

103^D CONGRESS
1ST SESSION

H. R. 2119

To establish an Immigration Enforcement Review Commission.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1993

Mr. BECERRA (for himself, Mr. CONYERS, Mr. EDWARDS of California, Mr. GUTIERREZ, Mr. PASTOR, Mr. SERRANO, and Mr. TORRES) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish an Immigration Enforcement Review
Commission.

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. SHORT TITLE.**

4 This Act may be cited as the “Immigration Enforce-
5 ment Review Commission Act”.

6 **SEC. 2. CREATION OF IMMIGRATION ENFORCEMENT RE-**
7 **VIEW COMMISSION.**

8 There is established the Immigration Enforcement
9 Review Commission (hereinafter referred to as the “Re-
10 view Commission”). The Review Commission shall be com-

1 prised of a Board of Commissioners, an Investigations Of-
2 fice, and a Community Outreach Office. In the execution
3 of its duties, the Review Commission shall comply with
4 the requirements established in this Act. The Immigration
5 and Naturalization Service and the Customs Service (here-
6 inafter referred to as “the Services”) shall cooperate fully
7 with the Review Commission and its employees in carrying
8 out the duties of the Review Commission under this Act,
9 and shall provide to the Commission such records as the
10 Commission considers appropriate.

11 **SEC. 3. DUTIES OF REVIEW COMMISSION.**

12 The Review Commission shall be responsible for in-
13 vestigating complaints of civil rights abuses against the
14 Services, employees of the Services, their divisions, or any
15 facilities where detainees are held in Service custody.
16 Based upon its findings, the Review Commission shall
17 make recommendations to the Services to discipline Serv-
18 ice employees responsible for committing abuses. The Re-
19 view Commission shall also make policy recommendations
20 to the Services as appropriate.

21 **SEC. 4. REVIEW COMMISSION.**

22 (a) COMPOSITION OF THE BOARD OF COMMIS-
23 SIONERS.—The Board of Commissioners (hereinafter re-
24 ferred to as the “Board”) shall be composed of 7 members
25 who shall be appointed by the President by and with the

1 advice and consent of the Senate. The President shall des-
2 ignate one member to serve as Director of the Board of
3 Commissioners. Not more than 4 members may be of the
4 same political party. The members of the Board shall be
5 full-time employees.

6 (b) APPOINTMENTS AND TERMS OF OFFICE.—

7 (1) Except as provided in paragraph (2), the
8 term of each Commissioner shall be 6 years.

9 (2) Of the members first appointed, 4 shall be
10 appointed to terms of 3 years. Not more than 2
11 members appointed under this paragraph may be of
12 the same political party.

13 (3) A member appointed to fill a vacancy occur-
14 ring before the expiration of the term for which that
15 member's predecessor was appointed shall be ap-
16 pointed only for the remainder of that term.

17 (4) No person shall serve as a member of the
18 Board for more than 2 terms.

19 (c) COMPENSATION.—Each member of the Board
20 shall receive compensation at the annual rate of basic pay
21 in effect for level V of the Executive Schedule.

22 (d) ELIGIBILITY.—A member of the Board may not
23 have been employed by the Services within the period be-
24 ginning 5 years before appointment, or employed by any

1 law enforcement agency within the period beginning 1 year
2 before appointment.

3 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

4 (a) INVESTIGATIONS OFFICE.—The Review Commis-
5 sion shall employ such investigative personnel as the
6 Board considers advisable, in accordance with the civil
7 service and classification laws. Investigators shall be
8 charged with the responsibility of investigating all com-
9 plaints brought to the Review Commission's attention.

10 (b) COMMUNITY OUTREACH OFFICE.—The Board
11 shall appoint a Director of Community Outreach. The Di-
12 rector of Community Outreach shall establish local com-
13 munity task forces to improve the working relationship be-
14 tween the Services and local community groups and orga-
15 nizations.

16 (c) REVIEW COMMISSION FACILITIES.—The Review
17 Commission shall establish a headquarters and 3 regional
18 offices. The Review Commission may not maintain offices
19 in a facility under the control or operation of the Services,
20 or any facility in which either of the Services occupies
21 space.

22 (d) PERSONNEL LIMITATION.—An employee of the
23 Review Commission may not have been employed by the
24 Services within the period beginning 5 years before ap-

1 pointment or employed by any law enforcement agency
2 within the period beginning 1 year before appointment.

