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**AN UNLIKELY COUPLE:
The Similar Approaches to Border Enforcement in H.R. 1417 and S. 744**

The House of Representatives and the Senate have embarked upon very different paths when it comes to immigration reform. On June 27, the Senate passed a comprehensive immigration reform bill—[S. 744](#) (the Border Security, Economic Opportunity, and Immigration Modernization Act)—that seeks to revamp practically every dysfunctional component of the U.S. immigration system.¹ The House leadership, on the other hand, favors a piecemeal approach in which a series of immigration bills are passed, each addressing a different aspect of the larger immigration system. To date, the most popular of these piecemeal bills has been [H.R. 1417](#) (the Border Security Results Act), which was passed unanimously on May 15 by the House Committee on Homeland Security. H.R. 1417 is, in marked contrast to S. 744, an enforcement-only bill which does not acknowledge the existence of any other component of immigration reform.²

Nevertheless, the border-enforcement provisions of S. 744 aren't all that different from those contained within H.R. 1417. Both bills share the arbitrary and possibly unworkable goals of “operational control” (a 90 percent deterrence rate) and 100 percent “situational awareness” along the entire southwest border. The Senate bill also added insult to injury in the form of the Corker-Hoeven (“border surge”) amendment, which seeks to micromanage border-security operations and would gratuitously appropriate tens of billions of dollars in additional funding, and hire tens of thousands of additional Border Patrol agents, before the Department of Homeland Security (DHS) has even determined what resource and staffing levels are needed to do the job.

The main problem with both bills, however, is that they are devoted primarily to deflecting unauthorized immigration to the United States, which is far from being the most significant threat to U.S. border security. Even though the bills acknowledge the unique security threat posed by smugglers, the primary metric by which border security is gauged is the deterrence of unauthorized immigrants. Yet, as a number of border-security [experts](#) have pointed out, security is most effectively enhanced by focusing law-enforcement resources on the transnational criminal cartels that smuggle drugs, guns, money, and human beings across the border.³ Deterring or capturing the unauthorized immigrants who are victimized by the cartels may look good on a balance sheet, but it does not necessarily do anything to improve security.

Both bills share the same border-security goals.

- “Situational awareness” of the entire southwest border; meaning 100 percent surveillance.

- “Operational control” of the entire southwest border; meaning that at least 90 percent of all unauthorized entries into the United States are deterred.

S. 744 mandates specific increases in border-enforcement funding and staffing; the costs of H.R. 1417 are implicit.

- The ill-conceived Corker-Hoeven amendment to S. 744 injects \$46.3 billion into southwest border enforcement, regardless of whether it is needed or not. As amended by Corker-Hoeven, S. 744 calls for 19,200 new Border Patrol agents; 3,500 additional Customs and Border Protection (CBP) officers; 700 miles of fencing; specific types and quantities of technology and infrastructure (watch towers, camera systems, drones, mobile surveillance systems, etc.); more prosecutors and judges; and an electronic exit system at all air and sea ports of entry where CBP officers are stationed.
- H.R. 1417 contains no specific mandates for resources or personnel. Rather, it puts the burden on DHS to identify needs and develop plans accordingly. However, given that the bill calls for the same degree of “situational awareness” and “operational control” as the Senate bill, it stands to reason that the price tag will be formidable. Moreover, the bill mandates the creation of a biometric exit system at all ports of entry, or a suitable alternative. This could be problematic considering that DHS has [concluded](#) that constructing a biometric exit system at all land points of entry along the southwest border is not feasible at the present time with the technology that currently exists.⁴

Both bills create numerous reporting requirements and other bureaucratic mechanisms to ensure that the goals of “situational awareness” and “operational control” are met.

- H.R. 1417:
 - 60 days after enactment, and annually thereafter, DHS must submit a report on staffing levels and available manpower.
 - 90 days after enactment, and every 180 days thereafter, DHS must submit a report on the state of situational awareness and operational control along the border. The data and methodology of the report must be verified by the Government Accountability Office (GAO).
 - 120 days after enactment, DHS must implement new metrics to measure its effectiveness in securing the border. The statistical validity of the metrics must be verified by GAO.
 - 180 days after enactment, DHS must submit a strategy for gaining and maintaining situational awareness and operational control of high-traffic areas of the border within two years, and of the entire southwest border within five years. In addition, DHS must submit a plan to implement a biometric exit system at all points of entry, or—if this is not feasible—an alternative that provides the same level of security.
 - One year after enactment, DHS must submit a report on the cost-effectiveness of border-security strategies.
 - Two years after DHS submits its plan to achieve control of high-traffic areas of the border, and annually thereafter, DHS must certify to Congress that situational

awareness and operational control of high-traffic areas have been achieved. If that has not been achieved, DHS must explain why.

- Five years after DHS submits its plan to achieve control of the border, and annually thereafter, it must certify to Congress that control has been achieved along the entire southwest border. If that has not been achieved, DHS must explain why.
- S. 744:
 - Within 180 days of enactment, DHS must submit a Southern Border Fencing Strategy to identify where 700 miles of fencing, plus associated infrastructure and technology, should be deployed.
 - Also within 180 days of enactment, DHS must also submit a Southern Border Security Strategy for achieving “effective control” of the border; defined as persistent surveillance of 100 percent of the border and a 90 percent effectiveness rate in preventing illegal crossings.
 - DHS must submit an annual report on sector-by-sector deployment of technology and infrastructure.
 - Every 180 days, DHS must submit a report on the status of implementing its border security strategy.
 - DHS must submit an annual report on effectiveness rates, miles of border under “persistent surveillance,” wait times at ports of entry, and migrant deaths.
 - Every six months, DHS must report on visa overstays and removal of visa overstays.
 - If DHS cannot certify effective control of all border sectors for at least one fiscal year within five years of enactment, a Southern Border Security Commission will be created to make recommendations for achieving effective control.

