

116TH CONGRESS
1ST SESSION

H. R. 2203

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2019

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To increase transparency, accountability, and community engagement within the Department of Homeland Security, provide independent oversight of border security activities, improve training for agents and officers of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, 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. 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 new section:

9 **“SEC. 711. OMBUDSMAN FOR BORDER AND IMMIGRATION**
 10 **ENFORCEMENT RELATED CONCERNS.**

11 “(a) IN GENERAL.—Within the Department there
 12 shall be a position of Ombudsman for Border and Immi-
 13 gration Enforcement Related Concerns (in this section re-
 14 ferred to as the ‘Ombudsman’), who shall—

15 “(1) be independent of Department agencies
 16 and officers;

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

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

20 “(b) FUNCTIONS.—It shall be the function of the
 21 Ombudsman to—

22 “(1) in coordination with the Inspector General
 23 of the Department, establish an independent, neu-
 24 tral, accessible, confidential, and standardized proc-
 25 ess to assist individuals (including aliens (as such

1 term is defined in section 101 of the Immigration
2 and Nationality Act (8 U.S.C. 1101)) in resolving
3 complaints with respect to U.S. Customs and Border
4 Protection, U.S. Immigration and Customs Enforcement,
5 a subcontractor, or a cooperating entity,
6 which process shall include a publicly accessible
7 website through which a complainant can check on
8 the status of such a complaint;

9 “(2) identify and thereafter review, examine,
10 and make recommendations to the Secretary to ad-
11 dress chronic issues identified by the Ombudsman in
12 carrying out the function described in paragraph
13 (1);

14 “(3) establish a Border Oversight Panel in ac-
15 cordance with subsection (f); and

16 “(4) review compliance with departmental poli-
17 cies and standards of care for custody of aliens by
18 U.S. Immigration and Customs Enforcement and
19 U.S. Customs and Border Protection, including any
20 violations of applicable policy or standards of care
21 involving force-feeding.

22 “(c) CONFIDENTIALITY.—The existence of a com-
23 plaint, including the identity of any Department employee
24 implicated in a complaint, shall be kept confidential by the
25 Ombudsman and, in the absence of the written consent

1 of an individual who submits a complaint, the Ombudsman
2 shall keep confidential the identity of and any identifying
3 information relating to such individual. Such confiden-
4 tiality requirement may not be considered as a factor of
5 whether or not information under this subsection may be
6 disclosed under section 552 of title 5, United States Code
7 (commonly referred to as the Freedom of Information
8 Act).

9 “(d) ANNUAL REPORTING.—Not later than June 30
10 of each year beginning in the year after the date of the
11 enactment of this section, the Ombudsman shall submit
12 to the Committee on Homeland Security and the Com-
13 mittee on the Judiciary of the House of Representatives
14 and the Committee on Homeland Security and Govern-
15 mental Affairs and the Committee on the Judiciary of the
16 Senate a report that includes, for the previous year, the
17 following:

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

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

22 “(B) the demographics of the complainant;

23 and

1 “(C) a description of the resolution of the
2 complaint or the status of the resolution proc-
3 ess.

4 “(2) Any complaint pattern that could be pre-
5 vented or reduced by policy training or practice
6 changes.

7 “(3) A description of any pattern of violations
8 of any applicable policy or standards.

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

16 “(5) A description of complaints received under
17 this section for which action has not been taken
18 after one year, and the period during which each
19 complaint has been open.

20 “(6) Recommendations the Ombudsman has
21 made under subsection (b)(2).

22 “(7) Other information, as determined appro-
23 priate by the Ombudsman.

24 “(e) APPOINTMENT OF BORDER COMMUNITIES LIAI-
25 SON.—

1 “(1) IN GENERAL.—The Ombudsman, in con-
2 junction with the Office for Civil Rights and Civil
3 Liberties of the Department, shall appoint a Border
4 Community Liaison (in this subsection referred to as
5 the ‘Liaison’) in each U.S. Border Patrol sector on
6 the northern and southern borders. Each Liaison
7 shall report to the Ombudsman.

8 “(2) PURPOSES.—Each Liaison appointed
9 under this subsection shall—

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

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

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

23 “(D) submit to the Ombudsman an annual
24 report detailing their findings, feedback re-
25 ceived from border communities, and rec-

1 ommendations to increase cooperation between
2 U.S. Customs and Border Protection, U.S. Im-
3 migration and Customs Enforcement, and bor-
4 der communities.

5 “(f) BORDER OVERSIGHT PANEL.—

6 “(1) ESTABLISHMENT.—The Ombudsman shall
7 establish a Border Oversight Panel (in this sub-
8 section referred to as the ‘Panel’).

9 “(2) COMPOSITION.—

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

13 “(B) CHAIRPERSON.—The Ombudsman
14 shall be the chair of the Panel.

