



AILA's Take on the 2015 Border Bills

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On January 16, 2015 Chairman McCaul (R-TX) introduced the Secure Our Borders First Act of 2015. The bill requires the Department of Homeland Security (DHS) to achieve and maintain “operational control” over the border, defined as preventing “**all** unlawful entries into the United States” of people and contraband. AILA recognizes the need to secure our borders, but H.R. 399 calls for an airtight seal of the border that is both unrealistic and costly to American taxpayers with a \$10 billion price-tag over ten years.

Key definitions

Situational awareness – “knowledge and an understanding of current unlawful cross-border activity, including cross-border threats and trends concerning illicit trafficking and unlawful crossings along the international borders of the United States, the ability to forecast future shifts in such threats and trends, and the operational capability to conduct continuous and integrated surveillance of the international borders of the United States.”

Operational control – is defined pursuant to the Secure Fence Act of 2006 as “the prevention of **all unlawful entries** into the United States, including entries by terrorists, and other unlawful aliens, instruments of terrorism, narcotics, and other contraband.”

High traffic areas – “sectors along the northern and southern borders of the United States that are within the responsibility of the Border Patrol that have significant unlawful cross-border activity, informed through situational awareness.”

Airtight seal of the border

H.R. 399 functionally requires a 100-percent seal of the 2000-mile southern border—an extreme standard that even totalitarian regimes like North Korea cannot achieve. The bill mandates the 100-percent standard in high traffic areas within two years after enactment. Within five years of enactment, that standard must be achieved for the entire southern land border.

Chairman McCaul himself does not think achieving the 100-percent seal is possible: In 2013 he criticized a proposal that also required a 100-percent secure border: “Putting a 100 percent number in there makes it not only unachievable but unrealistic, and I believe, less credible.”¹ Last year, McCaul’s aide provided a written statement published in *The National Review*: “The 100-percent standard in the Secure Fence Act is not realistic. This is like a mayor asking his police chief to prevent 100-percent of crime in his town.”²

Border officials have also criticized H.R. 399 as impractical and ineffective. David Aguilar, former deputy commissioner for U.S. Customs and Border Protection, said the 2015 McCaul bill’s operational control requirement “is not practical to do . . . under its current definition.”³

¹ <http://www.bloombergview.com/articles/2015-02-05/congress-inhabits-border-security-fantasy-land>

² <http://www.nationalreview.com/corner/383046/michael-mccauleys-team-responds-conservatives-preparing-revolt-joel-gehrke>

³ <http://www.nationaljournal.com/politics/we-don-t-know-how-secure-our-border-is-20150127>

