

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. PAUL

Viz:

1 Redesignate section 2(a)(2) as section 2(a)(3).

2 In section 2, after paragraph (1), insert the following:

3 (2) COVERED INFORMATION.—The term “cov-
4 ered information” means information relating to—

5 (A) a phone call;

6 (B) any type of digital communication, in-
7 cluding a post on a covered platform, an e-mail,
8 a text, and a direct message;

9 (C) a photo;

- 1 (D) shopping and commerce history;
- 2 (E) location data, including a driving route
- 3 and ride hailing information;
- 4 (F) an IP address;
- 5 (G) metadata;
- 6 (H) search history;
- 7 (I) the name, age, or demographic infor-
- 8 mation of a user of a covered platform; and
- 9 (J) a calendar item.

10 In section 2, redesignate paragraphs (3) and (4) as

11 paragraphs (4) and (5), respectively.

12 In section 2, insert after paragraph (2) the following:

13 (3) COVERED PLATFORM.—The term “covered

14 platform”—

15 (A) means a website or internet medium

16 that—

17 (i) permits a person to become a reg-

18 istered user, establish an account, or create

19 a profile for the purpose of allowing the

20 person to create, share, and view user-gen-

21 erated content through that account or

22 profile;

1 (ii) primarily serves as a means by
2 which users of the website or medium
3 interact with content generated by other
4 users of the website or medium; and

5 (iii) enables a user of the website or
6 medium to generate content that other
7 users of the website or medium can view;
8 and

9 (B) includes—

10 (i) an interactive computer service, as
11 that term is defined in section 230(f) of
12 the Communications Act of 1934 (47
13 U.S.C. 230(f)); and

14 (ii) any platform through which a
15 media organization disseminates informa-
16 tion, without regard to whether the organi-
17 zation disseminates that information—

18 (I) through broadcast or print;

19 (II) online; or

20 (III) through any other channel.

21 In section 2(a), insert after paragraph (4) the fol-
22 lowing:

1 (5) DIRECTOR.—The term “Director” means
2 the Director of the Office of Management and Budg-
3 et.

4 (6) EMPLOYEE.—

5 (A) IN GENERAL.—Except where otherwise
6 expressly provided, the term “employee”—

7 (i) means an employee of an Execu-
8 tive agency; and

9 (ii) includes—

10 (I) an individual, other than an
11 employee of an Executive agency,
12 working under a contract with an Ex-
13 ecutive agency; and

14 (II) the President and the Vice
15 President.

16 (B) RULE OF CONSTRUCTION.—With re-
17 spect to an individual described in subpara-
18 graph (A)(ii)(I), solely for the purposes of this
19 Act, the Executive agency that has entered into
20 the contract under which the employee is work-
21 ing shall be construed to be the Executive agen-
22 cy employing the employee.

23 (7) EXECUTIVE AGENCY.—The term “Executive
24 agency”—

1 (A) has the meaning given the term in sec-
2 tion 105 of title 5, United States Code; and

3 (B) includes the Executive Office of the
4 President.

5 (8) PROVIDER.—The term “provider” means a
6 provider of a covered platform.

7 Strike section 4 and insert the following:

8 **SEC. 4. STRATEGY TO COMBAT CARTEL RECRUITMENT ON**
9 **SOCIAL MEDIA AND ONLINE PLATFORMS.**

10 (a) IN GENERAL.—Not later than 1 year after the
11 date of enactment of this Act, the Comptroller General
12 of the United States shall submit to the appropriate con-
13 gressional committees a study on methods to combat the
14 use of covered services by transnational criminal organiza-
15 tions or criminal enterprises acting on their behalf to re-
16 cruit individuals located in the United States to engage
17 in or provide support with respect to illicit activities occur-
18 ring in the United States, Mexico, or otherwise in prox-
19 imity to an international boundary of the United States,
20 provided that these methods do not violate section 5 and
21 do not involve sharing of personal data without proper
22 warrants.

23 (b) ELEMENTS.—

1 (1) IN GENERAL.—The study required under
2 subsection (a) shall, at a minimum, include the fol-
3 lowing:

4 (A) An analysis of proposals to improve co-
5 operation and thereafter maintain cooperation
6 between the Secretary and relevant law enforce-
7 ment entities.

8 (B) A proposal to improve
9 intragovernmental coordination with respect to
10 the matters described in subsection (a), includ-
11 ing between the Department and State, Tribal,
12 and local governments.

13 (C) A proposal to improve coordination
14 within the Department and between the compo-
15 nents of the Department with respect to the
16 matters described in subsection (a).

17 (D) Activities to foster international part-
18 nerships and enhance collaboration with foreign
19 governments.

20 (2) LIMITATION.—The strategy required under
21 subsection (a) shall not include legislative rec-
22 ommendations or elements predicated on the passage
23 of legislation that is not enacted as of the date on
24 which the strategy is submitted under subsection
25 (a), including with respect to encryption policies or

1 reforms to section 230 of the Communications Act
2 of 1934 (47 U.S.C. 230).

