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

SECTION 1. ESTABLISHMENT OF THE OFFICE OF THE OMB-
BUDSMAN FOR BORDER AND IMMIGRATION

ENFORCEMENT RELATED CONCERNS.

(a) In General.—Title VII of the Homeland Secu-

rity Act of 2002 (6 U.S.C. 341 et seq.) is amended by
adding at the end the following new section:

“SEC. 711. OMBUDSMAN FOR BORDER AND IMMIGRATION

ENFORCEMENT RELATED CONCERNS.

“(a) In General.—Within the Department there
shall be a position of Ombudsman for Border and Immi-

gration Enforcement Related Concerns (in this section re-
ferred to as the ‘Ombudsman’), who shall—

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

“(2) report directly to the Secretary; and

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

“(b) Functions.—It shall be the function of the
Ombudsman to—

“(1) in coordination with the Inspector General
of the Department, establish an independent, neu-

tral, accessible, confidential, and standardized proc-

ess to assist individuals (including aliens (as such
term is defined in section 101 of the Immigration
and Nationality Act (8 U.S.C. 1101)) in resolving
complaints with respect to U.S. Customs and Border
Protection, U.S. Immigration and Customs Enforce-
ment, a subcontractor, or a cooperating entity,
which process shall include a publicly accessible
website through which a complainant can check on
the status of such a complaint;

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

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

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

“(c) CONFIDENTIALITY.—The existence of a com-
plaint, including the identity of any Department employee
implicated in a complaint, shall be kept confidential by the
Ombudsman and, in the absence of the written consent
of an individual who submits a complaint, the Ombudsman shall keep confidential the identity of and any identifying information relating to such individual. Such confidentiality requirement may not be considered as a factor of whether or not information under this subsection may be disclosed under section 552 of title 5, United Stated Code (commonly referred to as the Freedom of Information Act).

“(d) ANNUAL REPORTING.—Not later than June 30 of each year beginning in the year after the date of the enactment of this section, the Ombudsman shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate a report that includes, for the previous year, the following:

“(1) The number and types of complaints received under this section and for each complaint—

“(A) the component or subcomponent, subcontractor, or cooperating entity identified;

“(B) the demographics of the complainant; and
“(C) a description of the resolution of the complaint or the status of the resolution process.

“(2) Any complaint pattern that could be prevented or reduced by policy training or practice changes.

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

“(4) A description of each complaint received under this section with respect to which U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, a subcontractor, or a cooperating entity, as applicable, has taken action to resolve, and the time between receipt and resolution of each such complaint.

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

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

“(7) Other information, as determined appropriate by the Ombudsman.

“(e) APPOINTMENT OF BORDER COMMUNITIES LIAISON.—
“(1) IN GENERAL.—The Ombudsman, in conjunction with the Office for Civil Rights and Civil Liberties of the Department, shall appoint a Border Community Liaison (in this subsection referred to as the ‘Liaison’) in each U.S. Border Patrol sector on the northern and southern borders. Each Liaison shall report to the Ombudsman.

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

“(A) foster cooperation between U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and border communities;

“(B) consult with border communities on the development of policies, directives, and programs of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement;

“(C) receive feedback from border communities on the performance of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement; and

“(D) submit to the Ombudsman an annual report detailing their findings, feedback received from border communities, and rec-
ommendations to increase cooperation between
U.S. Customs and Border Protection, U.S. Im-
migration and Customs Enforcement, and bor-
der communities.

“(f) BORDER OVERSIGHT PANEL.—

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

“(2) COMPOSITION.—

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

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

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

“(3) DUTIES.—The Panel shall evaluate and
make recommendations regarding the border en-
forcement policies, strategies, and programs of the
Department operating along the northern and southern borders of the United States to—

“(A) take into consideration the impact of such policies, strategies, and programs on border communities, including protecting due process, civil and human rights of border residents and visitors, and private property rights of landowners;

“(B) uphold domestic and international legal obligations;

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

“(D) improve the safety of agents and officers of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.

