of two specified training programs. This section also gives the Director of ICE authority to reclassify any Shadow Wolves hired as part of a comparable unit, regardless of location, upon successful completion of the training, with the approval and consent of the appropriate Indian tribe.

Sec. 3. Expansion of Shadow Wolves Program

This section requires the Secretary of Homeland Security to create a plan to retain existing Shadow Wolves members, recruit new members, and expand the program to relevant Tribal areas along both the international borders between the United States and Canada and between the United States and Mexico, with the approval and consent of the appropriate Indian tribe.

Sec. 4. GAO Report

One year after completion of the strategy required under Section 3, and annually for the following two years, this section requires the Comptroller General to review DHS’s Shadow Wolves expansion strategy to assess its effectiveness and make recommendations to improve the strategy.

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, March 4, 2022.

Hon. GARY PETERS,
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. 2541, the Shadow Wolves Enhancement Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 2541, Shadow Wolves Enhancement Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 3, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 2541 would authorize Immigration and Customs Enforcement (ICE) to convert officers in the Native American tactical patrol unit in the Tohono O'odham Nation, referred to as "Shadow Wolves," to a special agent pay status after meeting certain training requirements. The bill also would require ICE to develop a strategy within 90 days to retain and recruit Shadow Wolves and expand the Shadow Wolves program. Additionally, S. 2541 would require the Government Accountability Office (GAO) to report on the effectiveness of the ICE strategy annually for three years.

There are currently eight Shadow Wolves employed by ICE, five of whom meet the training requirements for conversion to new pay status. CBO assumes officers who do not currently meet the training requirements will complete the training and all eight officers will convert to the new status within a year of eligibility. Based on those assumptions and information from the agency, CBO estimates implementing S. 2541 would cost ICE less than \$500,000 over the 2022–2026 period for training, additional salaries, and developing the recruitment strategy. Furthermore, using information

about the cost of similar activities, CBO estimates the cost of producing the GAO reports would be approximately \$500,000 over the 2022–2026 period. Taken together, CBO estimates the bill would cost about \$1 million over the 2022–2026 period; such spending would be subject to the availability of appropriated funds.

On January 11, 2022, CBO transmitted a cost estimate for H.R. 5681, the Shadow Wolves Enhancement Act, as ordered reported by the House Committee on Homeland Security on October 26, 2021. That bill is similar to S. 2541, as described above, and CBO’s estimates for the bills are the same.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

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

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.