3 (c) CONSULTATION.—In drafting the study required
4 under subsection (a), the Comptroller General of the
5 United States shall, at a minimum, consult and engage
6 with—

7 (1) the heads of relevant components of the De-
8 partment, including—

9 (A) the Commissioner of U.S. Customs
10 and Border Protection;

11 (B) the Under Secretary for Intelligence
12 and Analysis;

13 (C) the Under Secretary for Science and
14 Technology;

15 (D) the Director of U.S. Immigration and
16 Customs Enforcement;

17 (E) the Officer for Civil Rights and Civil
18 Liberties; and

19 (F) the Privacy Officer;

20 (2) the Secretary of State;

21 (3) the Director of the Federal Bureau of In-
22 vestigation;

23 (4) the Administrator of the Drug Enforcement
24 Agency;

1 (5) representatives of border communities, in-
2 cluding representatives of—

3 (A) State, Tribal, and local governments,
4 including school districts and local law enforce-
5 ment; and

6 (B) nongovernmental organizations;

7 (6) nongovernmental experts in the fields of—

8 (A) civil rights and civil liberties;

9 (B) online privacy;

10 (C) humanitarian assistance for migrants;

11 and

12 (D) youth outreach and rehabilitation.

13 (d) REPORT.—

14 (1) IN GENERAL.—Not later than 180 days
15 after the date on which the study required under
16 subsection (a) is submitted to the appropriate con-
17 gressional committees, the Secretary shall submit to
18 the appropriate congressional committees a report
19 describing the efforts of the Secretary to implement
20 the recommendations included in the study described
21 in subsection (a) and the progress of those efforts,
22 which shall include a description of—

23 (A) the recommendations;

24 (B) the interagency posture with respect to
25 the matters covered by the study required

1 under subsection (a), which shall include a de-
2 scription of collaboration between the Secretary,
3 other Federal entities, State, local, and Tribal
4 entities, and foreign governments;

5 (C) the threat landscape, including new de-
6 velopments related to the United States recruit-
7 ment efforts of transnational criminal organiza-
8 tions; and

9 (D) an assessment of the impact of en-
10 forcement activities on privacy rights and civil
11 liberties, including any actions taken to miti-
12 gate such impacts.

13 (2) FORM.—Each report required under sub-
14 paragraph (A) shall be submitted in unclassified
15 form, but may contain a classified annex.

16 **SEC. 5. EMPLOYEE PROHIBITIONS.**

17 (a) PROHIBITIONS.—

18 (1) IN GENERAL.—An employee acting under
19 official authority or influence may not—

20 (A) use any form of communication (with-
21 out regard to whether the communication is
22 visible to members of the public) to direct, co-
23 erce, compel, or encourage a provider to take,
24 suggest or imply that a provider should take, or
25 request that a provider take any action to cen-

1 sor speech that is protected by the Constitution
2 of the United States, including by—

3 (i) removing that speech from the ap-
4 plicable covered platform;

5 (ii) suppressing that speech on the ap-
6 plicable covered platform;

7 (iii) removing or suspending a par-
8 ticular user (or a class of users) from the
9 applicable covered platform or otherwise
10 limiting the access of a particular user (or
11 a class of users) to the covered platform;

12 or

13 (iv) labeling that speech as
14 disinformation, misinformation, or false, or
15 by making any similar characterization
16 with respect to the speech;

17 (B) direct or encourage a provider to share
18 with an Executive agency covered information
19 containing data or information regarding a par-
20 ticular topic, or a user or group of users on the
21 applicable covered platform, including—

22 (i) the name, age, or demographic in-
23 formation of such a user; or

24 (ii) any covered information shared or
25 stored by users on the covered platform;

1 (C) work in conjunction with any private
2 entity to take an action that is prohibited under
3 subparagraph (A) or (B); or

4 (D) on behalf of the Executive agency em-
5 ploying the employee—

6 (i) enter into a partnership with a
7 provider to monitor any content dissemi-
8 nated on the applicable covered platform;
9 or

10 (ii) solicit, accept, or enter into a con-
11 tract or other agreement (including a no-
12 cost agreement) for free advertising or an-
13 other promotion on a covered platform.

14 (2) EXCEPTION.—Notwithstanding subpara-
15 graph (B) of paragraph (1), the prohibition under
16 that subparagraph shall not apply with respect to an
17 action by an Executive agency or employee pursuant
18 to a warrant that is issued by—

19 (A) a court of the United States of com-
20 petent jurisdiction in accordance with the proce-
21 dures described in rule 41 of the Federal Rules
22 of Criminal Procedure; or

23 (B) a State court of competent jurisdic-
24 tion.

