

115TH CONGRESS  
1ST SESSION

# S. 748

To protect United States citizens and residents from unlawful profiling, arrest, and detention, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 28, 2017

Mr. MENENDEZ (for himself, Mr. BOOKER, Mrs. GILLIBRAND, Ms. HARRIS, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect United States citizens and residents from unlawful profiling, arrest, and detention, and for other purposes.

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 TITLES; TABLE OF CONTENTS.**

4 (a) SHORT TITLES.—This Act may be cited as the  
5 “Protecting the Rights of Families and Immigrants Who  
6 Legally Entered From Detention Act” or the  
7 “PROFILED Act”.

8 (b) TABLE OF CONTENTS.—The table of contents for  
9 this Act is as follows:

- Sec. 1. Short titles; table of contents.  
 Sec. 2. Findings.  
 Sec. 3. Definitions.

#### TITLE I—PROHIBITION OF RACIAL PROFILING

- Sec. 101. Prohibition.  
 Sec. 102. Enforcement.  
 Sec. 103. Policies to eliminate racial profiling.  
 Sec. 104. Attorney General to issue regulations.  
 Sec. 105. Publication of data.  
 Sec. 106. Limitations on publication of data.

#### TITLE II—PROTECTION FROM UNLAWFUL ARREST AND DETENTION

- Sec. 201. Protections against unlawful detentions of citizens of the United States.  
 Sec. 202. Protections for primary caregivers with children.  
 Sec. 203. Basic protections for vulnerable populations.  
 Sec. 204. Reports on protections from unlawful detention.  
 Sec. 205. Immigration and Customs Enforcement Ombudsman.  
 Sec. 206. Rulemaking.  
 Sec. 207. Rescission.

### 1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Officials at U.S. Immigration and Customs  
 4 Enforcement have mistakenly detained and deported  
 5 United States citizens and lawful permanent resi-  
 6 dents.

7 (2) Mistaken identities, bureaucratic mix-ups,  
 8 and discriminatory attitudes further contribute to  
 9 unconstitutional actions against United States citi-  
 10 zens, lawful permanent residents, and other persons  
 11 lawfully present in the United States.

12 (3) The United States should not be a country  
 13 in which United States citizens and lawful perma-

1       nent residents are mistakenly or unlawfully detained,  
2       deported, or mistreated by government agents.

3               (4) No person in the United States should be  
4       subject to government actions that deny basic pro-  
5       tections or constitutional rights.

6 **SEC. 3. DEFINITIONS.**

7       In this Act:

8               (1) DEPARTMENT.—The term “Department”  
9       means the Department of Homeland Security.

10              (2) DETAINED.—The term “detained”, with re-  
11       spect to an individual, means an individual who is in  
12       government custody or subject any other deprivation  
13       of the freedom of movement by government agents.

14              (3) DETAINEE.—The term “detainee” means  
15       an individual detained during an immigration-related  
16       enforcement activity.

17              (4) DETENTION.—The term “detention”, in the  
18       context of an immigration-related enforcement activ-  
19       ity, means government custody or any other depriva-  
20       tion of the freedom of movement of an individual by  
21       government agents.

22              (5) GOVERNMENTAL BODY.—The term “govern-  
23       mental body” means any department, agency, special  
24       purpose district, or other instrumentality of Federal,  
25       State, local, or Indian tribal government.

1           (6) HIT RATE.—The term “hit rate” means the  
2 percentage of stops and searches in which a law en-  
3 forcement officer finds drugs, a gun, or something  
4 else that leads to an arrest. The hit rate is cal-  
5 culated by dividing the total number of searches by  
6 the number of searches that yield contraband. The  
7 hit rate is complementary to the rate of false stops.

8           (7) IMMIGRATION-RELATED ENFORCEMENT AC-  
9 TIVITY.—The term “immigration-related enforce-  
10 ment activity” means any action by a government  
11 agent in which—

12                   (A) an individual suspected of an immigra-  
13 tion violation is detained for such violation; or

14                   (B) an individual who has been detained  
15 by government agents is questioned about a  
16 possible immigration violation.

17           (8) LAW ENFORCEMENT AGENCY.—The term  
18 “law enforcement agency” means any Federal,  
19 State, local, or Indian tribal public agency engaged  
20 in the prevention, detection, or investigation of viola-  
21 tions of criminal, immigration, or customs laws.

22           (9) LAW ENFORCEMENT AGENT.—The term  
23 “law enforcement agent” means any Federal, State,  
24 local, or Indian tribal official responsible for enforce-  
25 ing criminal, immigration, or customs laws, includ-

1       ing police officers and other agents of a law enforce-  
2       ment agency.

3               (10) RACIAL PROFILING.—The term “racial  
4       profiling” means the practice of a law enforcement  
5       agent or agency relying, to any degree, on actual or  
6       perceived race, ethnicity, national origin, religion,  
7       gender, gender identity, or sexual orientation in se-  
8       lecting which individual to subject to routine or  
9       spontaneous investigatory activities or in deciding  
10      upon the scope and substance of law enforcement ac-  
11      tivity following the initial investigatory procedure,  
12      except when there is trustworthy information, rel-  
13      evant to the locality and timeframe, that links a per-  
14      son with a particular characteristic described in this  
15      paragraph to an identified criminal incident or  
16      scheme.

17              (11) ROUTINE OR SPONTANEOUS INVESTIGA-  
18      TORY ACTIVITIES.—The term “routine or sponta-  
19      neous investigatory activities” means the following  
20      activities by a law enforcement agent:

21                   (A) Interviews.

22                   (B) Traffic stops.

23                   (C) Pedestrian stops.

24                   (D) Frisks and other types of body  
25      searches.

1           (E) Consensual or nonconsensual searches  
2 of the persons, property, or possessions (includ-  
3 ing vehicles) of individuals using any form of  
4 public or private transportation, including mo-  
5 torists and pedestrians.

6           (F) Data collection and analysis, assess-  
7 ments, and predicated investigations.

8           (G) Inspections and interviews of entrants  
9 into the United States that are more extensive  
10 than those customarily carried out.

11           (H) Immigration-related workplace inves-  
12 tigations.

