

117TH CONGRESS
2D SESSION

S. 4645

To restrict the flow of illicit drugs into the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2022

Mr. PETERS (for himself and Mr. HAWLEY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To restrict the flow of illicit drugs into the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Enhancing DHS Drug Seizures Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Drug testing and detection tools.

Sec. 3. Coordination and information sharing.

Sec. 4. Danger pay for Department of Homeland Security personnel deployed abroad.

- Sec. 5. Improving training to foreign-vetted law enforcement or national security units.
- Sec. 6. Enhancing the operations of U.S. Customs and Border Protection in foreign countries.
- Sec. 7. Drug seizure data improvement.
- Sec. 8. Drug performance measures.
- Sec. 9. Penalties for hindering immigration, border, and customs controls.
- Sec. 10. Modification of Homeland Security Investigations' authority for aircraft seizure and forfeiture.

1 SEC. 2. DRUG TESTING AND DETECTION TOOLS.

2 The Secretary of Homeland Security shall enhance
 3 the research and development needs and activities of the
 4 Department of Homeland Security related to fentanyl and
 5 other illicit drugs in accordance with section 309(a) of the
 6 Homeland Security Act of 2002 (6 U.S.C. 189(a))
 7 through coordination and communication with the Na-
 8 tional Laboratories (as defined in section 2 of the Energy
 9 Policy Act of 2005 (42 U.S.C. 15801)) or other appro-
 10 priate scientific research and development entities.

11 SEC. 3. COORDINATION AND INFORMATION SHARING.

12 (a) PUBLIC-PRIVATE PARTNERSHIPS.—

13 (1) STRATEGY.—Not later than 180 days after
 14 the date of enactment of this Act, the Secretary of
 15 Homeland Security shall develop a strategy to
 16 strengthen existing and establish new public-private
 17 partnerships with shipping, chemical, and pharma-
 18 ceutical industries to assist with early detection and
 19 interdiction of illicit drugs and precursor chemicals.

20 (2) CONTENTS.—The strategy required under
 21 paragraph (1) shall contain goals and objectives for

1 employees of the Department of Homeland Security
2 to ensure the tactics, techniques, and procedures
3 gained from the public-private partnerships de-
4 scribed in paragraph (1) are included in policies,
5 best practices, and training for the Department.

6 (3) IMPLEMENTATION PLAN.—Not later than
7 180 days after developing the strategy required
8 under paragraph (1), the Secretary of Homeland Se-
9 curity shall develop an implementation plan for the
10 strategy, which shall outline departmental lead and
11 support roles, responsibilities, programs, and
12 timelines for accomplishing the goals and objectives
13 of the strategy.

14 (4) BRIEFING.—The Secretary of Homeland
15 Security shall provide annual briefings to the Com-
16 mittee on Homeland Security and Governmental Af-
17 fairs of the Senate and the Committee on Homeland
18 Security of the House of Representatives regarding
19 the progress made in addressing the implementation
20 plan developed pursuant to paragraph (3).

21 (b) ASSESSMENT OF DRUG TASK FORCES.—

22 (1) IN GENERAL.—The Secretary of Homeland
23 Security shall conduct an assessment of the
24 counterdrug task forces in which the Department of
25 Homeland Security, including components of the De-

1 partment, participates in or leads, which shall in-
2 clude—

3 (A) areas of potential overlap;

4 (B) opportunities for sharing information
5 and best practices;

6 (C) how the Department’s processes for
7 ensuring accountability and transparency in its
8 vetting and oversight of partner agency task
9 force members align with best practices; and

10 (D) corrective action plans for any capa-
11 bility limitations and deficient or negative find-
12 ings identified in the report for any such task
13 forces led by the Department.

14 (2) REPORT.—Not later than 180 days after
15 the date of enactment of this Act, the Secretary of
16 Homeland Security shall submit a report to the
17 Committee on Homeland Security and Governmental
18 Affairs of the Senate and the Committee on Home-
19 land Security of the House of Representatives that
20 contains a summary of the results of the assessment
21 conducted pursuant to paragraph (1).

22 (3) CORRECTIVE ACTION PLAN.—The Secretary
23 of Homeland Security shall—

24 (A) implement the corrective action plans
25 described in paragraph (1)(D) immediately

1 after the submission of the report pursuant to
2 paragraph (2); and

3 (B) provide annual briefings to the Com-
4 mittee on Homeland Security and Govern-
5 mental Affairs of the Senate and the Committee
6 on Homeland Security of the House of Rep-
7 resentatives regarding the progress made in im-
8 plementing the corrective action plans.

9 (c) COMBINATION OF BRIEFINGS.—The Secretary of
10 Homeland Security may combine the briefings required
11 under subsections (a)(4) and (b)(3).

