

111TH CONGRESS
1ST SESSION

S. 1549

To protect United States citizens and residents from unlawful arrest and detention.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2009

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

A BILL

To protect United States citizens and residents from unlawful arrest and detention.

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 “Protect Citizens and
5 Residents from Unlawful Detention Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Officials at United States Immigration and
9 Customs Enforcement have mistakenly detained and

1 deported United States citizens and lawful perma-
2 nent residents.

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

8 (3) The United States should not be a country
9 in which United States citizens and lawful perma-
10 nent residents are mistakenly or unlawfully detained,
11 deported, or mistreated by government agents.

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

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) **DETAINEE.**—The term “detainee” means
18 an individual detained during an immigration-related
19 enforcement activity.

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

1 (3) DETENTION FACILITY.—The term “deten-
2 tion facility” means any Federal, State, or local gov-
3 ernment facility, or any facility providing services
4 under government contract, which is used to hold
5 immigration detainees for more than 72 hours.

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

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

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

15 (5) SECRETARY.—The term “Secretary” means
16 the Secretary of Homeland Security.

17 (6) SECURE ALTERNATIVES PROGRAM.—The
18 term “secure alternatives program” means any cus-
19 todial or noncustodial program under which an indi-
20 vidual is screened and provided with appearance as-
21 sistance services or placed in supervision programs,
22 as needed, to ensure that the individual appears at
23 all immigration interviews, appointments, and re-
24 moval or deportation hearings.

1 **SEC. 4. PROTECTIONS AGAINST UNLAWFUL DETENTIONS**
2 **OF UNITED STATES CITIZENS.**

3 (a) NOTIFICATIONS.—

4 (1) IN GENERAL.—Prior to questioning an indi-
5 vidual who has been detained on the basis of a sus-
6 pected immigration violation or has been detained
7 during an immigration-related enforcement activity,
8 a Department of Homeland Security or other officer
9 must first advise the detainee, in the language spo-
10 ken by the detainee that—

11 (A) the detainee has the right to be rep-
12 resented by counsel at no expense to the Fed-
13 eral Government;

14 (B) the detainee may remain silent; and

15 (C) any statement made by the detainee
16 may be used against the detainee in a subse-
17 quent removal or criminal proceeding.

18 (2) EFFECT OF VIOLATION.—Any evidence ob-
19 tained by an officer from a detainee in violation of
20 paragraph (1) may not be—

21 (A) admissible in a removal proceeding
22 against the detainee; or

23 (B) used to confirm that the detainee is a
24 noncitizen for purposes of issuing an immigra-
25 tion detainer.

26 (b) ACCESS TO COUNSEL.—

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

5 (2) LIST OF FREE LEGAL SERVICES.—The ex-
6 amining officer shall, in the language spoken by the
7 individual being detained—

8 (A) provide the individual, at the time of
9 detention of an individual for an immigration-
10 related violation, with a list of available free or
11 low-cost legal services provided by organizations
12 and attorneys that are located in the region in
13 which the arrest occurred; and

14 (B) certify on the Notice to Appear issued
15 to such individual that such a list was provided
16 to the individual.

17 (3) AMENDMENT.—Section 236 of the Immi-
18 gration and Nationality Act (8 U.S.C. 1226) is
19 amended—

20 (A) by redesignating subsection (e) as sub-
21 section (l);

22 (B) by redesignating subsections (b), (c),
23 (d), and (e) as subsections (f), (g), and (h), and
24 (i) respectively; and

1 (C) by inserting before subsection (l), as
2 redesignated, the following:

3 “(k) RIGHT OF ACCESS TO COUNSEL.—An individual
4 may be represented by counsel of the individual’s choosing
5 while being subject to any immigration-related enforce-
6 ment activity, including—

7 “(1) interviews;

8 “(2) processing appointments;

9 “(3) booking or intake questions;

10 “(4) hearings; and

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

14 (c) NOTICE.—

15 (1) AMENDMENT.—Section 236 of such Act, as
16 amended by subsection (b)(3), if further amended by
17 inserting before subsection (k), the following:

18 “(j) NOTICE AND CHARGES.—

19 “(1) IN GENERAL.—Not later than 48 hours
20 after the commencement of a detention of an indi-
21 vidual under this section, the Secretary of Homeland
22 Security shall—

23 “(A) file a Notice to Appear or other rel-
24 evant charging document with the immigration

1 court closest to the location at which the indi-
2 vidual was apprehended; and

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

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

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

15 “(A) enters into a written agreement with
16 the Department of Homeland Security to waive
17 such requirements; and

18 “(B) is prima facie eligible for immigration
19 benefits or demonstrates prima facie eligibility
20 for a defense against removal.”.