13           (I) Such other types of law enforcement  
14 encounters compiled for or by the Federal Bu-  
15 reau of Investigation or the Department of Jus-  
16 tice Bureau of Justice Statistics.

17           (12) SECRETARY.—The term “Secretary”  
18 means the Secretary of Homeland Security.

19           (13) STATE.—The term “State” means each of  
20 the 50 States, the District of Columbia, the Com-  
21 monwealth of Puerto Rico, and any other territory  
22 or possession of the United States.

23           (14) VULNERABLE POPULATION.—The term  
24 “vulnerable population” includes any of the fol-  
25 lowing:

1 (A) Individuals with a nonfrivolous claim  
2 to United States citizenship.

3 (B) Individuals who have a disability or  
4 have been determined by a medically trained  
5 professional to have medical or mental health  
6 needs.

7 (C) Pregnant or nursing women.

8 (D) Individuals who are detained with one  
9 or more of their children.

10 (E) Individuals who provide financial,  
11 physical, and other direct support to their  
12 minor children, parents, or other dependents.

13 (F) Individuals who are at least 65 years  
14 of age.

15 (G) Children (as defined in section  
16 101(b)(1) of the Immigration and Nationality  
17 Act (8 U.S.C. 1101(b)(1))).

18 (H) Victims of abuse, violence, crime, or  
19 human trafficking.

20 (I) Individuals who have been referred for  
21 a credible fear interview, a reasonable fear  
22 interview, or an asylum hearing.

23 (J) Stateless individuals.

24 (K) Individuals who have applied or intend  
25 to apply for asylum, withholding of removal, or

1 protection under the Convention Against Tor-  
 2 ture and Other Cruel, Inhuman or Degrading  
 3 Treatment or Punishment, done at New York,  
 4 December 10, 1984.

5 (L) Individuals who make a prima facie  
 6 case for eligibility for relief under any provision  
 7 of the Immigration and Nationality Act (8  
 8 U.S.C. 1101 et seq.), including returning lawful  
 9 permanent residents.

10 (M) Individuals who self-identify as les-  
 11 bian, gay, bisexual, transgender, or queer  
 12 (LGBTQ).

13 (N) Any group designated by the Secretary  
 14 as a vulnerable population.

## 15 **TITLE I—PROHIBITION OF** 16 **RACIAL PROFILING**

### 17 **SEC. 101. PROHIBITION.**

18 No law enforcement agent or law enforcement agency  
 19 shall engage in racial profiling.

### 20 **SEC. 102. ENFORCEMENT.**

21 (a) REMEDY.—The United States, or an individual  
 22 injured by racial profiling, may enforce this part in a civil  
 23 action for declaratory or injunctive relief, filed either in  
 24 a State court of general jurisdiction or in a district court  
 25 of the United States.



1 (b) PARTIES.—In any action brought under this part,  
2 relief may be obtained against—

3 (1) any governmental body that employed any  
4 law enforcement agent who engaged in racial  
5 profiling;

6 (2) any agent of a governmental body who en-  
7 gaged in racial profiling; and

8 (3) any person with supervisory authority over  
9 an agent described in paragraph (2).

10 (c) NATURE OF PROOF.—Proof that the routine or  
11 spontaneous investigatory activities of law enforcement  
12 agents in a jurisdiction have had a disparate impact on  
13 individuals with a particular characteristic described in  
14 section 3(11) shall constitute prima facie evidence of a vio-  
15 lation of this part.

16 (d) ATTORNEY'S FEES.—In any action or proceeding  
17 to enforce this part against any governmental body, the  
18 court may allow a prevailing plaintiff, other than the  
19 United States, reasonable attorney's fees as part of the  
20 costs, and may include expert fees as part of the attorney's  
21 fees.

22 **SEC. 103. POLICIES TO ELIMINATE RACIAL PROFILING.**

23 (a) IN GENERAL.—Federal, State, local, and Indian  
24 tribal law enforcement agencies shall—

1           (1) maintain adequate policies and procedures  
2           designed to eliminate racial profiling; and

3           (2) cease practices in effect on the date before  
4           the date of enactment of this Act that allow racial  
5           profiling.

6           (b) POLICIES.—The policies and procedures de-  
7           scribed in subsection (a)(1) shall include—

8           (1) a prohibition on racial profiling;

9           (2) training on racial profiling issues as part of  
10          law enforcement training;

11          (3) the collection of data in accordance with the  
12          regulations issued by the Attorney General under  
13          section 104;

14          (4) procedures for receiving, investigating, and  
15          responding meaningfully to complaints alleging ra-  
16          cial profiling by law enforcement agents; and

17          (5) any other policies and procedures the Attor-  
18          ney General determines to be necessary to eliminate  
19          racial profiling by law enforcement agencies.

20 **SEC. 104. ATTORNEY GENERAL TO ISSUE REGULATIONS.**

21          (a) REGULATIONS.—Not later than 6 months after  
22          the date of enactment of this Act, the Attorney General,  
23          in consultation with stakeholders, including Federal,  
24          State, and local law enforcement agencies and community,  
25          professional, research, and civil rights organizations, shall

1 issue regulations for the collection and compilation of data  
2 under section 103.

3 (b) REQUIREMENTS.—The regulations issued under  
4 subsection (a) shall—

5 (1) provide for the collection of data on all rou-  
6 tine or spontaneous investigatory activities;

7 (2) provide that the data collected shall—

8 (A) be collected by race, ethnicity, national  
9 origin, gender, and religion, as perceived by the  
10 law enforcement officer;

11 (B) include the date, time, and location of  
12 such investigatory activities;

13 (C) include detail sufficient to permit an  
14 analysis of whether a law enforcement agency is  
15 engaging in racial profiling; and

16 (D) not include personally identifiable in-  
17 formation;

18 (3) provide that a standardized form shall be  
19 made available to law enforcement agencies for the  
20 submission of collected data to the Department of  
21 Justice;

22 (4) provide that law enforcement agencies shall  
23 compile data on the standardized form made avail-  
24 able under paragraph (3), and submit the form to

1 the Civil Rights Division and the Department of  
2 Justice Bureau of Justice Statistics;

3 (5) provide that law enforcement agencies shall  
4 maintain all data collected under this subtitle for not  
5 less than 4 years;