12 **SEC. 4. DANGER PAY FOR DEPARTMENT OF HOMELAND SE-**
13 **CURITY PERSONNEL DEPLOYED ABROAD.**

14 Section 151 of the Foreign Relations Authorization
15 Act, Fiscal Years 1990 and 1991 (Public Law 101–246;
16 5 U.S.C. 5928 note) is amended by inserting “the Depart-
17 ment of Homeland Security,” after “Investigation,”.

18 **SEC. 5. IMPROVING TRAINING TO FOREIGN-VETTED LAW**
19 **ENFORCEMENT OR NATIONAL SECURITY**
20 **UNITS.**

21 The Secretary of Homeland Security, or the designee
22 of the Secretary, may waive reimbursement for salary ex-
23 penses of Department of Homeland Security for personnel
24 providing training to foreign-vetted law enforcement or
25 national security units in accordance with an agreement

1 with the Department of Defense pursuant to section 1535
2 of title 31, United States Code.

3 **SEC. 6. ENHANCING THE OPERATIONS OF U.S. CUSTOMS**
4 **AND BORDER PROTECTION IN FOREIGN**
5 **COUNTRIES.**

6 (a) OPERATIONS IN FOREIGN COUNTRIES AND SUP-
7 PORT TO FOREIGN AUTHORITIES.—

8 (1) IN GENERAL.—The Tariff Act of 1930 (19
9 U.S.C. 1304 et seq.) is amended by inserting after
10 section 629 the following:

11 **“SEC. 629A. OPERATIONS IN FOREIGN COUNTRIES AND**
12 **SUPPORT TO FOREIGN AUTHORITIES.**

13 “(a) IN GENERAL.—Notwithstanding any other pro-
14 vision of law, employees of U.S. Customs and Border Pro-
15 tection and other customs officers designated in accord-
16 ance with section 401(i) may provide the support de-
17 scribed in subsection (b) to authorities of the government
18 of a foreign county, including by conducting joint oper-
19 ations with appropriate law enforcement officials within
20 the territory of that country, if an arrangement has been
21 entered into between the Government of the United States
22 and the government of that country under which the provi-
23 sion of such support by U.S. Customs and Border Protec-
24 tion is permitted.

1 “(b) SUPPORT DESCRIBED.—Support described in
2 this subsection is air and marine support for—

3 “(1) the detection, deterrence, interdiction, and
4 disruption of—

5 “(A) the transit of illegal drugs into the
6 United States;

7 “(B) the illicit traffic of persons and goods
8 into the United States;

9 “(C) terrorist threats to the United States;
10 and

11 “(D) other threats to the security or econ-
12 omy of the United States;

13 “(2) emergency humanitarian efforts; and

14 “(3) law enforcement capacity-building ef-
15 forts.”.

16 (2) CONFORMING AMENDMENT.—Section 411(f)
17 of the Homeland Security Act of 2002 (6 U.S.C.
18 211(f)) is amended—

19 (A) by redesignating paragraph (4) as
20 paragraph (5); and

21 (B) by inserting after paragraph (3) the
22 following:

23 “(4) PERMISSIBLE ACTIVITIES.—Air and Ma-
24 rine Operations may provide support to authorities
25 of the government of a foreign county, including by

1 conducting aviation and marine operations, in con-
 2 junction with appropriate government officials from
 3 the United States and such foreign country in ac-
 4 cordance with section 629A of the Tariff Act of
 5 1930.”.

6 (b) CLAIMS AGAINST U.S. CUSTOMS AND BORDER
 7 PROTECTION FOR ACTIONS IN FOREIGN COUNTRIES.—
 8 The Tariff Act of 1930 (19 U.S.C. 1304 et seq.) is further
 9 amended by inserting after section 629A, as added by sub-
 10 section (a)(1), the following:

11 **“SEC. 629B. PAYMENT OF CLAIMS AGAINST U.S. CUSTOMS**
 12 **AND BORDER PROTECTION FOR ACTIONS IN**
 13 **FOREIGN COUNTRIES.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) COVERED CLAIM.—The term ‘covered
 16 claim’ means a claim against the United States—

17 “(A) for—

18 “(i) damage to, or loss of, real prop-
 19 erty of a foreign country or a political sub-
 20 division or resident of a foreign country,
 21 including damage or loss incident to use
 22 and occupancy of such real property;

23 “(ii) damage to, or loss of, personal
 24 property of a foreign country or a political
 25 subdivision or resident of a foreign coun-

1 try, including property bailed to the United
2 States; or

3 “(iii) personal injury to, or death of,
4 a resident of a foreign country; and

5 “(B) if the damage, loss, personal injury,
6 or death—

7 “(i) that occurred in a foreign coun-
8 try; and

9 “(ii) was caused by, or was otherwise
10 incident to the activities of, U.S. Customs
11 and Border Protection.

