

116TH CONGRESS
1ST SESSION

S. 2691

To establish the position of Ombudsman for Border and Immigration Enforcement Related Concerns in the Department of Homeland Security.

IN THE SENATE OF THE UNITED STATES

OCTOBER 24, 2019

Mr. UDALL (for himself, Ms. HARRIS, Mr. WYDEN, Mr. BLUMENTHAL, Mr. HEINRICH, Mr. MERKLEY, Mr. BOOKER, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish the position of Ombudsman for Border and Immigration Enforcement Related Concerns in the Department of Homeland Security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ESTABLISHMENT OF THE OFFICE OF THE OM-**
4 **BUDSMAN FOR BORDER AND IMMIGRATION**
5 **ENFORCEMENT RELATED CONCERNS.**

6 (a) IN GENERAL.—Title VII of the Homeland Secu-
7 rity Act of 2002 (6 U.S.C. 341 et seq.) is amended by
8 adding at the end the following:

1 **“SEC. 711. OMBUDSMAN FOR BORDER AND IMMIGRATION**
2 **ENFORCEMENT RELATED CONCERNS.**

3 “(a) IN GENERAL.—There is established within the
4 Department the position of Ombudsman for Border and
5 Immigration Enforcement Related Concerns (referred to
6 in this section as the ‘Ombudsman’), who shall—

7 “(1) be independent of Department agencies
8 and officers (except for the Secretary);

9 “(2) report directly to the Secretary; and

10 “(3) have a background in immigration law,
11 civil rights, and law enforcement.

12 “(b) FUNCTIONS.—It shall be the function of the
13 Ombudsman—

14 “(1) in coordination with the Inspector General
15 of the Department, to establish an independent, neu-
16 tral, accessible, confidential, and standardized proc-
17 ess—

18 “(A) to assist individuals, including aliens
19 (as defined in section 101 of the Immigration
20 and Nationality Act (8 U.S.C. 1101)) in resolv-
21 ing complaints with respect to U.S. Customs
22 and Border Protection, U.S. Immigration and
23 Customs Enforcement, a subcontractor, or a co-
24 operating entity; and

1 “(B) that includes a publicly accessible
2 website through which a complainant can check
3 on the status of such a complaint;

4 “(2) to identify and thereafter review, examine,
5 and make recommendations to the Secretary to ad-
6 dress chronic issues identified by the Ombudsman in
7 carrying out the function described in paragraph
8 (1);

9 “(3) to establish a Border Oversight Panel in
10 accordance with subsection (f); and

11 “(4) to review compliance with policies and
12 standards of the Department for the care for cus-
13 tody of aliens by U.S. Immigration and Customs
14 Enforcement and U.S. Customs and Border Protec-
15 tion, including any violations of applicable policy or
16 standards of care involving force-feeding.

17 “(c) CONFIDENTIALITY.—

18 “(1) IN GENERAL.—The existence of a com-
19 plaint, including the identity of any Department em-
20 ployee implicated in a complaint, shall be kept con-
21 fidential by the Ombudsman. In the absence of the
22 written consent of an individual who submits a com-
23 plaint, the Ombudsman shall keep confidential the
24 identity of and any identifying information relating
25 to such individual.

1 “(2) FOIA DISCLOSURES.—The confidentiality
 2 requirement under paragraph (1) may not be consid-
 3 ered as a factor in determining whether information
 4 under this subsection may be disclosed under section
 5 552 of title 5, United States Code (commonly re-
 6 ferred to as the ‘Freedom of Information Act’).

7 “(d) ANNUAL REPORTING.—Not later than June 30
 8 of the first calendar year beginning after the date of the
 9 enactment of this section, and annually thereafter, the
 10 Ombudsman shall submit a report to the Committee on
 11 Homeland Security and Governmental Affairs of the Sen-
 12 ate, the Committee on the Judiciary of the Senate, the
 13 Committee on Homeland Security of the House of Rep-
 14 resentatives, and the Committee on the Judiciary of the
 15 House of Representatives that includes, for the previous
 16 calendar year—

17 “(1) the number and types of complaints re-
 18 ceived under this section and, for each complaint—

19 “(A) the component or subcomponent, sub-
 20 contractor, or cooperating entity identified;

21 “(B) the demographics of the complainant;
 22 and

23 “(C) a description of the resolution of the
 24 complaint or the status of the resolution proc-
 25 ess;

1 “(2) any complaint pattern that could be pre-
2 vented or reduced by policy training or practice
3 changes;

4 “(3) a description of any pattern of violations
5 of any applicable policy or standards;

6 “(4) a description of each complaint received
7 under this section with respect to which U.S. Cus-
8 toms and Border Protection, U.S. Immigration and
9 Customs Enforcement, a subcontractor, or a cooper-
10 ating entity, as applicable, has taken action to re-
11 solve, and the time between receipt and resolution of
12 each such complaint;

13 “(5) a description of complaints received under
14 this section for which action has not been taken dur-
15 ing the 1-year period beginning on the date on which
16 the complaint was received, and the period during
17 which each complaint has remained open;

18 “(6) recommendations the Ombudsman has
19 made under subsection (b)(2); and

20 “(7) other information, as the Ombudsman de-
21 termines appropriate.