6 (6) include guidelines for setting comparative  
7 benchmarks, consistent with best practices, against  
8 which collected data shall be measured;

9 (7) provide that the Department of Justice Bu-  
10 reau of Justice Statistics shall—

11 (A) analyze the data for any statistically  
12 significant disparities, including—

13 (i) disparities in the percentage of  
14 drivers or pedestrians stopped relative to  
15 the proportion of the population passing  
16 through the neighborhood;

17 (ii) disparities in the hit rate; and

18 (iii) disparities in the frequency of  
19 searches performed on racial or ethnic mi-  
20 nority drivers and the frequency of  
21 searches performed on non-minority driv-  
22 ers; and

23 (B) not later than 3 years after the date  
24 of enactment of this Act, and annually there-  
25 after—

1 (i) prepare a report regarding the  
2 findings of the analysis conducted under  
3 subparagraph (A);

4 (ii) provide such report to Congress;  
5 and

6 (iii) make such report available to the  
7 public, including on a website of the De-  
8 partment of Justice; and

9 (8) protect the privacy of individuals whose  
10 data is collected by—

11 (A) limiting the use of the data collected  
12 under this subtitle to the purposes set forth in  
13 this subtitle;

14 (B) except as otherwise provided in this  
15 subtitle, limiting access to the data collected  
16 under this subtitle to those Federal, State,  
17 local, or tribal employees or agents who require  
18 such access in order to fulfill the purposes for  
19 the data set forth in this subtitle;

20 (C) requiring contractors or other non-gov-  
21 ernmental agents who are permitted access to  
22 the data collected under this subtitle to sign use  
23 agreements incorporating the use and disclosure  
24 restrictions set forth in subparagraph (A); and

1 (D) requiring the maintenance of adequate  
2 security measures to prevent unauthorized ac-  
3 cess to the data collected under this subtitle.

4 **SEC. 105. PUBLICATION OF DATA.**

5 The Department of Justice Bureau of Justice Statis-  
6 tics shall provide to Congress and make available to the  
7 public, together with each annual report described in sec-  
8 tion 104(b)(7)(B), the data collected pursuant to this sub-  
9 title, excluding any personally identifiable information de-  
10 scribed in section 106.

11 **SEC. 106. LIMITATIONS ON PUBLICATION OF DATA.**

12 The name or identifying information of a law enforce-  
13 ment officer, complainant, or any other individual involved  
14 in any activity for which data is collected and compiled  
15 under this subtitle shall not be—

16 (1) released to the public;

17 (2) disclosed to any person, except for—

18 (A) such disclosures as are necessary to  
19 comply with this subtitle;

20 (B) disclosures of information regarding a  
21 particular person to that person; or

22 (C) disclosures pursuant to litigation; or

23 (3) subject to disclosure under section 552 of  
24 title 5, United States Code (commonly known as the  
25 “Freedom of Information Act”), except for dislo-

1       sures of information regarding a particular person to  
2       that person.

3       **TITLE II—PROTECTION FROM**  
4       **UNLAWFUL ARREST AND DE-**  
5       **TENTION**

6       **SEC. 201. PROTECTIONS AGAINST UNLAWFUL DETENTIONS**  
7               **OF CITIZENS OF THE UNITED STATES.**

8       (a) NOTIFICATIONS.—

9               (1) IN GENERAL.—Prior to questioning an indi-  
10       vidual who has been detained on the basis of a sus-  
11       pected immigration violation or has been detained  
12       during an immigration-related enforcement activity,  
13       any law enforcement agent shall first advise the in-  
14       dividual, in the language requested by the individual  
15       that—

16               (A) the individual has the right to be rep-  
17       resented by counsel at no expense to the Fed-  
18       eral Government;

19               (B) the individual may remain silent; and

20               (C) any statement made by the individual  
21       may be used against the detainee in a subse-  
22       quent removal or criminal proceeding.

23       (2) EFFECT OF VIOLATION.—Any evidence ob-  
24       tained by a law enforcement agent from an indi-  
25       vidual in violation of paragraph (1) may not be—

1 (A) admissible in a removal proceeding  
2 against the individual; or

3 (B) used to confirm that the individual is  
4 not a citizen of the United States.

5 (b) ACCESS TO COUNSEL.—

6 (1) IN GENERAL.—An individual who is subject  
7 to, or detained during, an immigration-related en-  
8 forcement activity may be represented by legal coun-  
9 sel at any time.

10 (2) LIST OF FREE LEGAL SERVICES.—The ex-  
11 amining officer shall, in the language requested by  
12 the individual being detained—

13 (A) provide such individual, at the time of  
14 detention of such individual for an immigration-  
15 related violation, with a list of available free or  
16 low-cost legal services provided by organizations  
17 and attorneys that are located in the region in  
18 which the detention occurred; and

19 (B) certify on the Notice to Appear issued  
20 to such individual that such a list was provided  
21 to the individual.

22 (3) AMENDMENT.—Section 236 of the Immi-  
23 gration and Nationality Act (8 U.S.C. 1226) is  
24 amended—



1 (A) by redesignating subsection (e) as sub-  
2 section (k);

3 (B) by redesignating subsections (b), (c),  
4 and (d) as subsections (f), (g), and (h), respec-  
5 tively; and

6 (C) by inserting before subsection (k), as  
7 so redesignated, the following:

8 “(j) RIGHT OF ACCESS TO COUNSEL.—An individual  
9 may be represented by counsel of the individual’s choosing  
10 while being subject to any immigration-related enforce-  
11 ment activity, including—

12 “(1) interviews;

13 “(2) processing appointments;

14 “(3) booking or intake questions;

15 “(4) hearings; and

16 “(5) any procedure that may result in a conclu-  
17 sion that the detainee will be detained or removed  
18 from the United States.”.

19 (c) NOTICE.—

20 (1) AMENDMENT.—Section 236 of such Act, as  
21 amended by subsection (b)(3), is further amended by  
22 inserting before subsection (j), the following:

23 “(i) NOTICE AND CHARGES.—

24 “(1) IN GENERAL.—Not later than 48 hours  
25 after the commencement of a detention of an indi-

1       vidual under this section, the Secretary of Homeland  
2       Security shall—

3               “(A) file a Notice to Appear or other rel-  
4               evant charging document with the immigration  
5               court closest to the location at which the indi-  
6               vidual was apprehended; and

7               “(B) serve such notice or charging docu-  
8               ment on the individual.