12 “(2) FOREIGN COUNTRY.—The term ‘foreign
13 country’ includes any place under the jurisdiction of
14 the United States in a foreign country.

15 “(b) IN GENERAL.—The Secretary of Homeland Se-
16 curity may settle and pay a covered claim in an amount
17 that does not exceed \$100,000 from amounts appropriated
18 for the operating expenses of U.S. Customs and Border
19 Protection.

20 “(c) APPOINTMENT OF APPROVAL AUTHORITIES.—
21 The Secretary of Homeland Security, or an employee of
22 the Department of Homeland Security who has been des-
23 ignated by the Secretary, may appoint, under such regula-
24 tions as the Secretary may prescribe—

1 “(1) a claims commission, composed of one or
2 more employees of the Department of Homeland Se-
3 curity, to settle and pay covered claims that do not
4 exceed \$100,000; and

5 “(2) an employee of the Department to act as
6 an approval authority for settlement and payment of
7 covered claims that do not exceed \$10,000.

8 “(d) PAYMENT OF CLAIMS EXCEEDING \$100,000.—

9 “(1) IN GENERAL.—If the Secretary of Home-
10 land Security determines that a covered claim that
11 exceeds \$100,000 is meritorious, the Secretary
12 may—

13 “(A) pay the claimant \$100,000; and

14 “(B) report to the Secretary of the Treas-
15 ury, for payment under section 1304 of title 31,
16 United States Code, the amount of the claim
17 that—

18 “(i) exceeds \$100,000; and

19 “(ii) the Secretary of Homeland Secu-
20 rity determines is meritorious.

21 “(2) ANNUAL REPORT.—The Secretary shall
22 submit an annual report to the Committee on Home-
23 land Security and Governmental Affairs of the Sen-
24 ate and the Committee on Homeland Security of the
25 House of Representatives that lists the claims dur-

1 ing the reporting period that exceeded \$100,000, in-
2 cluding the amount of the claim paid and a descrip-
3 tion of the nature of the claim. The report shall be
4 submitted in an unclassified form, but may include
5 a classified annex.

6 “(e) LIMITATIONS.—

7 “(1) CLAIMS CONSIDERED.—The claim of an
8 insured may be considered under this section, but
9 the claim of a subrogee may not be considered under
10 this section.

11 “(2) TIME LIMITATION ON FILING OF
12 CLAIMS.—A covered claim may not be filed after the
13 date that is 2 years after the occurrence of the dam-
14 age, loss, personal injury, or death that is the sub-
15 ject of the claim.

16 “(3) FULL SATISFACTION REQUIRED.—Except
17 as provided in subsection (d), the Secretary of
18 Homeland Security may not settle or pay a covered
19 claim unless the amount of the payment is accepted
20 by the claimant as full satisfaction for the claim.”.

21 **SEC. 7. DRUG SEIZURE DATA IMPROVEMENT.**

22 (a) STUDY.—Not later than 180 days after the date
23 of the enactment of this Act, the Secretary of Homeland
24 Security shall conduct a study to identify any opportuni-
25 ties for improving drug seizure data collection.

1 (b) ELEMENTS.—The study required under sub-
2 section (a) shall—

3 (1) include a survey of the entities that use
4 drug seizure data; and

5 (2) address—

6 (A) any additional data fields or drug type
7 categories that should be added to U.S. Cus-
8 toms and Border Protection’s SEACATS, U.S.
9 Border Patrol’s e3 portal, and any other sys-
10 tems deemed appropriate by the Commissioner
11 of U.S. Customs and Border Protection, in ac-
12 cordance with the first recommendation in the
13 Government Accountability Office’s report
14 GAO–22–104725, entitled “Border Security:
15 CBP Could Improve How It Categorizes Drug
16 Seizure Data and Evaluates Training”;

17 (B) how all the Department of Homeland
18 Security components that collect drug seizure
19 data can standardize their data collection ef-
20 forts and deconflict drug seizure reporting;

21 (C) how the Department of Homeland Se-
22 curity can better identify, collect, and analyze
23 additional data on precursor chemicals, syn-
24 thetic drugs, novel psychoactive substances, and
25 analogues that have been seized by U.S. Cus-

1 toms and Border Protection and U.S. Immigra-
2 tion and Customs Enforcement; and

3 (D) how the Department of Homeland Se-
4 curity can improve its model of anticipated drug
5 flow into the United States.

6 (c) IMPLEMENTATION OF FINDINGS.—Following the
7 completion of the study required under subsection (a)—

8 (1) the Secretary of Homeland Security, in ac-
9 cordance with the Office of National Drug Control
10 Policy’s 2022 National Drug Control Strategy, shall
11 modify Department of Homeland Security drug sei-
12 zure policies and training programs, as appropriate,
13 consistent with the findings of such study; and

14 (2) the Commissioner of U.S. Customs and
15 Border Protection, in consultation with the Director
16 of U.S. Immigration and Customs Enforcement,
17 shall make any necessary updates to relevant sys-
18 tems to include the results of confirmatory drug
19 testing results.

