

116TH CONGRESS  
1ST SESSION

# S. 2691

To establish the position of Ombudsman for Border and Immigration Enforcement Related Concerns in the Department of Homeland Security.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 24, 2019

Mr. UDALL (for himself, Ms. HARRIS, Mr. WYDEN, Mr. BLUMENTHAL, Mr. HEINRICH, Mr. MERKLEY, Mr. BOOKER, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To establish the position of Ombudsman for Border and Immigration Enforcement Related Concerns in the Department of Homeland Security.

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:

1 **“SEC. 711. OMBUDSMAN FOR BORDER AND IMMIGRATION**  
2 **ENFORCEMENT RELATED CONCERNS.**

3 “(a) IN GENERAL.—There is established within the  
4 Department the position of Ombudsman for Border and  
5 Immigration Enforcement Related Concerns (referred to  
6 in this section as the ‘Ombudsman’), who shall—

7 “(1) be independent of Department agencies  
8 and officers (except for the Secretary);

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

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

12 “(b) FUNCTIONS.—It shall be the function of the  
13 Ombudsman—

14 “(1) in coordination with the Inspector General  
15 of the Department, to establish an independent, neu-  
16 tral, accessible, confidential, and standardized proc-  
17 ess—

18 “(A) to assist individuals, including aliens  
19 (as defined in section 101 of the Immigration  
20 and Nationality Act (8 U.S.C. 1101)) in resolv-  
21 ing complaints with respect to U.S. Customs  
22 and Border Protection, U.S. Immigration and  
23 Customs Enforcement, a subcontractor, or a co-  
24 operating entity; and

1           “(B) that includes a publicly accessible  
2           website through which a complainant can check  
3           on the status of such a complaint;

4           “(2) to identify and thereafter review, examine,  
5           and make recommendations to the Secretary to ad-  
6           dress chronic issues identified by the Ombudsman in  
7           carrying out the function described in paragraph  
8           (1);

9           “(3) to establish a Border Oversight Panel in  
10          accordance with subsection (f); and

11          “(4) to review compliance with policies and  
12          standards of the Department for the care for cus-  
13          tody of aliens by U.S. Immigration and Customs  
14          Enforcement and U.S. Customs and Border Protec-  
15          tion, including any violations of applicable policy or  
16          standards of care involving force-feeding.

17          “(c) CONFIDENTIALITY.—

18          “(1) IN GENERAL.—The existence of a com-  
19          plaint, including the identity of any Department em-  
20          ployee implicated in a complaint, shall be kept con-  
21          fidential by the Ombudsman. In the absence of the  
22          written consent of an individual who submits a com-  
23          plaint, the Ombudsman shall keep confidential the  
24          identity of and any identifying information relating  
25          to such individual.

1           “(2) FOIA DISCLOSURES.—The confidentiality  
2           requirement under paragraph (1) may not be consid-  
3           ered as a factor in determining whether information  
4           under this subsection may be disclosed under section  
5           552 of title 5, United States Code (commonly re-  
6           ferred to as the ‘Freedom of Information Act’).

7           “(d) ANNUAL REPORTING.—Not later than June 30  
8           of the first calendar year beginning after the date of the  
9           enactment of this section, and annually thereafter, the  
10          Ombudsman shall submit a report to the Committee on  
11          Homeland Security and Governmental Affairs of the Sen-  
12          ate, the Committee on the Judiciary of the Senate, the  
13          Committee on Homeland Security of the House of Rep-  
14          resentatives, and the Committee on the Judiciary of the  
15          House of Representatives that includes, for the previous  
16          calendar year—

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

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

21                         “(B) the demographics of the complainant;  
22                         and

23                         “(C) a description of the resolution of the  
24                         complaint or the status of the resolution proc-  
25                         ess;

1           “(2) any complaint pattern that could be pre-  
2           vented or reduced by policy training or practice  
3           changes;

4           “(3) a description of any pattern of violations  
5           of any applicable policy or standards;

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

13          “(5) a description of complaints received under  
14          this section for which action has not been taken dur-  
15          ing the 1-year period beginning on the date on which  
16          the complaint was received, and the period during  
17          which each complaint has remained open;

18          “(6) recommendations the Ombudsman has  
19          made under subsection (b)(2); and

20          “(7) other information, as the Ombudsman de-  
21          termines appropriate.

22          “(e) APPOINTMENT OF BORDER COMMUNITIES LIAI-  
23          SON.—

24                 “(1) IN GENERAL.—The Ombudsman, in con-  
25                 junction with the Office for Civil Rights and Civil

1       Liberties of the Department, shall appoint a Border  
2       Community Liaison (referred to in this subsection as  
3       a ‘Liaison’) in each U.S. Border Patrol sector on the  
4       northern and southern borders of the United States.  
5       Each Liaison shall report directly to the Ombuds-  
6       man.

7               “(2) PURPOSES.—Each Liaison shall—

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

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

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

21                     “(D) submit an annual report to the Om-  
22                     budsman that details the findings of the Liai-  
23                     son, feedback received from border commu-  
24                     nities, and recommendations to increase co-  
25                     operation between U.S. Customs and Border

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

3           “(f) BORDER OVERSIGHT PANEL.—

4           “(1) ESTABLISHMENT.—The Ombudsman shall  
5           establish a Border Oversight Panel (referred to in  
6           this subsection as the ‘Panel’).

7           “(2) COMPOSITION.—

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

11          “(B) CHAIRPERSON.—The Ombudsman  
12          shall serve as the chair of the Panel.