9               “(2) CUSTODY DETERMINATION.—Any indi-  
10              vidual who is detained under this section for more  
11              than 48 hours shall be brought before an immigra-  
12              tion judge for a custody determination not later than  
13              72 hours after the commencement of such detention  
14              unless the individual waives the right in accordance  
15              with paragraph (3).

16              “(3) WAIVER.—The requirements of this sub-  
17              section may be waived for not more than 7 days if  
18              the detainee—

19                      “(A) enters into a written agreement with  
20                      the Department of Homeland Security to waive  
21                      such requirements; and

22                      “(B) is prima facie eligible for immigration  
23                      benefits or demonstrates prima facie eligibility  
24                      for a defense against removal.”.

1           (2) APPLICABILITY OF OTHER LAW.—Nothing  
2           in subsection (i) of section 236 of the Immigration  
3           and Nationality Act, as added by paragraph (1),  
4           may be construed to repeal section 236A of such Act  
5           (8 U.S.C. 1226a).

6           (d) ACCESS TO TELEPHONES.—

7           (1) IN GENERAL.—Not later than 6 hours after  
8           the commencement of a detention of an individual  
9           during an immigration-related enforcement activity,  
10          an official of the Department or a law enforcement  
11          agency shall provide the individual with access to a  
12          telephone to make telephone calls at no charge to  
13          the detainee to—

14                   (A) the consulate of the individual;

15                   (B) designated free legal-service providers  
16                   or legal representatives who are providing free  
17                   representation for the individual;

18                   (C) an office of the U.S. Immigration and  
19                   Customs Enforcement;

20                   (D) an immigration court or the Board of  
21                   Immigration Appeals;

22                   (E) the Office of the Inspector General of  
23                   the Department;

24                   (F) the Office for Civil Rights and Civil  
25                   Liberties of the Department; and

1 (G) any Federal or State court in which  
2 the detainee is or may become involved in a  
3 legal proceeding.

4 (2) CONFIDENTIAL TELEPHONE CALLS.—

5 (A) IN GENERAL.—A detainee shall be per-  
6 mitted to make confidential telephone calls at  
7 no charge to the detainee if the detainee—

8 (i) is subject to expedited removal;

9 (ii) has dependents; or

10 (iii) is experiencing a personal or fam-  
11 ily emergency.

12 (B) ADDITIONAL CONFIDENTIAL TELE-  
13 PHONE CALLS.—A detainee shall be permitted  
14 to make additional confidential telephone calls  
15 at no cost to the Federal Government.

16 (e) PROTECTION OF COMMUNITY-BASED ORGANIZA-  
17 TIONS, FAITH-BASED ORGANIZATIONS AND OTHER INSTI-  
18 TUTIONS.—

19 (1) IN GENERAL.—The Secretary shall issue  
20 regulations requiring officials of the Department or  
21 law enforcement agencies—

22 (A) to prohibit the apprehension of an in-  
23 dividual as part of an immigration-related en-  
24 forcement activity on the premises or in the im-  
25 mediate vicinity of—

- 1 (i) a childcare provider;  
2 (ii) a school;  
3 (iii) a legal-service provider;  
4 (iv) a Federal court or State court  
5 proceeding;  
6 (v) an administrative proceeding;  
7 (vi) a funeral home;  
8 (vii) a cemetery;  
9 (viii) a college, university, or commu-  
10 nity college;  
11 (ix) a victim services agency;  
12 (x) a social service agency;  
13 (xi) a hospital or emergency care cen-  
14 ter;  
15 (xii) a health care clinic; and  
16 (xiii) a place of worship; and

17 (B) to tightly control investigative oper-  
18 ations at the locations described in subpara-  
19 graph (A).

20 (2) EXCEPTION.—

21 (A) IN GENERAL.—Notwithstanding para-  
22 graph (1), an immigration-related enforcement  
23 activity may be carried out in a location de-  
24 scribed under paragraph (1)(A) if the Secretary

1 determines that exigent circumstances exist and  
2 approves such activity.

3 (B) EXIGENT CIRCUMSTANCES DE-  
4 FINED.—In this paragraph, the term “exigent  
5 circumstances” means, with respect to an immi-  
6 gration-related enforcement activity, that such  
7 activity—

8 (i) involves a national security or ter-  
9 rorism matter;

10 (ii) involves an imminent risk of  
11 death, violence, or physical harm to any  
12 person or property;

13 (iii) involves the immediate arrest or  
14 pursuit of a dangerous felon, terrorist sus-  
15 pect, or any other individual that present  
16 an imminent danger to public safety; or

17 (iv) involves an imminent risk of de-  
18 struction of evidence material to an ongo-  
19 ing criminal case.

20 (3) NOTICE TO APPEAR.—The Secretary shall  
21 amend the Notice to Appear form to include a state-  
22 ment that no immigration-related enforcement activ-  
23 ity was undertaken in any of the locations described  
24 under paragraph (1)(A) unless such activity was ap-  
25 proved under paragraph (2).

1 (f) TRANSFER OF DETAINEES.—

2 (1) PROCEDURES.—In adopting procedures re-  
3 lating to the transfer of individuals detained under  
4 section 236 of the Immigration and Nationality Act  
5 (8 U.S.C. 1226), the Secretary shall promulgate reg-  
6 ulations requiring officials of the Department to give  
7 substantial weight to—

8 (A) the access of the detainee to legal rep-  
9 resentation;

10 (B) the residence of the detainee prior to  
11 apprehension;

12 (C) the location of family members of the  
13 detainee;

14 (D) the stage of any legal proceeding in-  
15 volving the detainee, including Federal, State,  
16 or administrative proceedings;

17 (E) the proximity of the transferee facility  
18 to the venue of any legal proceeding described  
19 in subparagraph (D);

20 (F) the health and medical fitness of the  
21 detainee; and

22 (G) whether the detainee has a pending  
23 application for relief with U.S. Citizenship and  
24 Immigration Services or the Executive Office  
25 for Immigration Review.

