

118TH CONGRESS }
1st Session

SENATE

{ REPORT
118-123

COMBATING CARTELS ON SOCIAL MEDIA
ACT OF 2023

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 61

TO REQUIRE THE SECRETARY OF HOMELAND SECURITY TO
IMPLEMENT A STRATEGY TO COMBAT THE EFFORTS OF
TRANSNATIONAL CRIMINAL ORGANIZATIONS TO RECRUIT
INDIVIDUALS IN THE UNITED STATES VIA SOCIAL MEDIA
PLATFORMS AND OTHER ONLINE SERVICES AND ASSESS
THEIR USE OF SUCH PLATFORMS AND SERVICES FOR
ILLICIT ACTIVITIES, AND FOR OTHER PURPOSES



DECEMBER 11, 2023.—Ordered to be printed

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COMBATING CARTELS ON SOCIAL MEDIA ACT OF 2023

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

R E P O R T

[To accompany S. 61]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 61) to require the Secretary of Homeland Security to implement a strategy to combat the efforts of transnational criminal organizations to recruit individuals in the United States via social media platforms and other online services and assess their use of such platforms and services for illicit activities, and for other purposes, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	3
IV. Section-by-Section Analysis of the Bill, as Reported	4
V. Evaluation of Regulatory Impact	6
VI. Congressional Budget Office Cost Estimate	6
VII. Changes in Existing Law Made by the Bill, as Reported	7

I. PURPOSE AND SUMMARY

S. 61, the *Combating Cartels on Social Media Act of 2023*, directs the Department of Homeland Security (DHS) to implement a strategy to combat the efforts of transnational criminal organizations (TCOs) to recruit individuals in the United States to participate in illicit activities via social media platforms and other online services. Specifically, the bill directs the Secretary of Homeland Security to submit to congressional committees an assessment de-

scribing TCOs' use of social media to recruit minors and support illicit activities, and existing governmental and law enforcement efforts to counter TCOs. The Secretary must also develop and implement a strategy to address recruitment on social media by TCOs, including proposals to improve cooperation and coordination across foreign, federal, state, tribal and local government agencies; recommendations to centralize information about TCOs use of social media; and activities to facilitate increased intelligence analysis for law enforcement purposes.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Mexican TCOs, commonly referred to as drug cartels or cartels, pose the greatest drug trafficking threat to the U.S. according to the Drug Enforcement Administration's (DEA) annual National Drug Threat Assessment.¹ These TCOs control the market and movement of a wide range of illicit drugs destined for the United States, and they regularly participate in human smuggling and arms trafficking. According to state and local officials near the border, the cartels have recently used social media to recruit children in support of their illicit activities. For example, in April 2023, this Committee's Subcommittee on Government Operations and Border Management held a hearing in which the mayor of Sierra Vista, Arizona, a city near the border with Mexico, testified that cartels were recruiting young people to travel south to the border to pick up migrants, and transport them north in exchange for money.² The mayor explained that the cartels encourage the drivers, who are often teenagers, to drive recklessly through the city to discourage pursuits, and that they pose a very real danger to residents and visitors.³ Arizona State Troopers have similarly reported an increasing trend of cartels using social media to recruit youth for smuggling operations, and noted that the actions endanger the youth involved, the smuggling victims, and local communities.⁴ Further, Cochise County Sheriff Mark Daniels has told reporters that this type of recruitment is common.⁵

Social media provides the TCOs access to a wide range of potential recruits. According to the Pew Research Center, more than 70 percent of Americans use social media, and 95 percent of U.S. teens use online platforms.⁶ In addition to Arizona, officials have seen cartels use social media to support their smuggling operations in other states. For example, the El Paso Division of the DEA, which covers West Texas and New Mexico, reported the cartels are using social media applications—like Facebook, Instagram, TikTok, and Snapchat—to coordinate logistics.⁷ Additionally, a Homeland Secu-

¹ Congressional Research Service, *Mexico: Organized Crime and Drug Trafficking Organizations* (R41576) (June 7, 2022).

² Senate Subcommittee on Government Operations and Border Management, *Hearing on Examining the Effects of Increased Migration on Communities Along the Southern Border*, 118th Cong. (Apr. 26, 2023) (S. Hrg. 118–XX).

³ *Id.*

⁴ Arizona Department of Public Safety, *ALERT: CARTELS RECRUITING YOUTH FOR HUMAN SMUGGLING* (June 16, 2023).