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

21          “(3) DUTIES.—The Panel shall evaluate and  
22          make recommendations regarding the border en-  
23          forcement policies, strategies, and programs of the  
24          Department operating along the northern and south-  
25          ern borders of the United States—

1           “(A) to take into consideration the impact  
2 of such policies, strategies, and programs on  
3 border communities, including protecting due  
4 process, civil and human rights of border resi-  
5 dents and visitors, and private property rights  
6 of land owners;

7           “(B) to uphold domestic and international  
8 legal obligations;

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

11           “(D) to improve the safety of agents and  
12 officers of U.S. Customs and Border Protection  
13 and U.S. Immigration and Customs Enforce-  
14 ment.

15           “(g) STAFFING.—The Secretary shall take appro-  
16 priate action to ensure that the Ombudsman’s office has  
17 sufficient staff and resources to effectively and efficiently  
18 carry out its duties under this section.

19           “(h) TRAINING.—

20           “(1) IN GENERAL.—The Ombudsman shall con-  
21 duct an annual evaluation of all training given to  
22 agents and officers of U.S. Customs and Border  
23 Protection and U.S. Immigration and Customs En-  
24 forcement.



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

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

14           “(B) policies for operating in locations  
15 where there are limitations on cooperation by  
16 local law enforcement;

17           “(C) interaction with vulnerable popu-  
18 lations, including instruction on screening, iden-  
19 tifying, and responding to vulnerable popu-  
20 lations, such as children, victims of human traf-  
21 ficking, and the acutely ill;

22           “(D) standards of professional and ethical  
23 conduct, including—

24           “(i) lawful use of force, de-escalation  
25 tactics, and alternatives to the use of force;

1           “(ii) complying with chain of com-  
2           mand and lawful orders;

3           “(iii) conduct and ethical behavior to-  
4           ward the public in a civil and professional  
5           manner;

6           “(iv) civil rights and legal protections  
7           for nationals of the United States and  
8           aliens;

9           “(v) non-biased questioning;

10          “(vi) sensitivity towards lesbian, gay,  
11          bisexual, transgender, and queer individ-  
12          uals;

13          “(vii) permissible and impermissible  
14          social media activity; and

15          “(viii) sexual and other harassment  
16          and assault, including an assessment of  
17          whether adequate policies exist to resolve  
18          complaints;

19          “(E) protecting the civil, constitutional,  
20          human, and privacy rights of individuals, with  
21          special emphasis on the scope of enforcement  
22          authority, including chain of evidence practices  
23          and document seizure, and use of force policies  
24          available to agents and officers;

1           “(F) maintaining and updated under-  
2           standing of Federal legal rulings, court deci-  
3           sions, and Department policies and procedures;  
4           and

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

11          “(3) RECOMMENDATIONS.—Not later than 90  
12          days after conducting each evaluation under para-  
13          graph (1), the Ombudsman shall develop, and sub-  
14          mit to the Secretary, recommendations regarding  
15          any additional training needed by agents and offi-  
16          cers of U.S. Customs and Border Protection and  
17          U.S. Immigration and Customs Enforcement.

18          “(4) FEEDBACK.—Not later than 180 days  
19          after receiving a recommendation from the Ombuds-  
20          man, the Secretary shall provide—

21                 “(A) a public, written response to the rec-  
22                 ommendation; and

23                 “(B)(i) if the Secretary concurs with the  
24                 recommendation, an action plan to implement  
25                 the recommendation; or

1           “(ii) if the Secretary rejects the rec-  
2           ommendation, a justification for such rejection.

3           “(i) ELECTRONIC TRACKING.—

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

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

23               “(A) is transferable;

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

4                   “(i) U.S. Customs and Border Protec-  
5                   tion;

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

8                   “(iii) the Office of Refugee Resettle-  
9                   ment of the Department of Health and  
10                  Human Services; and

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

14           “(j) BODY-WORN CAMERAS.—

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

1       committee on Homeland Security of the House of Rep-  
2       representatives, and the Committee on the Judiciary of  
3       the House of Representatives for requiring, not later  
4       than 1 year after such date of enactment, the use  
5       of body-worn cameras by U.S. Border Patrol agents  
6       and U.S. Immigration and Customs Enforcement of-  
7       ficers whenever such agents and officers are engaged  
8       in border security or immigration enforcement activi-  
9       ties.

10           “(2) ELEMENTS.—The plan required under  
11       paragraph (1) shall include—

12           “(A) benchmarks for implementation of  
13       the use of body-worn cameras within U.S. Cus-  
14       toms and Border Protection and U.S. Immigra-  
15       tion and Customs Enforcement;

16           “(B) policies, procedures, and training  
17       modules for the use of body-worn cameras by  
18       agents and officers of U.S. Customs and Border  
19       Protection and U.S. Immigration and Customs  
20       Enforcement, including training modules relat-  
21       ing to the appropriate use of such cameras and  
22       adverse action for non-compliance; and

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

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

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

5                   “(B) principles regarding body-worn cam-  
6 eras published by major civil and human rights  
7 organizations.”.

8           (b) CLERICAL AMENDMENT.—The table of contents  
9 in section 1(b) of the Homeland Security Act of 2002  
10 (Public Law 107–296) is amended by inserting after the  
11 item relating to section 710 the following:

“Sec. 711. Ombudsman for Border and Immigration Enforcement Related Con-  
cerns.”.

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