S. 744 includes humanitarian protections and oversight that are missing from H.R. 1417

- S. 744 requires:
 - Creation of a DHS Border Oversight Task Force to review and make recommendations on immigration and border-enforcement policies, strategies, and programs, including protection of due process, civil, and human rights of people at the border.
 - Creation of a DHS Ombudsman for Immigration and Related Concerns with a background in both immigration law and civil and human rights. The Ombudsman will review complaints, inspect facilities, make policy recommendations, request inspector general investigations, and submit annual reports to the Judiciary Committees of the Senate and House.
 - An annual report by DHS on the impact that deterrence programs are having on children, parents, caregivers, and guardians.
 - Deployment of up to 1,000 distress beacons in areas along the southern and northern borders where migrant deaths occur. There is also a requirement to report the number of migrant deaths.

- H.R. 1417, like S. 744, requires that DHS personnel receive training in the protection of civil and human rights, as well as social and cultural sensitivity training in dealing with border communities. But H.R. 1417 does not create mechanisms for ensuring that this training is successfully implemented.

Some of S. 744’s most laudable provisions could be undermined by Corker-Hoeven.

- S. 744 contains many provisions that explicitly mandate humanitarian protections, respect for civil and human rights, and involvement of border communities in border-security decision-making. However, these protections and guarantees could easily be swamped by the wave of border militarization that Corker-Hoeven would unleash. Many critics are concerned that accountability and transparency might be among the first victims of a “border surge” that was the product of political bargaining rather than sound policymaking.

S. 744 contains explicit “triggers” linking border enforcement to legalization of unauthorized immigrants; H.R. 1417 is more nebulous in this regard.

- Under S. 744, Registered Provisional Immigrants (RPIs) cannot apply to become Lawful Permanent Residents (LPRs) until the Southern Border Fencing Strategy is implemented and completed; the Southern Border Security Strategy is deployed and operational; a mandatory employment verification system is implemented; an electronic exit system is implemented at all air and sea ports where CBP officers are present; and at least 38,405 Border Patrol agents are deployed along the southwest border.
- In one sense, H.R. 1417 is a trigger; its authors intended it to be a precursor to any further immigration reform efforts (particularly those that might permit the legalization of unauthorized immigrants). Beyond that, it is probable that if H.R. 1417 were to be reconciled with S. 744 in a House-Senate conference committee, the meeting of its many metrics and reporting requirements would become explicit (and unworkable) triggers that would paralyze further immigration reform.

Neither S. 744 nor H.R. 1417 contains the kind of highly targeted border-enforcement measures that most enhance security.

- Indiscriminately flooding the border with a pre-determined number troops and a pre-determined list of technologies (à la S. 744’s Corker-Hoeven amendment) does not in and of itself enhance security. Nor does a single-minded focus on achieving 90-percent deterrence along every mile of a nearly 2,000 mile-long border (as do both S. 744 and H.R. 1417). Either way, a massive infusion of personnel and infrastructure will be devoted to the relatively unfocused mission of stopping unauthorized immigration.
- According to border-security experts, the most effective border-security measures are those that:

- Target the transnational criminal “cartels” that smuggle people and drugs into the United States from Mexico, and guns and money into Mexico from the United States.
- Cut off the funding and dismantle the leadership of the cartels, rather than arresting low-level cartel employees or people who are being smuggled.
- Do not focus excessively on areas *between* ports of entry given that so much contraband of all kinds is smuggled *through* ports of entry.⁵

Border Surges vs. Border Security

Their many differences notwithstanding, neither H.R. 1417 nor S. 744 effectively addresses the real security concerns along the U.S.-Mexico border. Inundating the border with troops and technology in a quest to stop absolutely anyone from coming across without authorization may sound like an appropriate, “get tough” means of ensuring security, but it is not. Such an approach is too unfocused to effectively tackle the most pressing security threats; namely, the cartels which smuggle people and contraband in both directions across the U.S.-Mexico border, both between ports of entry and through ports of entry. Until the infrastructure of these cartels is dismantled through sustained and carefully targeted enforcement, the border will not be secure. Unfortunately, the authors of S. 744 and H.R. 1417 have yet to learn this lesson.

Endnotes

¹ See Immigration Policy Center, [A Guide to S.744: Understanding the 2013 Senate Immigration Bill](#) (Washington, DC: American Immigration Council, June 2013).

² See American Immigration Lawyers Association, [H.R. 1417 – Border Security Results Act of 2013](#) (Washington, DC: July 2013).

³ Terry Goddard, [How to Fix a Broken Border, Parts I, II, and III](#) (Washington, DC: Immigration Policy Center, American Immigration Council, September 2011, February 2012, May 2012); Josiah McC. Heyman, [Guns, Drugs, and Money: Tackling the Real Threats to Border Security](#) (Washington, DC: Immigration Policy Center, American Immigration Council, September 2011).

⁴ U.S. Government Accountability Office, [Prospects for US-VISIT Biometric Exit Capability Remain Unclear](#), GAO-07-1044T, June 28, 2007, pp. 7-8.

⁵ Terry Goddard, [How to Fix a Broken Border, Parts I, II, and III](#) (Washington, DC: Immigration Policy Center, American Immigration Council, September 2011, February 2012, May 2012); Josiah McC. Heyman, [Guns, Drugs, and Money: Tackling the Real Threats to Border Security](#) (Washington, DC: Immigration Policy Center, American Immigration Council, September 2011).