21 (2) APPLICABILITY OF OTHER LAW.—Nothing
22 in section 236(f) of the Immigration and Nationality
23 Act, as added by paragraph (1), may be construed
24 to repeal section 236A of such Act (8 U.S.C.
25 1226a).

1 (d) ISSUANCE OF DETAINERS.—

2 (1) LIMITATION.—An official of the Depart-
3 ment of Homeland Security may not issue a detainer
4 in any context unless the official attests under oath
5 that—

6 (A) the official has confirmed through law-
7 fully obtained evidence that the individual who
8 is the subject of the detainer is not a United
9 States citizen; and

10 (B) the information obtained regarding the
11 alienage of such individual on the detainer is
12 correct.

13 (2) NOTICE.—An official of the Department of
14 Homeland Security shall serve each detainer issued
15 on the individual who is the subject of the detainer.

16 (3) RULEMAKING.—

17 (A) ALIENAGE.—The Secretary shall issue
18 regulations that require officials of the Depart-
19 ment of Homeland Security to confirm, before
20 issuing a detainer, the alienage of the individual
21 to be made subject to such detainer.

22 (B) CONFIRMATION OF ALIENAGE.—The
23 regulation required under subparagraph (A)
24 shall require officials of the Department of
25 Homeland Security to confirm the alienage of

1 an individual through lawfully obtained infor-
2 mation, including—

3 (i) the name of the individual;

4 (ii) the date of birth of the individual;

5 or

6 (iii) the fingerprints of the individual.

7 (e) ACCESS TO TELEPHONES.—

8 (1) IN GENERAL.—Not later than 6 hours after
9 the commencement of a detention of an individual
10 during an immigration-related enforcement activity,
11 an official of the Department of Homeland Security
12 shall provide the individual with access to a tele-
13 phone to make free telephone calls 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 United States Immi-
19 gration and 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 of Homeland Security;

1 (F) the Office for Civil Rights and Civil
2 Liberties of the Department of Homeland Secu-
3 rity; and

4 (G) any Federal or State court in which
5 the detainee is or may become involved in a
6 legal proceeding.

7 (2) CONFIDENTIAL TELEPHONE CALLS.—

8 (A) FREE CONFIDENTIAL TELEPHONE
9 CALLS.—A detainee shall be permitted to make
10 confidential telephone calls at no charge to the
11 detainee if the detainee is—

12 (i) subject to expedited removal; or

13 (ii) experiencing a personal or family
14 emergency, including the need to arrange
15 care for dependents.

16 (B) ADDITIONAL CONFIDENTIAL TELE-
17 PHONE CALLS.—A detainee shall be permitted
18 to make additional confidential telephone calls
19 at no cost to the Federal Government.

20 (f) PROTECTION OF COMMUNITY-BASED ORGANIZA-
21 TIONS, FAITH-BASED ORGANIZATIONS AND OTHER INSTI-
22 TUTIONS.—

23 (1) IN GENERAL.—The Secretary shall issue
24 regulations requiring officials of the Department of
25 Homeland Security to—

1 (A) prohibit the apprehension of persons
2 on the premises or in the immediate vicinity
3 of—

4 (i) a childcare provider;

5 (ii) a school;

6 (iii) a legal-service provider;

7 (iv) a Federal court or State court
8 proceeding;

9 (v) an administrative proceeding;

10 (vi) a funeral home;

11 (vii) a cemetery;

12 (viii) a college, university, or commu-
13 nity college;

14 (ix) a victim services agency;

15 (x) a social service agency;

16 (xi) a hospital or emergency care cen-
17 ter;

18 (xii) a health care clinic; and

19 (xiii) a place of worship; and

20 (B) tightly control investigative operations
21 at the locations described in subparagraph (A).