1           (2) NOTICE.—Unless emergency circumstances,  
2 such as a natural disaster or comparable exigency,  
3 dictate an immediate transfer, the Secretary—

4           (A) shall provide at least 72-hour notice to  
5 the detainee in the language requested by the  
6 detainee and to the representative of record be-  
7 fore transferring a detainee to another facility;  
8 and

9           (B) may not transfer the detainee until the  
10 detainee has received any custody hearing for  
11 which the detainee is eligible.

12           (3) ADDITIONAL REQUIREMENTS.—

13           (A) IN GENERAL.—Absent emergency cir-  
14 cumstances, such as a natural disaster or com-  
15 parable exigency, the Secretary or law enforce-  
16 ment agent may not transfer a detainee who  
17 has an existing attorney-client relationship to  
18 another facility if the transfer of the detainee  
19 would—

20           (i) impair the existing attorney-client  
21 relationship;

22           (ii) prejudice the rights of the de-  
23 tainee in any legal proceeding; or

24           (iii) affect the ability of the detainee  
25 to present evidence or witnesses.



1 (B) LEGAL RIGHTS OF DETAINEES.—In  
2 any custody, bond, or removal decision involving  
3 a detainee detained under section 236 of the  
4 Immigration and Nationality Act (8 U.S.C.  
5 1226)—

6 (i) legal precedent in the location of  
7 apprehension shall control any custody,  
8 bond, or removal decision; and

9 (ii) in cases of ambiguity, an immigra-  
10 tion judge shall use the rule of lenity in  
11 choosing from among the laws of the rel-  
12 evant circuits.

13 (C) RECORD.—If a detainee is transferred,  
14 the Secretary or law enforcement agent shall  
15 prepare a record of—

16 (i) the reasons necessitating the trans-  
17 fer; and

18 (ii) actions taken to ameliorate any  
19 adverse effect on the legal rights of the de-  
20 tainee.

21 (D) INVESTIGATION.—If a detainee makes  
22 an allegation of retaliation, such allegation shall  
23 be investigated by an independent entity.

24 (g) TRAINING.—

1           (1) IN GENERAL.—The Secretary, in consulta-  
2           tion with the Civil Rights and Civil Liberties Officer,  
3           shall provide all officers of the Department, other  
4           Federal agencies, and all State and local officers in-  
5           volved in immigration-related enforcement activities  
6           with periodic training regarding—

7                   (A) immigration law;

8                   (B) civil rights law;

9                   (C) medical and mental health needs and  
10           treatment;

11                   (D) due process protections;

12                   (E) humanitarian guidelines under current  
13           law, including—

14                   (i) the right of access to immigration  
15           legal counsel; and

16                   (ii) the appropriate treatment of vul-  
17           nerable populations during immigration-re-  
18           lated enforcement activities; and

19                   (F) racial profiling and implicit bias.

20           (2) IMPLICIT BIAS DEFINED.—In this sub-  
21           section, the term “implicit bias” means—

22                   (A) bias in judgment or behavior that re-  
23           sults from subtle cognitive processes, including  
24           implicit attitudes and implicit stereotypes, that

1 often operate at a level below conscious aware-  
2 ness and without intentional control; and

3 (B) implicit attitudes and stereotypes that  
4 result in beliefs or simple associations that a  
5 person makes between an object and its evalua-  
6 tion that are automatically activated by the  
7 mere presence (actual or symbolic) of the atti-  
8 tude object.

9 **SEC. 202. PROTECTIONS FOR PRIMARY CAREGIVERS WITH**  
10 **CHILDREN.**

11 (a) APPREHENSION PROCEDURES.—In any immigra-  
12 tion-related enforcement activity, the Secretary and any  
13 entity cooperating with the Secretary on such activity  
14 shall—

15 (1) as soon as possible after an individual is  
16 subject to detention in an immigration-related en-  
17 forcement activity, but generally not later than 2  
18 hours after the commencement of such detention,  
19 determine whether the individual is a parent or pri-  
20 mary caregiver of a child in the United States and,  
21 if the individual is a parent or primary caregiver,  
22 provide the individual with—

23 (A) the opportunity to make a minimum of  
24 2 telephone calls to arrange for the care of such  
25 child in the individual's absence; and

1 (B) contact information for—

2 (i) child welfare agencies and family  
3 courts in the jurisdiction in which the child  
4 is located; and

5 (ii) consulates, attorneys, and legal  
6 service providers capable of providing free  
7 legal advice or representation regarding  
8 child welfare, child custody determinations,  
9 and immigration matters;

10 (2) notify the child welfare agency with jurisdic-  
11 tion over the child if the child’s parent or primary  
12 caregiver is unable to make care arrangements for  
13 the child or if the child is in imminent risk of seri-  
14 ous harm;

15 (3) ensure that personnel of the Department  
16 and cooperating entities do not, absent medical ne-  
17 cessity or extraordinary circumstances, compel or re-  
18 quest children to interpret or translate for interviews  
19 of their parents or of other individuals who are en-  
20 countered as part of an immigration enforcement ac-  
21 tion; and

22 (4) ensure that any parent or primary caregiver  
23 of a child in the United States—

24 (A) absent medical necessity or extraor-  
25 dinary circumstances, is not transferred from

1 his or her area of apprehension until the indi-  
2 vidual—

3 (i) has made arrangements for the  
4 care of such child; or

5 (ii) if such arrangements are unavail-  
6 able or the individual is unable to make  
7 such arrangements, is informed of the care  
8 arrangements made for the child and of a  
9 means to maintain communication with the  
10 child;

11 (B) absent medical necessity or extraor-  
12 dinary circumstances, and to the extent prac-  
13 ticable, is placed in a detention facility either—

14 (i) proximate to the location of appre-  
15 hension; or

16 (ii) proximate to the individual's ha-  
17 bitual place of residence; and

18 (C) receives due consideration of the best  
19 interests of such child in any decision or action  
20 relating to his or her detention, release, or  
21 transfer between detention facilities.

