

110TH CONGRESS  
2D SESSION

# S. 3594

To protect United States citizens from unlawful arrest and detention.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008

Mr. MENENDEZ (for himself and Mr. KENNEDY) 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 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 Raids and Detention Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Since 2006, the Department of Homeland  
9 Security and partnering law enforcement agents  
10 have amplified enforcement actions at the workplace,  
11 on the street, and inside the homes of individuals.

1           (2) A large majority of the children affected by  
2 such enforcement actions are United States citizens  
3 and the youngest and most vulnerable in our society,  
4 including infants, toddlers, and preschoolers.

5           (3) In the workplace, thousands of hardworking  
6 lawful permanent residents, United States citizens,  
7 and immigrants have been questioned, handcuffed,  
8 and detained without adequate protections to safe-  
9 guard their constitutional rights.

10          (4) In several recent immigration raids and im-  
11 migration enforcement activities, officials at United  
12 States Immigration and Customs Enforcement have  
13 unlawfully detained United States citizens and law-  
14 ful permanent residents.

15          (5) Mistaken identities, bureaucratic mix-ups,  
16 and discriminatory attitudes further contribute to  
17 improper immigration actions taken against United  
18 States citizens, lawful permanent residents, and  
19 other persons with legal immigration status.

20          (6) The United States should not be a place  
21 where citizens and lawful permanent residents are  
22 unlawfully detained or mistreated by government  
23 agents.

1           (7) No person in America should be subject to  
2           government actions that overstep basic protections  
3           or constitutional rights.

4 **SEC. 3. DEFINITIONS.**

5           In this Act:

6           (1) **DETENTION.**—The term “detention”, in the  
7           context of an immigration-related enforcement activ-  
8           ity, means government custody or any significant  
9           deprivation of an individual’s freedom of action by  
10          government agents.

11          (2) **DETENTION FACILITY.**—The term “deten-  
12          tion facility” means any Federal, State, or local gov-  
13          ernment facility, or facility which provides services  
14          under government contract that is used to hold im-  
15          migration detainees for more than 72 hours.

16          (3) **IMMIGRATION-RELATED ENFORCEMENT AC-**  
17          **TIVITY.**—The term “immigration-related enforce-  
18          ment activity” means any government action in  
19          which—

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

22                  (B) an individual who has been detained  
23                  on criminal charges is questioned about possible  
24                  immigration violations.

1           (4) VULNERABLE POPULATIONS.—The term  
2 “vulnerable populations” means classes of aliens or  
3 other individuals who have special needs requiring  
4 special treatment and consideration because of past  
5 abuse, harm, or other physical or mental character-  
6 istics that place the individual at special risk of  
7 harm.

8 **SEC. 4. PROTECTIONS AGAINST UNLAWFUL DETENTIONS**  
9                           **OF UNITED STATES CITIZENS AND LAWFUL**  
10                           **PERMANENT RESIDENTS.**

11 (a) NOTIFICATIONS.—

12           (1) IN GENERAL.—An officer of United States  
13 Immigration and Customs Enforcement or other  
14 government law enforcement officer may not ques-  
15 tion an individual who has been detained on the  
16 basis of a suspected immigration violation or has  
17 been detained during an immigration-related en-  
18 forcement activity, unless the officer has advised the  
19 individual, in the language spoken by the indi-  
20 vidual—

21                   (A) of the right to be represented at no ex-  
22                   pense to the Federal Government;

23                   (B) that he or she may choose to remain  
24                   silent; and

1 (C) that any statement may be used  
2 against him or her in a subsequent proceeding.

3 (2) EFFECT OF VIOLATION.—Any statement ob-  
4 tained by the government from an individual in vio-  
5 lation of the requirements set forth in subpara-  
6 graphs (A) through (C) of paragraph (1) shall not  
7 be admissible in the Federal Government’s case-in-  
8 chief in any removal proceeding against the indi-  
9 vidual.

10 (b) ACCESS TO COUNSEL.—

11 (1) IN GENERAL.—An individual who is de-  
12 tained during an immigration-related enforcement  
13 activity may be represented by legal counsel at any  
14 time at no expense to the Federal Government.

15 (2) LIST OF FREE LEGAL SERVICES.—The ex-  
16 amining officer shall—

17 (A) at the time of detention of an indi-  
18 vidual for an immigration-related violation, pro-  
19 vide the individual with a list of available free  
20 or low-cost legal services provided by organiza-  
21 tions and attorneys that are located in the dis-  
22 trict where the arrest is taking place; and

23 (B) certify on the notice to appear issued  
24 to such individual that such a list was provided  
25 to the individual.

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

4                   (A) by redesignating subsection (e) as sub-  
5           section (h);

6                   (B) by redesignating subsections (b), (c),  
7           and (d) as subsections (c), (d), and (e), respec-  
8           tively; and

9                   (C) by inserting before subsection (h), as  
10          redesignated, the following:

11          “(g) RIGHT TO ACCESS COUNSEL.—An individual  
12          who has been detained under this section may be rep-  
13          resented, at no expense to the Federal Government, by  
14          counsel of the individual’s choosing while being subject to  
15          any immigration-related enforcement activity, including—

16                   “(1) interviews;

17                   “(2) processing appointments;

18                   “(3) hearings; and

19                   “(4) any procedure which may result in a con-  
20          clusion that the individual will be detained or re-  
21          moved from the United States.”.