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

23 “(3) DUTIES.—The Panel shall evaluate and
24 make recommendations regarding the border en-
25 forcement policies, strategies, and programs of the

1 Department operating along the northern and south-
2 ern borders of the United States to—

3 “(A) take into consideration the impact of
4 such policies, strategies, and programs on bor-
5 der communities, including protecting due proc-
6 ess, civil and human rights of border residents
7 and visitors, and private property rights of land
8 owners;

9 “(B) uphold domestic and international
10 legal obligations;

11 “(C) reduce the number of migrant deaths;
12 and

13 “(D) improve the safety of agents and offi-
14 cers of U.S. Customs and Border Protection
15 and U.S. Immigration and Customs Enforce-
16 ment.

17 “(g) STAFFING.—The Secretary shall take appro-
18 priate action to ensure the Ombudsman’s office is suffi-
19 ciently staffed and resourced to carry out its duties effec-
20 tively and efficiently.

21 “(h) TRAINING.—

22 “(1) IN GENERAL.—The Ombudsman shall con-
23 duct a yearly evaluation of all training given to
24 agents and officers of U.S. Customs and Border

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

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

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

17 “(B) Policies for operating in locations
18 where there are limitations on cooperation by
19 local law enforcement.

20 “(C) Interaction with vulnerable popu-
21 lations, including instruction on screening, iden-
22 tifying, and responding to vulnerable popu-
23 lations, such as children, victims of human traf-
24 ficking, and the acutely ill.

1 “(D) Standards of professional and ethical
2 conduct, including the following:

3 “(i) Lawful use of force, de-escalation
4 tactics, and alternatives to the use of force.

5 “(ii) Complying with chain of com-
6 mand and lawful orders.

7 “(iii) Conduct and ethical behavior to-
8 ward the public in a civil and professional
9 manner.

10 “(iv) Civil rights and legal protections
11 for nationals of the United States and
12 aliens.

13 “(v) Non-biased questioning.

14 “(vi) Sensitivity towards lesbian, gay,
15 bisexual, transgender, and queer individ-
16 uals.

17 “(vii) Permissible and impermissible
18 social media activity.

19 “(viii) Sexual and other harassment
20 and assault, including an assessment of
21 whether adequate policies exist to resolve
22 complaints.

23 “(E) Protecting the civil, constitutional,
24 human, and privacy rights of individuals, with
25 special emphasis on the scope of enforcement

1 authority, including chain of evidence practices
2 and document seizure, and use of force policies
3 available to agents and officers.

4 “(F) Maintaining and updated under-
5 standing of Federal legal rulings, court deci-
6 sions, and Department policies and procedures.

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

13 “(3) RECOMMENDATIONS.—Not later than 90
14 days after conducting each evaluation under para-
15 graph (1), the Ombudsman shall develop, and sub-
16 mit to the Secretary, recommendations regarding
17 any additional training.

18 “(4) FEEDBACK.—Not later than 180 days
19 after receiving recommendations transmitted by the
20 Ombudsman, the Secretary shall respond publicly
21 and in writing with feedback on each of the rec-
22 ommendations, an action plan to implement any of
23 such recommendations with which the Secretary con-
24 curs, and a justification for why any of such rec-
25 ommendations have been rejected.

1 “(i) ELECTRONIC TRACKING.—

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

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

21 “(A) is transferrable;

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

1 “(i) U.S. Customs and Border Protec-
2 tion;

3 “(ii) U.S. Immigration and Customs
4 Enforcement; and

5 “(iii) the Office of Refugee Resettle-
6 ment of the Department of Health and
7 Human Services; and

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

11 “(j) BODY-WORN CAMERAS.—

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

1 enactment, the use of body-worn cameras by U.S.
2 Border Patrol agents and U.S. Immigration and
3 Customs Enforcement officers whenever such agents
4 and officers are engaged in border security or immi-
5 gration enforcement activities.

6 “(2) ELEMENTS.—The plan required under
7 paragraph (1) shall include the following:

8 “(A) Benchmarks for implementation of
9 the use of body-worn cameras within U.S. Cus-
10 toms and Border Protection and U.S. Immigra-
11 tion and Customs Enforcement.

12 “(B) Policies, procedures, and training
13 modules for the use of body-worn cameras by
14 agents and officers of U.S. Customs and Border
15 Protection and U.S. Immigration and Customs
16 Enforcement, including training modules relat-
17 ing to the appropriate use of such cameras and
18 adverse action for non-compliance.

19 “(C) Mechanisms to ensure compliance
20 with body-worn camera policies and procedures.

21 “(3) CONSIDERATIONS.—The plan required
22 under paragraph (1) shall be informed by—

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

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

Attest: **CHERYL L. JOHNSON,**
Clerk.