22 (b) REQUESTS TO LOCAL AND STATE ENTITIES.—  
23 If the Secretary requests a State or local entity to hold  
24 in custody an individual who the Department has reason  
25 to believe is removable pending transfer of that individual

1 to the custody of the Secretary or to a detention facility,  
2 the Secretary shall also request that the State or local en-  
3 tity provide the individual the protections specified in  
4 paragraphs (1) and (2) of subsection (a), if that individual  
5 is found to be the parent or primary caregiver of a child  
6 in the United States.

7 (c) ACCESS TO CHILDREN, STATE AND LOCAL  
8 COURTS, CHILD WELFARE AGENCIES, AND CONSULAR  
9 OFFICIALS.—At all detention facilities, the Secretary  
10 shall—

11 (1) prominently post in a manner accessible to  
12 detainees and visitors and include in detainee hand-  
13 books information on the protections of this title as  
14 well as information on potential eligibility for parole  
15 or release;

16 (2) absent extraordinary circumstances, ensure  
17 that individuals who are detained by the Department  
18 and are parents of children in the United States  
19 are—

20 (A) permitted regular phone calls and con-  
21 tact visits with their children;

22 (B) provided with contact information for  
23 child welfare agencies and family courts in the  
24 relevant jurisdictions;

1 (C) able to participate fully, and to the ex-  
2 tent possible in-person, in all family court pro-  
3 ceedings and any other proceedings that may  
4 impact their right to custody of their children;

5 (D) granted free and confidential telephone  
6 calls to relevant child welfare agencies and fam-  
7 ily courts as often as is necessary to ensure  
8 that the best interest of their children, includ-  
9 ing a preference for family unity whenever ap-  
10 propriate, can be considered in child welfare  
11 agency or family court proceedings;

12 (E) able to fully comply with all family  
13 court or child welfare agency orders impacting  
14 custody of their children;

15 (F) provided access to United States pass-  
16 port applications or other relevant travel docu-  
17 ment applications for the purpose of obtaining  
18 travel documents for their children;

19 (G) afforded timely access to a notary pub-  
20 lic for the purpose of applying for a passport  
21 for their children or executing guardianship or  
22 other agreements to ensure the safety of their  
23 children; and

24 (H) granted adequate time before removal  
25 to obtain passports, apostilled birth certificates,

1 travel documents, and other necessary records  
2 on behalf of their children if such children will  
3 accompany them on their return to their coun-  
4 try of origin or join them in their country of or-  
5 igin; and

6 (3) if doing so would not impact public safety  
7 or national security, facilitate the ability of a de-  
8 tained individual who is a parent or primary care-  
9 giver to share information regarding travel arrange-  
10 ments with their consulate, children, child welfare  
11 agencies, or other caregivers in advance of the de-  
12 tained individual's departure from the United  
13 States.

14 **SEC. 203. BASIC PROTECTIONS FOR VULNERABLE POPU-**  
15 **LATIONS.**

16 (a) VULNERABLE POPULATIONS.—Not later than 72  
17 hours after the commencement of an immigration-related  
18 enforcement activity, the Department shall screen each de-  
19 tainee to determine whether the detainee is a member of  
20 a vulnerable population.

21 (b) OPTIONS REGARDING DETENTION DECISIONS  
22 FOR VULNERABLE POPULATIONS.—Section 236 of the  
23 Immigration and Nationality Act (8 U.S.C. 1226), as  
24 amended by this Act, is further amended—

25 (1) in subsection (a)—



1 (A) in the matter preceding paragraph (1),  
2 by striking “(c)” and inserting “(g)”; and

3 (B) in paragraph (2)—

4 (i) in subparagraph (A), by striking  
5 “or” at the end;

6 (ii) in subparagraph (B), by striking  
7 “but” and inserting “or”; and

8 (iii) by adding at the end the fol-  
9 lowing:

10 “(C) the individual’s own recognizance;”;

11 (C) by redesignating paragraph (3) as  
12 paragraph (4); and

13 (D) by inserting after paragraph (2) the  
14 following:

15 “(3) may enroll the alien in an alternatives pro-  
16 gram; but”; and

17 (2) by inserting after subsection (a) the fol-  
18 lowing:

19 “(b) DETENTION DECISIONS.—

20 “(1) CRITERIA TO BE CONSIDERED.—If an  
21 alien is not subject to mandatory detention under  
22 subsection (g) or section 236A, the criteria that the  
23 Secretary or the Attorney General shall use to dem-  
24 onstrate that detention of the alien is necessary are  
25 the following:

1           “(A) Whether the alien poses a risk to  
2           public safety, including a risk to national secu-  
3           rity.

4           “(B) Whether—

5                   “(i) the alien poses a risk of flight;  
6                   and

7                   “(ii) there are no conditions of release  
8                   that will reasonably ensure that the alien  
9                   will appear for immigration proceedings,  
10                  including bond or other conditions of re-  
11                  lease that reduce the risk of flight.

12           “(2) EXCEPTION FOR MANDATORY DETAIN-  
13           EES.—The requirements described in paragraph (1)  
14           shall not apply if the Secretary of Homeland Secu-  
15           rity demonstrates by substantial evidence that the  
16           alien is subject to detention under subsection (g).

17           “(c) CUSTODY DECISIONS FOR VULNERABLE POPU-  
18           LATIONS.—

19                   “(1) IN GENERAL.—Not later than 72 hours  
20                   after an individual is detained under this section  
21                   (unless the 72-hour requirement is waived in writing  
22                   by the individual), an individual who is a member of  
23                   a vulnerable population (as defined in section 3 of  
24                   the Protecting the Rights of Families and Immig-  
25                   grants Who Legally Entered From Detention Act)

1 shall be released from the custody of the Depart-  
2 ment of Homeland Security and shall not be subject  
3 to electronic monitoring unless the Department dem-  
4 onstrates by a preponderance of the evidence that  
5 the individual—

6 “(A) is subject to mandatory custody or  
7 mandatory detention under subsection (g) or  
8 section 236A;

9 “(B) poses a risk to the national security  
10 of the United States; or

11 “(C) is a flight risk and the risk cannot be  
12 mitigated through supervision or placement in  
13 an alternative program.