“(g) STAFFING.—The Secretary shall take appropriate action to ensure the Ombudsman’s office is sufficiently staffed and resourced to carry out its duties effectively and efficiently.

“(h) TRAINING.—

“(1) IN GENERAL.—The Ombudsman shall conduct a yearly evaluation of all training given to agents and officers of U.S. Customs and Border
Protection and U.S. Immigration and Customs Enforcement.

“(2) CONTENTS.—Each evaluation under paragraph (1) shall include whether the training referred to in such paragraph adequately addresses the following:

“(A) Best practices in community policing, cultural awareness, and carrying out enforcement actions near sensitive locations, such as places of worship or religious ceremony, school or education-related places or events, courthouses or other civic buildings providing services accessible to the public, hospitals, medical treatment or health care facilities, public demonstrations, and attorney’s offices (including a public defender or legal aid offices).

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

“(C) Interaction with vulnerable populations, including instruction on screening, identifying, and responding to vulnerable populations, such as children, victims of human trafficking, and the acutely ill.
“(D) Standards of professional and ethical conduct, including the following:

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

“(ii) Complying with chain of command and lawful orders.

“(iii) Conduct and ethical behavior toward the public in a civil and professional manner.

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

“(v) Non-biased questioning.

“(vi) Sensitivity towards lesbian, gay, bisexual, transgender, and queer individuals.

“(vii) Permissible and impermissible social media activity.

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

“(E) Protecting the civil, constitutional, human, and privacy rights of individuals, with special emphasis on the scope of enforcement
authority, including chain of evidence practices
and document seizure, and use of force policies
available to agents and officers.

“(F) Maintaining and updated understand-
ing of Federal legal rulings, court deci-
sions, and Department policies and procedures.

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

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

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

“(1) **In General.**—The Ombudsman, in coordination with the Commissioner of U.S. Customs and Border Protection, the Director of U.S. Immigration and Customs Enforcement, and the Office of Refugee Resettlement of the Department of Health and Human Services, shall develop recommendations for the establishment of an electronic tracking number system on a single interface, which shall be used to track the location of a child who has been separated from a parent, legal guardian, or other relative of such child, and which shall be accessible to agents and officers of U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Office of Refugee Resettlement.

“(2) **Tracking Number.**—The recommendations developed under this subsection shall consider how a tracking number can be assigned to a child who has been separated from a parent, legal guardian, or other relative of such child that—

“(A) is transferrable;

“(B) may be shared easily on the electronic tracking system described in this subsection by agents and officers of—
“(i) U.S. Customs and Border Protection;

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

“(iii) the Office of Refugee Resettlement of the Department of Health and Human Services; and

“(C) is interoperable with the electronic location records of a parent, legal guardian, or other relative of such child.

“(j) BODY-WORN CAMERAS.—

“(1) REQUIREMENT.—Not later than 120 days after the date of the enactment of this section, the Ombudsman, in coordination with the Commissioner of U.S. Customs and Border Protection, the Director of U.S. Immigration and Customs Enforcement, and labor organizations representing agents and officers of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate a plan for requiring, not later than one year after such date of
enactment, the use of body-worn cameras by U.S. Border Patrol agents and U.S. Immigration and Customs Enforcement officers whenever such agents and officers are engaged in border security or immigration enforcement activities.

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

“(A) Benchmarks for implementation of the use of body-worn cameras within U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.

“(B) Policies, procedures, and training modules for the use of body-worn cameras by agents and officers of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, including training modules relating to the appropriate use of such cameras and adverse action for non-compliance.

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

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

“(A) existing State and local policies requiring 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 of the Homeland Security Act of 2002 is amended by adding after the item relating to section 710 the following new item:

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

Passed the House of Representatives September 25, 2019.

Attest: CHERYL L. JOHNSON,

Clerk.