20 **SEC. 8. DRUG PERFORMANCE MEASURES.**

21 Not later than 180 days after the date of enactment
22 of this Act, the Secretary of Homeland Security shall de-
23 velop and implement a Department of Homeland Security
24 plan—

1 (1) to ensure that components of the Depart-
 2 ment develop and maintain outcome-based perform-
 3 ance measures that adequately assess the success of
 4 drug interdiction; and

5 (2) for how to utilize the existing drug-related
 6 metrics and performance measures to achieve the
 7 missions, goals, and targets of the Department, and
 8 if additional metrics and measures are needed.

9 **SEC. 9. PENALTIES FOR HINDERING IMMIGRATION, BOR-**
 10 **DER, AND CUSTOMS CONTROLS.**

11 (a) PERSONNEL AND STRUCTURES.—Title II of the
 12 Immigration and Nationality Act (8 U.S.C. 1151 et seq.)
 13 is amended by inserting after section 274D the following:

14 **“SECTION 274E. DESTROYING OR EVADING BORDER CON-**
 15 **TROLS.**

16 “(a) ILLICIT SPOTTING.—

17 “(1) IN GENERAL.—It shall be unlawful to
 18 knowingly surveil, track, monitor, or transmit the lo-
 19 cation, movement, or activities of any officer or em-
 20 ployee of a Federal, State, or Tribal law enforce-
 21 ment agency with the intent to knowingly and will-
 22 fully—

23 “(A) secure a financial gain;

24 “(B) further the objectives of a criminal
 25 organization; and

1 “(C) violate—

2 “(i) section 274(a)(1)(A)(i);

3 “(ii) the customs and trade laws of
4 the United States (as defined in section
5 2(4) of the Trade Facilitation and Trade
6 Enforcement Act of 2015 (Public Law
7 114–125));

8 “(iii) any other Federal law relating
9 to transporting controlled substances, agri-
10 culture, or monetary instruments into the
11 United States; or

12 “(iv) any Federal law relating to bor-
13 der controls measures of the United
14 States.

15 “(2) PENALTY.—Any person who violates para-
16 graph (1) shall be fined under title 18, United
17 States Code, imprisoned for not more than 5 years,
18 or both.

19 “(b) DESTRUCTION OF UNITED STATES BORDER
20 CONTROLS.—

21 “(1) IN GENERAL.—It shall be unlawful to
22 knowingly and without lawful authorization—

23 “(A)(i) destroy or significantly damage any
24 fence, barrier, sensor, camera, or other physical
25 or electronic device deployed by the Federal

1 Government to control an international border
2 of, or a port of entry to, the United States; or

3 “(ii) otherwise construct, excavate, or
4 make any structure intended to defeat, cir-
5 cumvent or evade such a fence, barrier, sensor
6 camera, or other physical or electronic device
7 deployed by the Federal Government to control
8 an international border of, or a port of entry to,
9 the United States; and

10 “(B) in carrying out an act described in
11 paragraph (1), have the intent to knowingly
12 and willfully—

13 “(i) secure a financial gain;

14 “(ii) further the objectives of a crimi-
15 nal organization; and

16 “(iii) violate—

17 “(I) section 274(a)(1)(A)(i);

18 “(II) the customs and trade laws
19 of the United States (as defined in
20 section 2(4) of the Trade Facilitation
21 and Trade Enforcement Act of 2015
22 (Public Law 114–125));

23 “(III) any other Federal law re-
24 lating to transporting controlled sub-

1 stances, agriculture, or monetary in-
 2 struments into the United States; or

3 “(IV) any Federal law relating to
 4 border controls measures of the
 5 United States.

6 “(2) PENALTY.—Any person who violates para-
 7 graph (1) shall be fined under title 18, United
 8 States Code, imprisoned for not more than 5 years,
 9 or both.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
 11 for the Immigration and Nationality Act (8 U.S.C. 1101
 12 et seq.) is amended by inserting after the item relating
 13 to section 274D the following:

“Sec. 274E. Destroying or evading border controls.”.

14 **SEC. 10. MODIFICATION OF HOMELAND SECURITY INVES-**
 15 **TIGATIONS’ AUTHORITY FOR AIRCRAFT SEI-**
 16 **ZURE AND FORFEITURE.**

17 Section 46306(d)(1) of title 49, United States Code,
 18 is amended by striking “or the Commissioner of U.S. Cus-
 19 toms and Border Protection” and inserting “, the Com-
 20 missioner of U.S. Customs and Border Protection, or the
 21 Director of U.S. Immigration and Customs Enforce-
 22 ment.”.

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