25 (3) EMPLOYEE DISCIPLINE.—

1 (A) IN GENERAL.—Notwithstanding any
2 provision of title 5, United States Code, and
3 subject to subparagraph (B), the head of an
4 Executive agency employing an employee who
5 violates any provision of paragraph (1) (or, in
6 the case of the head of an Executive agency
7 who violates any provision of paragraph (1), the
8 President) shall impose on that employee—

9 (i) disciplinary action consisting of re-
10 moval, reduction in grade, debarment from
11 employment with the United States for a
12 period of not longer than 5 years, or sus-
13 pension;

14 (ii) a civil penalty in an amount that
15 is not less than \$1,000 and not more than
16 \$10,000; or

17 (iii) a combination of the penalties de-
18 scribed in clauses (i) and (ii), as deter-
19 mined by the agency head or the Presi-
20 dent, as applicable.

21 (B) SPECIFIC CONTRACTOR DISCIPLINE.—

22 In the case of an employee described in section
23 2(6)(A)(ii)(I) who violates any provision of
24 paragraph (1), in addition to any discipline that
25 may be applicable under subparagraph (A) of

1 this paragraph, that employee shall be barred
2 from working under any contract with the Fed-
3 eral Government for a period of 5 years.

4 (b) PRIVATE RIGHT OF ACTION.—

5 (1) IN GENERAL.—A person, the account, con-
6 tent, or information of which has been affected in
7 violation of this section, may bring a civil action
8 against the applicable Executive agency in the
9 United States District Court for the District of Co-
10 lumbia for reasonable attorneys' fees, injunctive re-
11 lief, and actual damages.

12 (2) PRESUMPTION OF LIABILITY.—In a civil ac-
13 tion brought under paragraph (1), there shall be a
14 rebuttable presumption against the applicable Exec-
15 utive agency if the person bringing the action dem-
16 onstrates that the applicable employee commu-
17 nicated with a provider on a matter relating to—

18 (A) covered information with respect to
19 that person; or

20 (B) a statement made by that person on
21 the applicable covered platform.

22 **SEC. 6. REPORTING REQUIREMENTS.**

23 (a) IN GENERAL.—Not later than 90 days after the
24 date of enactment of this Act, and not less frequently than
25 once every 90 days thereafter, the head of each Executive

1 agency shall submit to the Director and the chair and
2 ranking member of the Committee on Homeland Security
3 and Governmental Affairs of the Senate and the Com-
4 mittee on Oversight and Accountability of the House of
5 Representatives a report that discloses, for the period cov-
6 ered by the report, each communication between a rep-
7 resentative of a provider and an employee of that Execu-
8 tive agency, including any such communication that con-
9 stitutes a violation of section 5(a)(1).

10 (b) CONTENTS.—Each report submitted under sub-
11 section (a) shall include, with respect to a communication
12 described in that subsection—

13 (1) the name and professional title of each em-
14 ployee and each representative of a provider engaged
15 in the communication; and

16 (2) if the communication constitutes a violation
17 of section 5(a)(1)—

18 (A) a detailed explanation of the nature of
19 the violation; and

20 (B) the date of the violation.

21 (c) PUBLICATION.—

22 (1) IN GENERAL.—Not later than 5 days after
23 the date on which the Director receives a report
24 under subsection (a), the Director shall—

1 (A) collect the report and assign the report
2 a unique tracking number; and

3 (B) publish on a publicly accessible and
4 searchable website the contents of the report
5 and the tracking number for the report.

6 (2) SUBJECT OF REPORT.—With respect to a
7 report submitted pursuant to subsection (a) of which
8 an individual is a subject, not later than the end of
9 the business day following the business day on which
10 the report is submitted, the Director shall make a
11 reasonable effort to contact the individual to inform
12 the individual of the report.

13 **SEC. 7. TERMINATION OF OVERT HUMAN INTELLIGENCE**
14 **COLLECTION PROGRAM.**

15 (a) TERMINATION.—The Overt Human Intelligence
16 Collection Program established by the Department, if in
17 existence on the date of enactment of this Act, is termi-
18 nated.

19 (b) PROHIBITION AGAINST FEDERAL FUNDING.—No
20 Federal funds may be used to establish or support the ac-
21 tivities of any other entity that is substantially similar to
22 the Overt Human Intelligence Collection Program termi-
23 nated pursuant to subsection (a).

1 **SEC. 8. APPLICABILITY OF FOIA.**

2 (a) DEFINITION.—In this section, the term “agency”
3 has the meaning given the term in section 551 of title 5,
4 United States Code.

5 (b) APPLICABILITY.—Notwithstanding any provision
6 of section 552 of title 5, United States Code, any request
7 made to an agency pursuant to that section for records
8 relating to communication between an employee and a rep-
9 resentative of a provider—

10 (1) shall be granted by the agency without re-
11 gard to any exemption under subsection (b) of that
12 section, except the agency may not release any iden-
13 tifying information of a user of a covered platform
14 without express written consent granted by the user
15 to the agency; and

16 (2) may not be granted by the agency if the
17 communication occurred pursuant to a warrant de-
18 scribed in section 5(a)(2).