⁵ *Cartels using social media to recruit teens for drug smuggling and human trafficking*, 12NEWS KPNX-TV Phoenix (June 21, 2023) (www.12news.com/article/news/local/cartels-are-recruiting-teens-for-human-and-drug-smuggling/75-39b0cab6-ala4-44cd-9e6a-d9fdff7890b7).

⁶ Pew Research Center, *Social Media Use in 2021* (Apr. 7, 2021) (www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/); *Teens, Social Media and Technology 2022* (Aug. 10, 2022) (www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/).

⁷ Drug Enforcement Administration, *DEA Operation Last Mile Tracks Down Sinaloa and Jalisco Cartel Associates Operating within the United States* (May 8, 2023).

rity Investigations agent reported that young kids—including first year drivers and some without a driver’s license—in Dallas, San Antonio, and Austin have been recruited on social media to smuggle migrants across the southwest border.⁸

S. 61 is intended to specifically address DHS’s response to this dangerous trend by requiring DHS to assess how the cartels are using social media to recruit individuals under the age of 18, as well as federal government efforts to counter this recruitment. To ensure that this approach is holistic, the bill directs DHS to collaborate with other federal agencies, including the Departments of Health and Human Services and Education, as well as governmental and non-governmental representatives of border communities and experts in civil rights and civil liberties, online privacy, humanitarian assistance for migrants, and youth outreach and rehabilitation, in the production of a “National Strategy to Combat Illicit Recruitment Activity by Transnational Criminal Organizations on Social Media and Online Platforms.”

The platforms that will be covered under the bill include not only social media platforms but also mobile or desktop services with direct or group messaging capabilities that are used by TCOs for recruitment purposes if they are not solely text messaging applications; as well as digital platforms with real-time interactive communications between multiple individuals, including multi-player gaming services and immersive technologies.

Considering the wide usage of social media, the bill includes important language focusing the DHS assessment and strategy on TCOs who seek to recruit minors for the cartels’ activities rather than the minors themselves or any other individuals. To ensure that DHS only targets TCOs, S. 61 requires that the strategy include a detailed description of the measures used to ensure privacy rights, civil rights, and civil liberties protections, especially protections for minors and constitutionally protected activities. The strategy must also ensure that law enforcement and intelligence activities that focus on TCO recruitment target the activities of the TCOs and not the individuals being recruited. Further, the bill directs the DHS Officer for Civil Rights and Civil Liberties, in coordination with the DHS Privacy Office, to provide the appropriate congressional committees a report assessing measures to protect civil rights, civil liberties, and privacy within 2 years of the strategy’s issuance.

III. LEGISLATIVE HISTORY

Senator Kyrsten Sinema (I-AZ) introduced S. 61, the *Combating Cartels on Social Media Act of 2023*, on January 24, 2023, with original cosponsors Senator James Lankford (R-OK), Senator Mark Kelly (D-AZ), and Senator Bill Hagerty (R-TN). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Jon Tester (D-MT) and Senator Thomas Tillis (R-NC) joined as additional cosponsors on May 18, 2023.

The Committee considered S. 61 at a business meeting on June 14, 2023. At the business meeting, Senator Sinema and Senator Lankford offered a substitute amendment to the bill as well as a

⁸*Images reveal social media recruitment tactics of suspected human smugglers*, ABC News (Dec. 23, 2022) (abcnews.go.com/US/images-reveal-social-media-recruitment-tactics-suspected-human/story?id=95672672).

modification to the substitute amendment. The Sinema-Lankford substitute amendment as modified defines “criminal enterprise,” “illicit activities,” and “transnational criminal organization.” The Sinema-Lankford substitute amendment as modified also specified that DHS’s assessment should address the exploitation of children; struck language stating the strategy should include activities to facilitate proactive law enforcement, such as engaging individuals in an effort to preempt the commission of criminal offenses; required that DHS’s Office of Civil Rights and Civil Liberties, in cooperation with the DHS Office of Privacy, assess the strategy and its implementation; and clarified that nothing in the bill shall be construed to expand the statutory law enforcement or regulatory authority of DHS. The Committee adopted the modification to the Sinema-Lankford substitute amendment by unanimous consent, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Paul, Lankford, Romney, Scott, and Hawley present. The Sinema-Lankford substitute amendment, as modified, was adopted by unanimous consent with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Paul, Lankford, Romney, Scott, and Hawley present.