14 “(2) RELEASE.—An individual shall be released  
15 from custody under this subsection—

16 “(A) on the individual’s own recognizance;

17 “(B) by posting a minimum bond under  
18 subsection (a)(2)(a); or

19 “(C) on parole in accordance with section  
20 212(d)(5)(A).

21 “(d) DECISIONS TO DETAIN ALIENS.—

22 “(1) IN GENERAL.—All detention decisions  
23 under this section shall—

24 “(A) be made in writing by an official of  
25 the Department of Homeland Security;

1           “(B) specify the reasons for the decision, if  
2 the decision is made to continue the detention  
3 without bond or parole; and

4           “(C) be served upon the detainee, in the  
5 language spoken by the alien, not later than 72  
6 hours after—

7           “(i) the commencement of the deten-  
8 tion; or

9           “(ii) a positive determination of cred-  
10 ible fear of persecution or reasonable fear  
11 of persecution or torture, if the detainee is  
12 subject to section 235 or 241(a)(5).

13           “(2) REDETERMINATION.—

14           “(A) REQUEST.—Any alien detained by  
15 the Department of Homeland Security, at any  
16 time after being served with the decision de-  
17 scribed in paragraph (1)(A), may request a re-  
18 determination of such decision by an immigra-  
19 tion judge.

20           “(B) OTHER DECISIONS.—All custody de-  
21 cisions by the Secretary of Homeland Security  
22 shall be subject to redetermination by an immi-  
23 gration judge.

24           “(C) SAVINGS PROVISION.—Nothing in  
25 this paragraph may be construed to prevent a

1           detainee from requesting a bond redetermina-  
2           tion.

3           “(e) ALTERNATIVES PROGRAMS.—

4           “(1) IN GENERAL.—The Secretary of Homeland  
5           Security shall establish secure alternatives programs  
6           to ensure public safety and appearances at immigra-  
7           tion proceedings.

8           “(2) CONTRACT AUTHORITY.—The Secretary  
9           shall contract with nongovernmental organizations to  
10          conduct screening of detainees, provide appearance  
11          assistance services, and operate community-based  
12          supervision programs.

13          “(3) INDIVIDUALIZED DETERMINATIONS.—  
14          When deciding whether to use secure alternatives,  
15          the Secretary shall make an individualized deter-  
16          mination and review each case on a monthly basis.

17          “(4) CUSTODY.—If an individual is not eligible  
18          for release from custody, the Secretary shall con-  
19          sider the alien for placement in secure alternatives  
20          that maintain custody over the alien, including the  
21          use of electronic ankle devices. The Secretary may  
22          use secure alternatives programs to maintain cus-  
23          tody over any alien detained under this Act except  
24          for aliens detained under section 236A.

1           “(5) SECURE ALTERNATIVES PROGRAM DE-  
2           FINED.—In this section, the term ‘secure alter-  
3           natives program’ means any custodial or noncusto-  
4           dial program under which an individual is screened  
5           and provided with appearance assistance services or  
6           placed in supervision programs, as needed, to ensure  
7           that the individual appears at all immigration inter-  
8           views, appointments, and removal or deportation  
9           hearings.”.

10 **SEC. 204. REPORTS ON PROTECTIONS FROM UNLAWFUL**  
11 **DETENTION.**

12           (a) REPORT REQUIREMENT.—Not later than 1 year  
13 after the date of the enactment of this Act, and annually  
14 thereafter, the Secretary shall submit to Congress a report  
15 that describes the impact of worksite and fugitive oper-  
16 ations on citizens of the United States, lawful permanent  
17 residents, and individuals otherwise lawfully present in the  
18 United States.

19           (b) CONTENT.—Each report submitted under sub-  
20 section (a) shall include an assessment of—

21           (1) the number of individuals detained during  
22 worksite or nonworksite operations who are children,  
23 United States citizens, or adult lawful permanent  
24 residents;

1           (2) immigration-related enforcement activity at  
2 homes, schools, places of worship, medical care fa-  
3 cilities, victim services agencies, social services agen-  
4 cies, and community centers;

5           (3) arrests, detentions, and removals of individ-  
6 uals who are—

7                 (A) sole caregivers;

8                 (B) primary earners of income in a family;

9                 (C) pregnant or nursing mothers; or

10                (D) members of other vulnerable groups  
11 subject to immigration-related enforcement ac-  
12 tivity;

13           (4) transfers of immigrants during the course  
14 of a raid or immigration-enforcement activity, in-  
15 cluding—

16                 (A) whether the immigrants had access to  
17 legal counsel before being transferred;

18                 (B) whether the immigrants received notice  
19 of an impending transfer; and

20                 (C) whether the immigrants, if primary or  
21 sole caregivers, were given an opportunity to  
22 make care arrangements for their children;

23           (5)(A) U.S. Immigration and Customs Enforce-  
24 ment protocol for humanitarian screening during a  
25 worksite enforcement action;

1 (B) the compliance with such protocol; and

2 (C) the nature of any related protocol in small-  
3 er worksite or nonworksite actions;

4 (6) collateral arrests under the National Fugitive  
5 Operations Program and worksite enforcement  
6 initiatives;

7 (7) whether individuals detained in an immigra-  
8 tion-related enforcement activity are notified of their  
9 right to counsel;

10 (8) whether U.S. Immigration and Customs  
11 Enforcement agents or any law enforcement  
12 agents—

13 (A) use excessive force in executing war-  
14 rants, arrests, detentions, or other immigration-  
15 related enforcement activities;

16 (B) enter private homes or residences with-  
17 out a search warrant or consent;

18 (C) use ruses to conceal their identity dur-  
19 ing enforcement activities; or

20 (D) display and use weapons during immi-  
21 gration-related enforcement activity or interro-  
22 gations;

23 (9) the extent to which U.S. Immigration and  
24 Customs Enforcement cooperates and coordinates



1 with State and local law enforcement during immi-  
2 gration-related enforcement activity;

3 (10) whether U.S. Immigration and Customs  
4 Enforcement agents or other law enforcement agents  
5 identify themselves when entering a location for en-  
6 forcement purposes;

7 (11) the conditions under which individuals are  
8 confined and whether detainees are provided access  
9 to a telephone;

10 (12) the number of children left behind when a  
11 parent or parents are detained;

12 (13) whether detainees are notified of their  
13 rights in a language they can understand;

14 (14) whether individuals detained during an im-  
15 migration-related enforcement activity are forced or  
16 coerced to sign any documents or waive any rights  
17 without consulting with an attorney;

18 (15) the procedures used by the Department or  
19 law enforcement agency—

20 (A) to notify agents about humanitarian  
21 standards regarding enforcement actions; and

22 (B) hold agents accountable when they vio-  
23 late such standards;

24 (16) the per detainee cost of each raid involving  
25 more than 50 detainees;

1           (17) the number of U.S. Immigration and Customs Enforcement agents disciplined for violations  
2           in detention proceedings; and

3           (18) recommendations for improving worksite  
4           operations and fugitive operations.