22 (2) NOTICE TO APPEAR.—The Secretary shall
23 amend the Notice to Appear form to include a state-
24 ment that no immigration enforcement activity was

1 undertaken in any of the locations described in para-
2 graph (1)(A).

3 (g) TRANSFER OF DETAINEES.—

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

10 (A) the access of the detainee to legal rep-
11 resentation;

12 (B) the residence of the detainee prior to
13 apprehension;

14 (C) the location of family members of the
15 detainee;

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

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

22 (F) the health and medical fitness of the
23 detainee; and

24 (G) whether the detainee has a pending
25 application for relief with United States Citi-

1 zanship and Immigration Services or the Execu-
2 tive Office for Immigration Review.

3 (2) NOTICE.—Unless exigent circumstances dic-
4 tate an immediate transfer, the Secretary—

5 (A) shall provide at least 72-hour notice to
6 the detainee in the language spoken by the de-
7 tainee and to the representative of record before
8 transferring a detainee to another detention fa-
9 cility; and

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

13 (3) ADDITIONAL REQUIREMENTS.—

14 (A) IN GENERAL.—Absent exigent cir-
15 cumstances, such as a natural disaster or com-
16 parable emergency, the Secretary may not
17 transfer a detainee who has an existing attor-
18 ney-client relationship to another facility if the
19 transfer of the detainee 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 shall prepare a record of—

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

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

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

23 (h) TRAINING.—The Secretary, in consultation with
24 the Civil Rights and Civil Liberties Officer, shall provide
25 all officers of the Department of Homeland Security, other

1 Federal agencies, and all State and local officers involved
2 in immigration-enforcement activities with periodic train-
3 ing regarding—

4 (1) immigration law;

5 (2) civil rights law;

6 (3) medical and mental health needs and treat-
7 ment;

8 (4) due process protections; and

9 (5) humanitarian guidelines under current law,
10 including—

11 (A) the right of access to immigration legal
12 counsel; and

13 (B) the appropriate treatment of vulner-
14 able populations during immigration-related en-
15 forcement activities.

16 **SEC. 5. BASIC PROTECTIONS FOR VULNERABLE POPU-**
17 **LATIONS.**

18 (a) **VULNERABLE POPULATIONS.**—

19 (1) **IN GENERAL.**—Not later than 72 hours
20 after the commencement of an immigration-related
21 enforcement activity, the Department of Homeland
22 Security shall screen each detainee to determine
23 whether the detainee is a member of a vulnerable
24 population.

1 (2) VULNERABLE POPULATIONS.—A member of
2 a vulnerable population includes any of the fol-
3 lowing:

4 (A) Individuals with a nonfrivolous claim
5 to United States citizenship.

6 (B) Individuals who have a disability or
7 have been determined by a medically trained
8 professional to have medical or mental health
9 needs.

10 (C) Pregnant or nursing women.

11 (D) Individuals who are detained with 1 or
12 more of their children, and their detained chil-
13 dren.

14 (E) Individuals who provide financial,
15 physical, and other direct support to their
16 minor children, parents, or other dependents.

17 (F) Individuals who are at least 65 years
18 of age.

19 (G) Children (as defined in section
20 101(b)(1) of the Immigration and Nationality
21 Act (8 U.S.C. 1101(b)(1))).

22 (H) Victims of abuse, violence, crime, or
23 human trafficking.

1 (I) Individuals who have been referred for
2 a credible fear interview, a reasonable fear
3 interview, or an asylum hearing.

4 (J) Stateless individuals.

5 (K) Individuals who have applied or intend
6 to apply for asylum, withholding of removal, or
7 protection under the Convention Against Tor-
8 ture and Other Cruel, Inhuman or Degrading
9 Treatment or Punishment, done at New York,
10 December 10, 1984, and entered into force
11 June 26, 1987.

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

17 (M) Any group designated by the Sec-
18 retary as a vulnerable population.