22 “(e) APPOINTMENT OF BORDER COMMUNITIES LIAI-
23 SON.—

24 “(1) IN GENERAL.—The Ombudsman, in con-
25 junction with the Office for Civil Rights and Civil

1 Liberties of the Department, shall appoint a Border
2 Community Liaison (referred to in this subsection as
3 a ‘Liaison’) in each U.S. Border Patrol sector on the
4 northern and southern borders of the United States.
5 Each Liaison shall report directly to the Ombuds-
6 man.

7 “(2) PURPOSES.—Each Liaison shall—

8 “(A) foster cooperation between U.S. Cus-
9 toms and Border Protection, U.S. Immigration
10 and Customs Enforcement, and border commu-
11 nities;

12 “(B) consult with border communities on
13 the development of policies, directives, and pro-
14 grams of U.S. Customs and Border Protection
15 and U.S. Immigration and Customs Enforce-
16 ment;

17 “(C) receive feedback from border commu-
18 nities on the performance of U.S. Customs and
19 Border Protection and U.S. Immigration and
20 Customs Enforcement; and

21 “(D) submit an annual report to the Om-
22 budsman that details the findings of the Liai-
23 son, feedback received from border commu-
24 nities, and recommendations to increase co-
25 operation between U.S. Customs and Border

1 Protection, U.S. Immigration and Customs En-
2 forcement, and border communities.

3 “(f) BORDER OVERSIGHT PANEL.—

4 “(1) ESTABLISHMENT.—The Ombudsman shall
5 establish a Border Oversight Panel (referred to in
6 this subsection as the ‘Panel’).

7 “(2) COMPOSITION.—

8 “(A) IN GENERAL.—The Panel shall be
9 composed of 30 members selected by the Om-
10 budsman.

11 “(B) CHAIRPERSON.—The Ombudsman
12 shall serve as the chair of the Panel.

13 “(C) EXPERTISE.—Members of the Panel
14 shall have expertise in immigration, local crime
15 indices, civil and human rights, community re-
16 lations, cross-border trade and commerce, qual-
17 ity of life indicators, or other experience the
18 Ombudsman determines is appropriate, and
19 shall include individuals who reside in or near
20 border counties.

21 “(3) DUTIES.—The Panel shall evaluate and
22 make recommendations regarding the border en-
23 forcement policies, strategies, and programs of the
24 Department operating along the northern and south-
25 ern borders of the United States—

1 “(A) to take into consideration the impact
2 of such policies, strategies, and programs on
3 border communities, including protecting due
4 process, civil and human rights of border resi-
5 dents and visitors, and private property rights
6 of land owners;

7 “(B) to uphold domestic and international
8 legal obligations;

9 “(C) to reduce the number of migrant
10 deaths; and

11 “(D) to improve the safety of agents and
12 officers of U.S. Customs and Border Protection
13 and U.S. Immigration and Customs Enforce-
14 ment.

15 “(g) STAFFING.—The Secretary shall take appro-
16 priate action to ensure that the Ombudsman’s office has
17 sufficient staff and resources to effectively and efficiently
18 carry out its duties under this section.

19 “(h) TRAINING.—

20 “(1) IN GENERAL.—The Ombudsman shall con-
21 duct an annual evaluation of all training given to
22 agents and officers of U.S. Customs and Border
23 Protection and U.S. Immigration and Customs En-
24 forcement.

1 “(2) CONTENTS.—Each evaluation under para-
2 graph (1) shall include whether the training referred
3 to in such paragraph adequately addresses—

4 “(A) best practices in community policing,
5 cultural awareness, and carrying out enforce-
6 ment actions near sensitive locations, such as
7 places of worship or religious ceremony, school
8 or education-related places or events, court-
9 houses or other civic buildings providing serv-
10 ices accessible to the public, hospitals, medical
11 treatment or health care facilities, public dem-
12 onstrations, and attorney’s offices (including a
13 public defender or legal aid offices);

14 “(B) policies for operating in locations
15 where there are limitations on cooperation by
16 local law enforcement;

17 “(C) interaction with vulnerable popu-
18 lations, including instruction on screening, iden-
19 tifying, and responding to vulnerable popu-
20 lations, such as children, victims of human traf-
21 ficking, and the acutely ill;

22 “(D) standards of professional and ethical
23 conduct, including—

24 “(i) lawful use of force, de-escalation
25 tactics, and alternatives to the use of force;

1 “(ii) complying with chain of com-
2 mand and lawful orders;

3 “(iii) conduct and ethical behavior to-
4 ward the public in a civil and professional
5 manner;

6 “(iv) civil rights and legal protections
7 for nationals of the United States and
8 aliens;

9 “(v) non-biased questioning;

10 “(vi) sensitivity towards lesbian, gay,
11 bisexual, transgender, and queer individ-
12 uals;

13 “(vii) permissible and impermissible
14 social media activity; and

15 “(viii) sexual and other harassment
16 and assault, including an assessment of
17 whether adequate policies exist to resolve
18 complaints;

19 “(E) protecting the civil, constitutional,
20 human, and privacy rights of individuals, with
21 special emphasis on the scope of enforcement
22 authority, including chain of evidence practices
23 and document seizure, and use of force policies
24 available to agents and officers;

1 “(F) maintaining and updated under-
2 standing of Federal legal rulings, court deci-
3 sions, and Department policies and procedures;
4 and

5 “(G) the scope of agents’ and officers’ au-
6 thority to conduct immigration enforcement ac-
7 tivities, including interviews, interrogations,
8 stops, searches, arrests, and detentions, in addi-
9 tion to identifying and detecting fraudulent doc-
10 uments.