5           (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
6           authorized to be appropriated such sums as may be necessary to carry out this section.

7           **SEC. 205. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.**

8           (a) ESTABLISHMENT.—Subtitle D of title IV of the  
9           Homeland Security Act of 2002 (6 U.S.C. 251 et seq.)  
10           is amended by adding at the end the following:

11           **“SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.**

12           “(a) IN GENERAL.—There established in the Department a position of Immigration and Customs Enforcement  
13           Ombudsman (referred to in this section as the ‘Ombudsman’).

14           “(b) REQUIREMENTS.—The Ombudsman shall—

15           “(1) report directly to the Director for U.S. Immigration and Customs Enforcement (referred to in  
16           this section as the ‘Director’); and

17           “(2) have a background in immigration law.

18           “(c) FUNCTIONS.—The Ombudsman shall—

1           “(1) undertake regular and unannounced in-  
2           spections of detention facilities and local offices of  
3           U.S. Immigration and Customs Enforcement to de-  
4           termine whether the facilities and offices comply  
5           with relevant policies, procedures, standards, laws,  
6           and regulations;

7           “(2) report all findings of compliance or non-  
8           compliance of the facilities and local offices de-  
9           scribed in paragraph (1) to the Secretary and the  
10          Director;

11          “(3) develop procedures for detainees or their  
12          representatives to submit confidential written com-  
13          plaints directly to the Ombudsman;

14          “(4) investigate and resolve all complaints, in-  
15          cluding confidential and anonymous complaints, re-  
16          lated to decisions, recommendations, acts, or omis-  
17          sions made by the Director or the Commissioner of  
18          U.S. Customs and Border Protection in the course  
19          of custody and detention operations;

20          “(5) initiate investigations into allegations of  
21          systemic problems at detention facilities;

22          “(6) conduct any review or audit relating to de-  
23          tention, as directed by the Secretary or Director;

24          “(7) refer matters, as appropriate, to the Office  
25          of Inspector General of the Department of Justice,

1 the Office of Civil Rights and Civil Liberties of the  
2 Department, or any other relevant office or agency;

3 “(8) propose changes in the policies or practices  
4 of U.S. Immigration and Customs Enforcement to  
5 improve the treatment of United States citizens and  
6 residents, immigrants, detainees, and others subject  
7 to immigration-related enforcement operations;

8 “(9) establish a public advisory group con-  
9 sisting of nongovernmental organization representa-  
10 tives and Federal, State, and local government offi-  
11 cials with expertise in detention and vulnerable pop-  
12 ulations to provide the Ombudsman with input on—

13 “(A) the priorities of the Ombudsman; and

14 “(B) current practices of U.S. Immigration  
15 and Customs Enforcement; and

16 “(10) recommend to the Director personnel ac-  
17 tion based on any finding of noncompliance.

18 “(d) ANNUAL REPORT.—

19 “(1) OBJECTIVES.—Not later than June 30 of  
20 each year, the Ombudsman shall submit to the Com-  
21 mittee on the Judiciary of the Senate and the Com-  
22 mittee on the Judiciary of the House of Representa-  
23 tives a report on the objectives of the Office of the  
24 Ombudsman for the next fiscal year.

1           “(2) CONTENTS.—Each report submitted under  
2 paragraph (1) shall include—

3           “(A) full and substantive analysis of the  
4 objectives of the Office of the Ombudsman;

5           “(B) statistical information regarding such  
6 objectives;

7           “(C) a description of each detention facil-  
8 ity found to be in noncompliance with the de-  
9 tention standards of the Department or other  
10 applicable regulations;

11           “(D) a description of the actions taken by  
12 the Department to remedy any findings of non-  
13 compliance or other identified problems;

14           “(E) information regarding whether the  
15 actions described in subparagraph (D) resulted  
16 in compliance with detention standards;

17           “(F) a summary of the most pervasive and  
18 serious problems encountered by individuals  
19 subject to the enforcement operations of the  
20 Department, including a description of the na-  
21 ture of such problems; and

22           “(G) such other information as the Om-  
23 budsman may consider advisable.

24           “(3) DEFINITIONS.—In this section:

1           “(A) DETAINEE.—The term ‘detainee’ has  
2           the meaning given that term in section 2 of the  
3           Protecting the Rights of Families and Immigrants  
4           Who Legally Entered From Detention  
5           Act.

6           “(B) DETENTION FACILITY.—The term  
7           ‘detention facility’ means any Federal, State, or  
8           local government facility, or any facility providing  
9           services under government contract,  
10          which is used to hold detainees for more than  
11          72 hours.”.

12          (b) AMENDMENT.—The table of contents in section  
13          1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101  
14          et seq.) is amended by inserting after the item relating  
15          to section 446 the following:

          “Sec. 447. Immigration and Customs Enforcement Ombudsman.”.

16          **SEC. 206. RULEMAKING.**

17          Not later than 1 year after the date of the enactment  
18          of this Act, the Secretary shall promulgate regulations to  
19          implement this Act and the amendments made by this Act.

20          **SEC. 207. RESCISSION.**

21          The provisions of Executive Order 13768 of January  
22          25, 2017 (82 Fed. Reg. 8799), titled “Enhancing Public  
23          Safety in the Interior of the United States” and of Execu-  
24          tive Order 13767 of January 25, 2017 (82 Fed. Reg.  
25          8793), titled “Border Security and Immigration Enforce-

- 1 ment Improvements'' are rescinded and shall not have any
- 2 legal effect.