3 (e) REGULATIONS.—The Review Commission is au-
4 thorized to promulgate such rules and regulations as may
5 be necessary to carry out this Act including procedures
6 for the filing, investigation, and resolution of complaints.

7 **SEC. 6. OPERATIONS OF REVIEW COMMISSION.**

8 (a) COMPLAINT FORMS.—

9 (1) Complaint forms shall be made available at
10 all Service facilities and shall be available upon re-
11 quest from the Review Commission.

12 (2) The complaint forms shall be written in lan-
13 guages reflecting the languages of the immigrant
14 population.

15 (b) FILING OF COMPLAINTS.—

16 (1) Complaints may be filed in person, by mail,
17 by telephone, by facsimile, or by any other reason-
18 able means. Complaints may be filed by any person,
19 including anonymously, and may be filed on behalf
20 of third parties. Complaints need not be filed on the
21 official complaint forms.

22 (2) The Review Commission shall establish and
23 operate a multilingual, 24-hour, toll-free hotline to
24 receive complaints.

1 (3) Whenever possible, upon receipt of a com-
2 plaint, the Review Commission shall provide to the
3 complainant information which describes the review
4 procedures of the Review Commission. Such infor-
5 mation shall be available in languages reflecting the
6 languages of the immigrant population.

7 (c) PUBLIC OUTREACH.—

8 (1) The Review Commission shall educate mem-
9 bers of the public about its functions and shall re-
10 ceive and actively seek out suggestions from the pub-
11 lic to improve the functioning of the Review Com-
12 mission.

13 (2) The Review Commission shall develop out-
14 reach materials, which shall include, a description of
15 the Review Commission, its duties, and complaint
16 procedures. Such materials shall be made available
17 to the public in languages reflecting the languages
18 of the immigrant population.

19 (3) The Review Commission shall oversee the
20 display and dissemination of outreach materials at
21 all Service facilities.

22 (d) SERVICE EMPLOYEES' DUTY TO INFORM COM-
23 MISSION.—

24 (1) When a complaint of agent misconduct is
25 brought to the attention of any Service employee,

1 the employee shall promptly inform the complainant
2 of proper procedures for filing a complaint.

3 (2) A Service employee who witnesses or other-
4 wise obtains actual knowledge of the use of force,
5 that is unreasonable in light of the facts and cir-
6 cumstances and involves another Service employee,
7 shall report such incident to the Review Commission
8 within 24 hours of the acquisition of knowledge of
9 such incident.

10 (3) The Review Commission may promulgate
11 regulations requiring Service employees to report to
12 the Commission other violations of the Services' op-
13 erating procedures.

14 (e) INVESTIGATION OF COMPLAINTS.—Each com-
15 plaint shall be investigated by an investigator who shall
16 complete and submit a written report to the Board of
17 Commissioners within 60 days of the assignment, unless
18 the Board authorizes an extension. The Services shall
19 grant investigators access to information, documents, or
20 other items relevant to the matter under investigation.
21 The Board may issue subpoenas. Service employees shall
22 cooperate fully with Review Commission investigations,
23 subject to the protections afforded by the Constitution.
24 Service employees shall be advised of their constitutional
25 rights and the procedural rights afforded under this Act.

1 (f) DISPOSITION OF COMPLAINTS.—

2 (1) When the Board receives a written report
3 on a complaint from an investigator, the Board shall
4 designate a panel of 3 of its members (hereinafter
5 referred to as the “Panel”) to review the report.

6 (2) The Panel shall conduct hearings on the
7 complaint if—

8 (A) the alleged abuse is of a serious na-
9 ture, as defined by the regulations prescribed
10 under authority of this Act; or

11 (B) the Panel, by majority vote, decides to
12 hold a hearing.

13 (3) The Panel shall issue a written finding on
14 the complaint based on the report alone or on the
15 report and a hearing, if one is held.

16 (4) The Panel shall forward its finding to both
17 the complainant and the Service employee. The com-
18 plainant and the Service employee shall have 30
19 days in which to review the Panel’s official finding.
20 During the 30-day period, either the complainant or
21 the Service employee may take one of the following
22 actions:

23 (A) If no hearing was held, request that
24 the Panel conduct a hearing. A hearing shall be

1 held if one member of the Panel votes to hold
2 a hearing.