11 “(3) RECOMMENDATIONS.—Not later than 90
12 days after conducting each evaluation under para-
13 graph (1), the Ombudsman shall develop, and sub-
14 mit to the Secretary, recommendations regarding
15 any additional training needed by agents and offi-
16 cers of U.S. Customs and Border Protection and
17 U.S. Immigration and Customs Enforcement.

18 “(4) FEEDBACK.—Not later than 180 days
19 after receiving a recommendation from the Ombuds-
20 man, the Secretary shall provide—

21 “(A) a public, written response to the rec-
22 ommendation; and

23 “(B)(i) if the Secretary concurs with the
24 recommendation, an action plan to implement
25 the recommendation; or

1 “(ii) if the Secretary rejects the rec-
2 ommendation, a justification for such rejection.

3 “(i) ELECTRONIC TRACKING.—

4 “(1) IN GENERAL.—The Ombudsman, in co-
5 ordination with the Commissioner of U.S. Customs
6 and Border Protection, the Director of U.S. Immig-
7 ration and Customs Enforcement, and the Office of
8 Refugee Resettlement of the Department of Health
9 and Human Services, shall develop recommendations
10 for the establishment of an electronic tracking num-
11 ber system on a single interface, which shall be used
12 to track the location of a child who has been sepa-
13 rated from a parent, legal guardian, or other relative
14 of such child, and which shall be accessible to agents
15 and officers of U.S. Customs and Border Protection,
16 U.S. Immigration and Customs Enforcement, and
17 the Office of Refugee Resettlement.

18 “(2) TRACKING NUMBER.—The recommenda-
19 tions developed under this subsection shall consider
20 how a tracking number can be assigned to a child
21 who has been separated from a parent, legal guard-
22 ian, or other relative of such child that—

23 “(A) is transferable;

1 “(B) may be shared easily on the elec-
2 tronic tracking system described in this sub-
3 section by agents and officers of—

4 “(i) U.S. Customs and Border Protec-
5 tion;

6 “(ii) U.S. Immigration and Customs
7 Enforcement; and

8 “(iii) the Office of Refugee Resettle-
9 ment of the Department of Health and
10 Human Services; and

11 “(C) is interoperable with the electronic lo-
12 cation records of a parent, legal guardian, or
13 other relative of such child.

14 “(j) BODY-WORN CAMERAS.—

15 “(1) REQUIREMENT.—Not later than 120 days
16 after the date of the enactment of this section, the
17 Ombudsman, in coordination with the Commissioner
18 of U.S. Customs and Border Protection, the Direc-
19 tor of U.S. Immigration and Customs Enforcement,
20 and labor organizations representing agents and offi-
21 cers of U.S. Customs and Border Protection and
22 U.S. Immigration and Customs Enforcement, shall
23 submit a plan to the Committee on Homeland Secu-
24 rity and Governmental Affairs of the Senate, the
25 Committee on the Judiciary of the Senate, the Com-

1 mittee on Homeland Security of the House of Rep-
2 resentatives, and the Committee on the Judiciary of
3 the House of Representatives for requiring, not later
4 than 1 year after such date of enactment, the use
5 of body-worn cameras by U.S. Border Patrol agents
6 and U.S. Immigration and Customs Enforcement of-
7 ficers whenever such agents and officers are engaged
8 in border security or immigration enforcement activi-
9 ties.

10 “(2) ELEMENTS.—The plan required under
11 paragraph (1) shall include—

12 “(A) benchmarks for implementation of
13 the use of body-worn cameras within U.S. Cus-
14 toms and Border Protection and U.S. Immigra-
15 tion and Customs Enforcement;

16 “(B) policies, procedures, and training
17 modules for the use of body-worn cameras by
18 agents and officers of U.S. Customs and Border
19 Protection and U.S. Immigration and Customs
20 Enforcement, including training modules relat-
21 ing to the appropriate use of such cameras and
22 adverse action for non-compliance; and

23 “(C) mechanisms to ensure compliance
24 with body-worn camera policies and procedures.

3 “(A) existing State and local policies re-
4 quiring the use of body-worn cameras; and

“(B) principles regarding body-worn cameras published by major civil and human rights organizations.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296) is amended by inserting after the item relating to section 710 the following:

“Sec. 711. Ombudsman for Border and Immigration Enforcement Related Concerns.”.

•S 2691 IS