Senator Paul offered an amendment to the bill directing the Comptroller General, instead of the DHS Secretary, to implement the assessment; prohibiting federal employees from coercing, compelling, or encouraging a social media company to censor speech; terminating all overt intelligence collection at DHS; and requiring agencies to provide records of communications between agency employees and social media companies even if the records are classified or would otherwise be protected. The Committee did not adopt the Paul amendment by a roll call vote of 2 yeas and 13 nays, with Senator Paul voting in the affirmative, and Senators Peters, Hassan, Sinema, Rosen, Ossoff, Lankford, Romney, Scott, and Hawley voting in the negative. Senator Marshall voted yea by proxy, and Senators Carper, Padilla, Blumenthal, and Johnson voted no by proxy.

The bill, as amended by the modified Sinema-Lankford substitute amendment, was ordered reported favorably by roll call vote of 9 yeas and 1 nay, with Senators Peters, Hassan, Sinema, Rosen, Ossoff, Lankford, Romney, Scott, and Hawley voting in the affirmative, and Senator Paul voting in the negative. Senators Carper, Padilla, Blumenthal, Johnson and Marshall voted yea by proxy, for the record only.

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

Section 1. Short title

This section establishes the short title of the bill as the “Combating Cartels on Social Media Act of 2023.”

Section 2. Definitions

This section defines the terms “appropriate congressional committees,” “covered operator,” “covered service,” “criminal enterprise,” “department,” “illicit activities,” “Secretary,” and “transnational criminal organization.”

Section 3. Assessment of illicit usage

This section states, not later than 180 days after enactment, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment describing: (1) the use of covered services by TCOs or criminal enterprises to recruit individuals, including individuals under the age of 18, to support illicit activities; (2) the use of covered services by TCOs to engage in illicit activities, such as narcotics smuggling, human smuggling, and human trafficking; and (3) the existing efforts of the Secretary and relevant government entities to address the aforementioned usage of covered services.

Section 4. Strategy to combat cartel recruitment on social media and online platforms

Subsection (a) states, not later than 1 year after enactment, the Secretary of Homeland Security shall submit to the appropriate congressional committees a strategy to be known as the “National Strategy to Combat Illicit Recruitment Activity by Transnational Criminal Organizations on Social Media and Online Platforms.”

Subsection (b) establishes that the strategy’s elements shall include, at a minimum: (1) a proposal to improve cooperation between the Secretary of Homeland Security and relevant law enforcement entities; (2) recommendations to implement a voluntary-reporting process on TCOs’ recruitment efforts involving covered services; (3) a proposal to improve coordination between DHS and state, tribal, and local governments; (4) a proposal to improve coordination between DHS components; (5) activities to facilitate increased intelligence analysis for law enforcement purposes; (6) activities to foster international partnerships; (7) activities to increase engagement with youth in border communities about TCOs’ recruitment tactics; and (8) a detailed description of measures to ensure law enforcement and intelligence activities focus on TCOs rather than individuals being recruited; and protections for privacy rights, civil rights, and civil liberties. This subsection also states that the strategy shall not include legislative recommendations.

Subsection (c) requires that the Secretary of Homeland Security, at a minimum, consult with the heads of relevant DHS components—including the Under Secretary for Intelligence and Analysis, the Commissioner of U.S. Customs and Border Protection, the Director of U.S. Immigration and Customs Enforcement, and the Officer for Civil Rights and Civil Liberties—as well as interagency partners, governmental and non-governmental representatives of border communities, and subject matter experts, in drafting and implementing the strategy.

Subsection (d) requires the Secretary of Homeland Security to commence implementation of the strategy not later than 90 days after the strategy is submitted to Congress. It further requires that 180 days after the strategy is implemented, and semiannually for five years thereafter, the Secretary submit a report describing implementation of the strategy to the appropriate congressional committees. This report should address (1) the implementation of the strategy’s recommendations; (2) the activities of government as part of the strategy; and (3) the threat landscape, including new developments. Further, this subsection requires a civil rights, civil liberties, and privacy assessment of the implementation of the

strategy from the DHS Officer for Civil Rights and Civil Liberties and DHS Privacy Officer 2 years after the strategy is due.

Section 5. Rule of construction

This section states that nothing in this bill shall expand the law enforcement or regulatory authority of DHS.

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

S. 61, Combating Cartels on Social Media Act of 2023			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 14, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	1	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 61 would require the Department of Homeland Security (DHS) to report to the Congress on the use of social media by transnational criminal organizations for recruitment and other illicit activities and on a strategy to combat those organizations' efforts. The bill also would require the department to begin implementing the strategy to combat those efforts within 90 days of submitting the report. Finally, S. 61 would require the Office for Civil Rights and Privacy Office at DHS to assess the strategy and report to the Congress.

Based on the costs of similar activities, CBO estimates that implementing S. 61 would cost \$1 million over the 2024–2028 period. Any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

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.