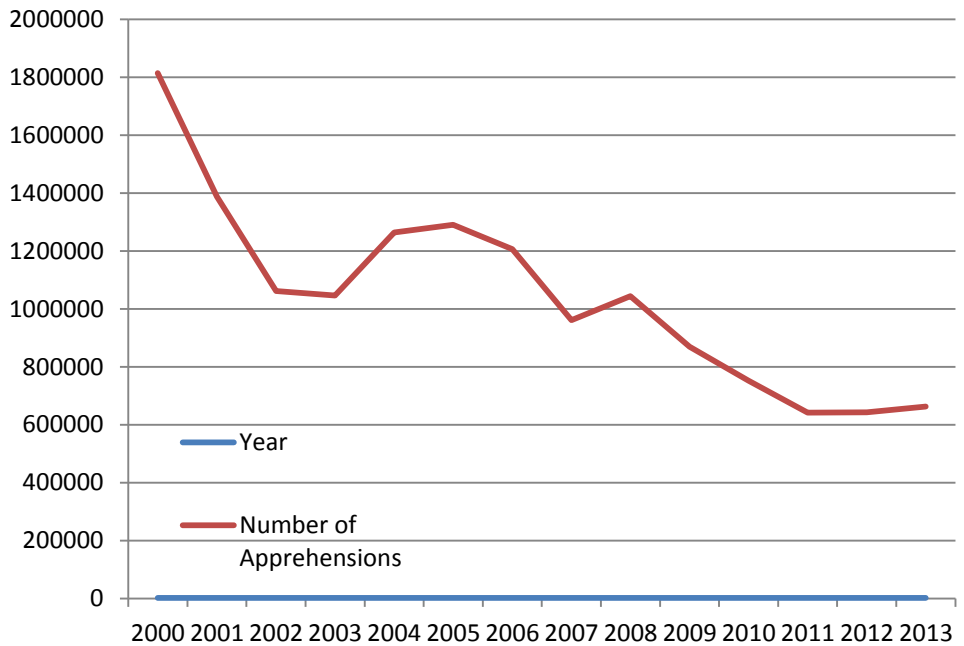
Sanctions for non-compliance

H.R. 399 imposes nominal penalties on DHS for failure to meet its requirements including: suspension of bonus pay and salary increases for DHS political appointees and a prohibition on their travel on government aircraft or receipt of any non-essential training.

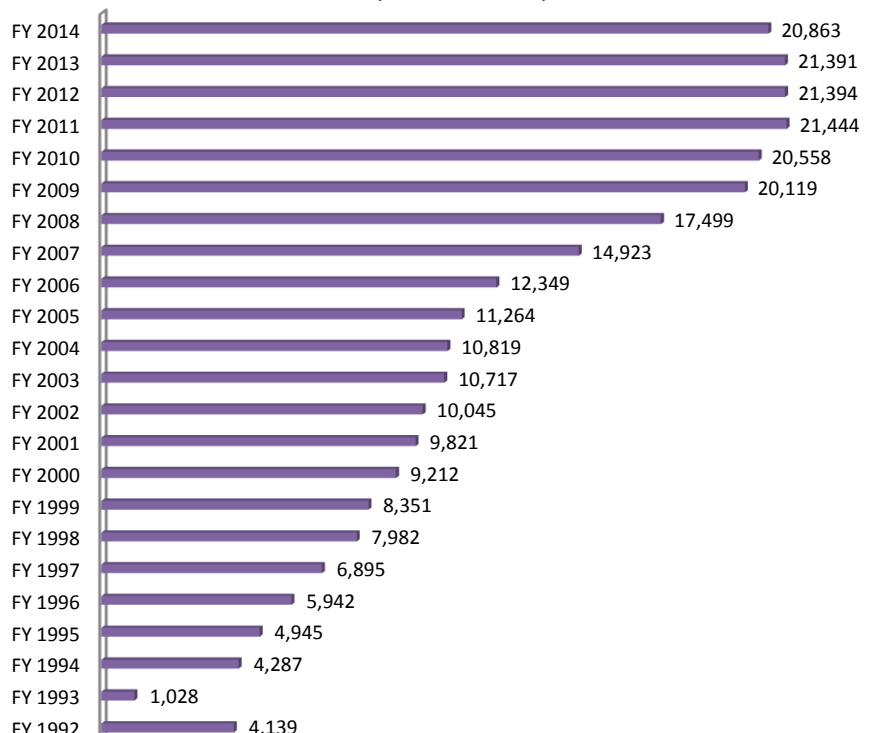
The border is more secure than ever

The federal government has deployed more resources, agents, and technology to the border than ever before and the number of people apprehended crossing the border is at nearly a 40-year low.

Based on current figures, the number of people trying to cross the border is the lowest it has been since the early 1970s. Reported annual apprehensions from FY 2010 to FY 2013 were lower than any other year since 1972.



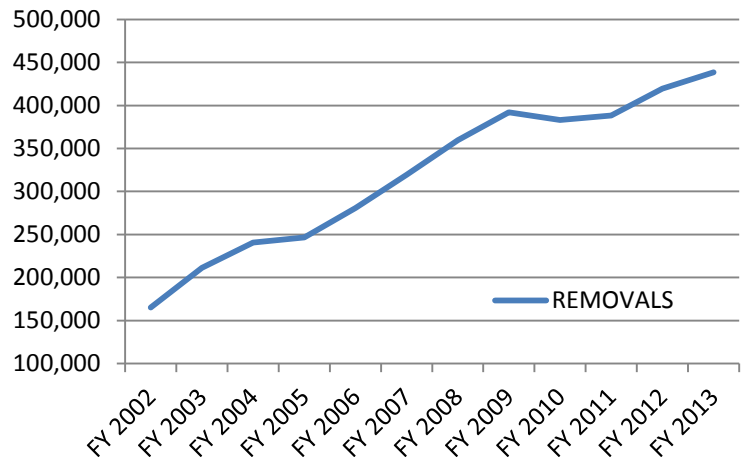
Border Patrol Agent Staffing by Fiscal Year
(Nationwide totals)



In 2014, CBP had 20,863 Border Patrol agents, over a 500-percent increase from 1992 when there were about 4,000 agents. CBP patrols every mile of the U.S. border daily, and in many places, they can view nearly all attempts to cross the border in real time.