19 (b) OPTIONS REGARDING DETENTION DECISIONS
20 FOR VULNERABLE POPULATIONS.—Section 236 of the
21 Immigration and Nationality Act, as amended by this Act,
22 is further amended—

23 (1) in subsection (a)—

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

1 (B) in paragraph (2)—
2 (i) in subparagraph (A), by striking
3 “or” at the end;
4 (ii) in subparagraph (B), by striking
5 “but” and inserting “or”; and
6 (iii) by adding at the end the fol-
7 lowing:
8 “(C) the individual’s own recognizance;”;
9 (C) by redesignating paragraph (3) as
10 paragraph (4); and
11 (D) by inserting after paragraph (2) the
12 following:
13 “(3) may enroll the alien in a secure alter-
14 natives program; but”; and
15 (2) by inserting after subsection (a) the fol-
16 lowing:
17 “(b) DETENTION DECISIONS.—
18 “(1) CRITERIA TO BE CONSIDERED.—If an
19 alien is not subject to mandatory detention under
20 subsection (g) or section 236A, the criteria that the
21 Secretary or the Attorney General shall use to dem-
22 onstrate that detention of the alien is necessary are
23 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 by section
24 5(a)(3) of the Protect Citizens and Residents from
25 Unlawful Detention Act) shall be released from the

1 custody of the Department of Homeland Security
2 and shall not be subject to electronic monitoring un-
3 less the Department demonstrates by a preponder-
4 ance of the evidence that the individual—

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

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

10 “(C) is a flight risk and the risk cannot be
11 mitigated through supervision in a non-custo-
12 dial secure alternatives program.

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

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

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

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

20 “(d) DECISIONS TO DETAIN ALIENS.—

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

23 “(A) be made in writing by an official of
24 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) SECURE 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 **SEC. 6. REPORTS ON PROTECTIONS FROM UNLAWFUL DE-**
2 **TENTION.**

3 (a) **REPORT REQUIREMENT.**—Not later than 1 year
4 after the date of the enactment of this Act, and annually
5 thereafter, the Secretary shall prepare and submit a report
6 to Congress that describes the impact of worksite and fu-
7 gitive operations on United States citizens, lawful perma-
8 nent residents, and individuals otherwise lawfully present
9 in the United States.

10 (b) **CONTENT.**—The report submitted under sub-
11 section (a) shall include an assessment of—

12 (1) the number of individuals detained during
13 worksite or nonworksite operations who are children,
14 United States citizens, or adult lawful permanent
15 residents;

16 (2) immigration-related arrests at homes,
17 schools, places of worship, medical care facilities,
18 victim services agencies, social services agencies, and
19 community centers;

20 (3) arrests, detentions, and removals of individ-
21 uals who are—

22 (A) sole caregivers;

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

24 (C) pregnant or nursing mothers; or

1 (D) members of other vulnerable groups
2 subject to immigration-related enforcement ac-
3 tivity;

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

7 (A) whether the immigrants had access to
8 legal counsel before being transferred; and

9 (B) whether the immigrants received notice
10 of an impending transfer;

11 (5)(A) United States Immigration and Customs
12 Enforcement protocol for humanitarian screening
13 during a worksite enforcement action;

14 (B) the compliance with such protocol; and

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

17 (6) collateral arrests under the National Fugitive
18 Operations Program and worksite enforcement
19 initiatives;

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

23 (8) whether United States Immigration and
24 Customs Enforcement agents—

1 (A) use excessive force in executing war-
2 rants, arrests, detentions, or other immigration-
3 enforcement activities;

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

6 (C) display and use weapons during immi-
7 gration-enforcement activities or interrogations;

8 (9) the extent to which United States Immigra-
9 tion and Customs Enforcement cooperates and co-
10 ordinates with State and local law enforcement dur-
11 ing immigration enforcement activities;

12 (10) whether United States Immigration and
13 Customs Enforcement agents identify themselves
14 when entering a location for enforcement purposes;

15 (11) the conditions under which individuals are
16 confined;

17 (12) whether detainees are provided access to a
18 telephone;

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

21 (14) whether individuals detained during a raid
22 or an immigration enforcement activity are forced or
23 coerced to sign any documents or waive any rights
24 without consulting with an attorney;

1 (15) the procedures used by the Department of
2 Homeland Security—

3 (A) to notify agents about humanitarian
4 standards regarding enforcement actions; and

5 (B) hold agents accountable when they vio-
6 late such standards;

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

9 (17) the number of United States Immigration
10 and Customs Enforcement agents disciplined for vio-
11 lations in detention proceedings; and

12 (18) recommendations for improving worksite
13 operations and fugitive operations.

