



September 24, 2018

The Honorable Ron Johnson  
Chairman  
Senate Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Claire McCaskill  
Ranking Member  
Senate Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

**Re: Oppose H.R. 6439, the Biometric Identification Transnational Migration Alert Program (BITMAP) Authorization Act of 2018**

Dear Chairman Johnson, Ranking Member McCaskill and Members of the Committee,

On behalf of the American Civil Liberties Union, Immigrant Legal Resource Center, National Immigration Law Center and the National Immigration Project of the National Lawyers Guild, we write to urge you to oppose H.R. 6439, legislation that would permanently authorize the biometric pilot program known as “BITMAP” within the Department of Homeland Security (DHS). This bill is scheduled for markup on September 26, 2018. **We urge you to oppose H.R. 6439.**

This bill was opposed by a bipartisan group of 119 members of the House, including Ranking Member of the House Homeland Security Committee Bennie Thompson and Ranking Member of the House Judiciary Committee Jerrold Nadler. In his dissenting views on the bill, Ranking Member Thompson emphasized that DHS had yet to provide Congress with information demonstrating BITMAP’s effectiveness or details regarding how sensitive information collected can be used and disseminated.<sup>1</sup> He also noted permanent authorization is not needed to continue the program.<sup>2</sup> The House Liberty Caucus similarly opposed the bill, noting that “Congress cannot blindly codify the government’s data collection programs without putting our citizens’ privacy at risk, yet this bill permanently authorizes another such program, without providing clear rules on what data can be collected, from whom data can be collected, and how the data may be used, retained, or shared.”<sup>3</sup>

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<sup>1</sup> H.R. Rep. No. 115-909, at 10-11 (2018).

<sup>2</sup> *Id.* at 10.

<sup>3</sup> House Liberty Caucus, “House Liberty Caucus statement on H.R. 6439, Biometric Identification Transnational Migration Alert Program Authorization Act of 2018” *available at* <https://www.facebook.com/libertycaucus/photos/a.519545221443743/1905296102868641/?type=3&theater>.



In 2010<sup>4</sup>, DHS began piloting BITMAP to collect and share biometric and biographical data on “special interest aliens, violent criminals, fugitives and confirmed or suspected terrorists.”<sup>5</sup> According to previous testimony by DHS officials, this also includes gang members and other persons of interest who may pose a potential national security concern.<sup>6</sup> H.R. 6439 would permanently authorize BITMAP – but with no privacy or transparency protections, and with insufficient fact-finding during committee consideration of the bill. Among the civil rights and civil liberties concerns posed by the bill are the following:

- There is no information or proof as to BITMAP’s effectiveness. Despite numerous requests from Congress, including members of the House Homeland Security Committee, DHS has failed to provide information since the program’s inception in 2010 that shows its effectiveness or that it is tailored to meet its needs.<sup>7</sup> The Ranking Member of the House Homeland Security Committee has emphasized this point, stating that the information provided to Congress has been insufficient to show that the program is “effective and tailored.”<sup>8</sup> Given this, it is premature to permanently authorize the program, particularly given the significant privacy and civil liberties concerns.
- The legislation fails to require that the program adhere to privacy protections. This program includes the sharing of extraordinarily sensitive information regarding individuals without warrant or analogous legal process. Yet, the legislation fails to include any privacy standards that DHS must follow with regards to the program. For example, what information can be collected, how long can it be stored, when can it be disseminated to other agencies, and can it be shared with foreign partners? The omission of these protections in the bill is particularly striking given that the agency has not provided any public information regarding what, if any, privacy protections currently apply to the execution of BITMAP.
- The legislation fails to place limits on how information collected under BITMAP can be used. There is little to no information regarding what actions may be triggered as a result of these database checks nor information regarding what is considered “suspicion” or a “national security concern.” The terms used by officials in discussing this program such as terrorism, gang members, and national security concern have historically been used to target Muslim, Arab, Iranian, Latinx, Middle Eastern, and South Asian populations. The failure to provide information regarding policies governing BITMAP raises significant concerns that the program may result in unjust profiling and discrimination. The existing legislation fails to include any language that would prohibit such improper uses. Moreover, insufficient information has been made public to assess whether such profiling and discrimination are current problems with the program.

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<sup>4</sup> H.R. Rep. No. 115-909, at 10 (2018).

<sup>5</sup> U.S. Immigration and Customs Enforcement, “Internal Operations,” <https://www.ice.gov/international-operations> (last updated Jan. 03, 2018).

<sup>6</sup> *Potential Terrorist Threats: Border Security Challenges in Latin America and the Caribbean, Before the Subcomm. on the Western Hemisphere of the H. Comm. on Foreign Affairs*, 114th Cong. 6-8 (2016) (statement of Alan D. Bersin, Assistant Secretary for International Affairs and Chief Diplomatic Officer).

<sup>7</sup> H.R. Rep. No. 115-909, at 10-11 (2018).

<sup>8</sup> *Id.* at 10.



- Under this bill, DHS would have the authority to enter into agreements with foreign countries to carry out BITMAP operations without legislative or judicial review. Although this bill would require DHS to notify Congress before the execution of BITMAP agreements, the agreements would not be subject to congressional authorization. This legislation would significantly undermine Congress' oversight role by allowing DHS to take measures without sufficient checks or balances. Additionally, the bill fails to ensure that the public is made aware of how DHS is exercising its authority.

It is irresponsible to permanently authorize BITMAP without a full understanding of its effectiveness, policies and procedures, privacy and civil rights protections, and oversight mechanisms.

We urge you to oppose H.R. 6439. If you have any questions, please contact Neema Singh Guliani at [nguliani@aclu.org](mailto:nguliani@aclu.org)

Sincerely,

American Civil Liberties Union  
Immigrant Legal Resource Center  
National Immigration Law Center  
National Immigration Project of the National Lawyers Guild