REMOVALS

The administration is deporting an average of 400,000 people per year, with removals at the border accounting for about 70-percent of all removals. Unauthorized immigrants are more likely to be apprehended crossing the border than ever before, with the majority occurring within 3 days of entry.



CBP has also built extensive fencing in the past decade and currently has 651 miles of fencing and vehicle barriers compared to 215 miles in 2008.

\$10 billion price tag without a clear plan

In 2014, the CBP budget was \$3.6 billion. H.R. 399 would add an additional \$1 billion each year for a total price tag of \$10 billion over ten years for fencing construction, operational bases, surveillance, and other technology. H.R. 399, however, does not establish measures for whether these resources are needed to enhance border security.

Last year Chairman McCaul's own staff criticized such a resource-heavy approach: "For too long, the Federal government has approached border security backwards – by throwing resources at the problem to plug the holes on our borders without a coherent plan. Spending billions of dollars without a long-term plan and calls for an unrealistic 19,000 more Border Patrol agents that would not be in place for a decade, like the Corker-Hoeven amendment required, is bad government."⁴

The bill mandates 19 different types of technological deployments that each Northern and Southern border sector must make. The deployments range from additional tower-based surveillance technology to additional coastal radar surveillance systems. The bill also mandates the building of 27 new miles of fencing, the replacement of 64 miles of fencing, the building of 415 miles of access roads, and new boat ramps and access gates, all in the next 18 months. DHS also must build 12 new "forward operation bases" in the various southern border sectors.

The bill calls for 16 hours of drone surveillance seven days per week. In January 2015 the DHS Office of the Inspector General (OIG) criticized excessive spending on drones: "Notwithstanding the significant investment, we see no evidence that the drones contribute to a more secure border, and there is no reason to invest additional taxpayer funds at this time."⁵

⁴ <http://www.nationalreview.com/corner/383046/michael-mccauals-team-responds-conservatives-preparing-revolt-joel-gehrke>

⁵ <http://www.emergencymgmt.com/safety/Drones-Do-Not-Create-More-Secured-Border-DHS-Official-Says.html>

Comparison of Chairman McCaul's 2013 and 2015 border bills

Chairman McCaul's 2013 bill, H.R. 1417, took a very different approach to border security by delegating the development of a border security strategy to the DHS Secretary. In defending that proposal, McCaul did not identify the resources required to secure the border and insisted that DHS develop a border security plan first. By contrast his new bill, H.R. 399, prescribes details of the border security plan and the specific resources needed, including fencing construction, other infrastructure, and surveillance technology along the border.

Significantly, the 2015 version of his border bill increases the standard DHS must meet for operational control from 90 percent to 100 percent. H.R. 1417 defined "operational control" as "a 90 percent probability that illegal border crossers are apprehended and narcotics and other contraband are seized in high traffic areas." With respect to using operational control as a measure, the Border Patrol Chief, Michael Fisher, testified that they:

"do not use this term as a measure of border security because the complex nature of the multitude of different border conditions cannot be described by a single objective measure. . . . It is not merely a measure of resources, because even the heaviest concentration of fencing, all weather roads, 24-hour lighting, surveillance systems, and Border Patrol agents cannot seal the border completely."⁶

Finally, unlike H.R. 399, McCaul's 2013 bill did not impose penalties on DHS for failure to achieve the bill's requirements.

Border community concerns

Border communities have expressed concern that H.R. 399 would place too much of a police presence on the border, and as a result harm trade and tourism as well as the environment. Some are also concerned about the loss of privacy from the constant presence of drone surveillance within the region up to 100 miles from the border.⁷

⁶ <http://www.dhs.gov/news/2013/06/27/written-testimony-cbp-house-oversight-and-government-reform-subcommittee-national>

⁷ <http://www.cair.com/press-center/press-releases/12841-cair-joins-150-organizations-opposing-hr399-secure-our-borders-first-act.html>