3 (B) Regardless of whether a hearing was
4 held, request an en banc review of the Panel's
5 decision. An en banc review will be granted if
6 a majority of the Board votes to conduct such
7 review.

8 (5) If neither party makes a request pursuant
9 to subparagraphs (A) or (B) of paragraph (4), or if
10 such a request is denied, then the Board, promptly,
11 shall report its finding to the appropriate Service.

12 (6) All findings made by the Board of Commis-
13 sioners sitting en banc shall be reported directly to
14 the appropriate Service with copies to the complain-
15 ant and the Service employee.

16 (g) HEARINGS.—

17 (1) Both the complainant and the subject Serv-
18 ice employee shall have the right to be represented
19 by counsel or other representative at Board hear-
20 ings, to present witnesses, and to cross-examine wit-
21 nesses.

22 (2) Any finding of a violation on the part of a
23 Service employee by the Board must be established
24 by a preponderance of the evidence.

1 (3)(A) Except as provided in subparagraph (B),
2 hearings shall be open to the public and transcripts
3 of hearings shall be available to the public.

4 (B) For good cause the Board of Commis-
5 sioners may close to the public all or any part of a
6 hearing and may seal all or any part of the tran-
7 script of a hearing.

8 (4) Unless mandated by unusual circumstances,
9 a hearing shall be conducted in one location within
10 the United States that is generally convenient to the
11 complainant and any potential witnesses.

12 (h) DISCIPLINARY RECOMMENDATIONS.—

13 (1) When a finding of a violation may con-
14 stitute a criminal offense, the Board of Commis-
15 sioners shall inform the appropriate Federal or State
16 authorities so that appropriate prosecutorial action
17 may be considered. Prosecutorial action shall not re-
18 lieve the Board of its duties under this Act.

19 (2) When a complaint has been substantiated,
20 the Board shall recommend disciplinary action
21 against the subject Service employee. The Board's
22 recommendations shall be based on a schedule of
23 sanctions determined by the Commission. If the
24 Services do not adopt the recommendations of the
25 Board, they shall provide a written explanation of

1 the grounds for refusal to do so within 30 days of
2 the Board's recommendation. The Commission's rec-
3 ommendations and the Service's explanation shall be
4 made public.

5 (3) Nothing in this Act shall affect the Services'
6 authority to discipline their employees.

7 (i) EARLY WARNING PROGRAM.—The Review Com-
8 mission shall conduct a periodic review of all complaints
9 in order to determine whether particular Service employ-
10 ees have been the subject of repeated complaints or have
11 otherwise demonstrated they may be having difficulty
12 dealing appropriately with members of the public. The re-
13 sults of this review shall be presented to the Services. The
14 Review Commission shall make recommendations to the
15 Services with respect to so identified Service employees in-
16 cluding, but not limited to, recommendations of training
17 or counseling.

18 (j) RECORDS OF COMPLAINTS AND STATISTICAL
19 SUMMARIES.—The Review Commission shall maintain
20 records of complaints, including a summary of reports
21 made pursuant to the Early Warning Program under sub-
22 section (i). The Review Commission shall compile and pub-
23 lish, at least annually, a statistical summary of all com-
24 plaints received and the dispositions of such complaints.

1 **SEC. 7. RETALIATION.**

2 (a) RETALIATION PROHIBITED.—Retaliation is pro-
3 hibited and shall constitute the basis for a complaint to
4 the Commission.

5 (b) DEFINITION.—For the purposes of this Act, the
6 term “retaliation” means any action or threat of action
7 against a person, including a Service employee, because
8 such person filed a complaint, testified, assisted, or par-
9 ticipated in any manner in an investigation or hearing re-
10 lated to the complaint procedures established by this Act.

11 **SEC. 8. LIMITATION ON USE OF TESTIMONY.**

12 No testimony or other information gathered as part
13 of a complaint, investigation, or hearing under this Act
14 may be used in any proceeding under the Immigration and
15 Nationality Act.

16 **SEC. 9. FUNDING.**

17 Funds authorized to be appropriated for the Offices
18 of Inspector General of the Department of Justice and the
19 Department of the Treasury are authorized to be available
20 to carry out this Act.

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