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
15 authorized to be appropriated such sums as may be nec-
16 essary to carry out this section.

17 **SEC. 7. IMMIGRATION AND CUSTOMS ENFORCEMENT OM-**
18 **BUDSMAN.**

19 (a) ESTABLISHMENT.—Subtitle D of title III of the
20 Homeland Security Act of 2002 (6 U.S.C. 251 et seq.)
21 is amended by adding at the end the following:

22 **“SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT**
23 **OMBUDSMAN.**

24 “(a) IN GENERAL.—There established in the Depart-
25 ment of Homeland Security a position of Immigration and

1 Customs Enforcement Ombudsman (referred to in this
2 section as the ‘Ombudsman’).

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

4 “(1) report directly to the Assistant Secretary
5 for Immigration and Customs Enforcement (referred
6 to in this section as the ‘Assistant Secretary’); and

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

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

9 “(1) undertake regular and unannounced in-
10 spections of detention facilities and local offices of
11 United States Immigration and Customs Enforce-
12 ment to determine whether the facilities and offices
13 comply with relevant policies, procedures, standards,
14 laws, and regulations;

15 “(2) report all findings of compliance or non-
16 compliance of the facilities and local offices de-
17 scribed in paragraph (1) to the Secretary and the
18 Assistant Secretary;

19 “(3) develop procedures for detainees or their
20 representatives to submit confidential written com-
21 plaints directly to the Ombudsman;

22 “(4) investigate and resolve all complaints, in-
23 cluding confidential and anonymous complaints, re-
24 lated to decisions, recommendations, acts, or omis-
25 sions made by the Assistant Secretary or the Com-

1 missioner of United States Customs and Border
2 Protection in the course of custody and detention
3 operations;

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

6 “(6) conduct any review or audit relating to de-
7 tention, as directed by the Secretary or Assistant
8 Secretary;

9 “(7) refer matters, as appropriate, to the Office
10 of Inspector General of the Department of Justice,
11 the Office of Civil Rights and Civil Liberties of the
12 Department, or any other relevant office or agency;

13 “(8) propose changes in the policies or practices
14 of United States Immigration and Customs Enforce-
15 ment to improve the treatment of United States citi-
16 zens and residents, immigrants, detainees, and oth-
17 ers subject to immigration-related enforcement oper-
18 ations;

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

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

1 “(B) current practices of United States
2 Immigration and Customs Enforcement; and

3 “(10) recommend to the Assistant Secretary
4 personnel action based on any finding of noncompli-
5 ance.

6 “(d) ANNUAL REPORT.—

7 “(1) OBJECTIVES.—Not later than June 30 of
8 each year, the Ombudsman shall prepare and submit
9 a report to the Committee on the Judiciary of the
10 Senate and the Committee on the Judiciary of the
11 House of Representatives on the objectives of the
12 Office of the Ombudsman for the next fiscal year.

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

15 “(A) full and substantive analysis of the
16 objectives of the Office of the Ombudsman;

17 “(B) statistical information regarding such
18 objectives;

19 “(C) a description of each detention facil-
20 ity found to be in noncompliance with the de-
21 tention standards of the Department of Home-
22 land Security or other applicable regulations;

23 “(D) a description of the actions taken by
24 the Department of Homeland Security to rem-

1 edy any findings of noncompliance or other
2 identified problems;

3 “(E) information regarding whether the
4 actions described in subparagraph (D) resulted
5 in compliance with detention standards;

6 “(F) a summary of the most pervasive and
7 serious problems encountered by individuals
8 subject to the enforcement operations of the
9 Department of Homeland Security, including a
10 description of the nature of such problems; and

11 “(G) such other information as the Om-
12 budsman may consider advisable.”.

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

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

17 **SEC. 8. RULEMAKING.**

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

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