22          (c) NOTICE.—

23           (1) AMENDMENT.—Section 236 of the Immi-  
24          gration and Nationality Act, as amended by sub-

1 section (b)(3), is further amended by inserting be-  
2 fore subsection (g) the following:

3 “(f) NOTICE AND CHARGES.—

4 “(1) NOTICE.—The Secretary of Homeland Se-  
5 curity shall, for each individual detained under this  
6 section—

7 “(A) file a notice to appear or other rel-  
8 evant charging document with the closest immi-  
9 gration court to where the individual was appre-  
10 hended; and

11 “(B) serve such notice on the individual  
12 not later than 48 hours after the commence-  
13 ment of the individual’s detention.

14 “(2) CUSTODY DETERMINATION.—Any indi-  
15 vidual who is detained under this section for more  
16 than 48 hours shall be brought before an immigra-  
17 tion judge for a custody determination not later than  
18 72 hours after the commencement of such detention  
19 unless the individual waives such right in accordance  
20 with paragraph (3).

21 “(3) WAIVER.—The requirements under this  
22 subsection may be waived for 7 days if the indi-  
23 vidual—

1           “(A) enters into a written agreement with  
2           the Department of Homeland Security to waive  
3           such requirement; and

4           “(B) is eligible for immigration benefits or  
5           demonstrates eligibility for a defense against re-  
6           moval.”.

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

11         (d) ISSUANCE OF DETAINERS.—

12           (1) LIMITATION.—An official of the Depart-  
13          ment of Homeland Security may not issue a detainer  
14          unless the official—

15           (A) has confirmed that the individual who  
16           is the subject of such detainer is not a United  
17           States citizen; and

18           (B) notes the information collected regard-  
19           ing the individual’s alienage on the detainer.

20           (2) RULEMAKING.—The Secretary of Homeland  
21          Security shall issue regulations requiring officials of  
22          the Department of Homeland Security to confirm an  
23          individual’s alienage before issuing a detainer by  
24          confirming the name, date of birth, fingerprints, or  
25          other identifying information of the individual.



1 (e) ACCESS TO TELEPHONES.—Not later than 6  
2 hours after the commencement of a detention of an indi-  
3 vidual during an immigration-related enforcement activity,  
4 an official of the Department of Homeland Security shall  
5 provide such individual with free access to a telephone to  
6 make a telephone call.

7 (f) PROTECTION OF COMMUNITY INSTITUTIONS.—

8 (1) IN GENERAL.—The Secretary of Homeland  
9 Security shall issue regulations requiring officials of  
10 the Department of Homeland Security to—

11 (A) avoid the apprehension of persons on  
12 the premises or in the immediate vicinity of day  
13 care centers, schools, legal service providers,  
14 courts, funeral homes, cemeteries, colleges, vic-  
15 tim services agencies, social service agencies,  
16 hospitals, health care clinics, and places of wor-  
17 ship; and

18 (B) tightly control investigative operations  
19 at the places described in subparagraph (A).

20 (2) NOTICE TO APPEAR.—The Secretary of  
21 Homeland Security shall amend the Notice to Ap-  
22 pear form to include a statement that no immigra-  
23 tion enforcement activity was undertaken in any of  
24 the community institutions described in paragraph  
25 (1)(A).

1 (g) TRANSFER OF DETAINEES.—

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

9 (A) the detainee’s access to legal represen-  
10 tation;

11 (B) the detainee’s residence prior to appre-  
12 hension;

13 (C) the location of family members;

14 (D) the stage of any legal proceeding in-  
15 volving the detainee;

16 (E) the proximity of the transferee facility  
17 to the venue of such proceeding;

18 (F) the detainee’s health and medical fit-  
19 ness; and

20 (G) whether the detainee has a pending  
21 application with United States Citizenship and  
22 Immigration Services or the Executive Office  
23 for Immigration Review or has appeared for a  
24 merits calendar hearing.

1           (2) NOTICE.—Unless exigent circumstances die-  
2           tate an immediate transfer, the Secretary of Home-  
3           land Security—

4                   (A) shall provide not less than 72 hours  
5                   notice to any detainee before transferring the  
6                   detainee to another detention facility; and

7                   (B) shall not transfer any detainee who  
8                   has already requested, and is awaiting, a bond  
9                   hearing.

10          (3) OTHER REQUIREMENTS.—

11                   (A) IN GENERAL.—Except as provided  
12                   under paragraph (B), the Secretary may not  
13                   transfer a detainee who has an existing attor-  
14                   ney-client relationship to another facility if such  
15                   transfer would—

16                           (i) impair the existing attorney-client  
17                           relationship; or

18                           (ii) prejudice the rights of the de-  
19                           tainee in any legal proceeding.

20                   (B) EXCEPTION.—The Secretary may  
21                   transfer a detainee who has an existing attor-  
22                   ney-client relationship to an alternate detention  
23                   facility if such transfer is necessitated by a  
24                   highly unusual emergency, such as a natural  
25                   disaster or comparable emergency.

1 (C) PROTECTING DETAINEES LEGAL  
2 RIGHTS.—If the Secretary determines that a  
3 transfer is necessary due to a highly unusual  
4 emergency, the Secretary shall ensure that the  
5 detainee’s legal rights are not prejudiced and  
6 the existing attorney client relationship is not  
7 impaired, including evaluating the location of  
8 the detention facility based on its proximity to  
9 the detainee’s counsel or organizations pro-  
10 viding free immigration legal services.

11 (D) RECORD.—In cases in which a de-  
12 tainee is transferred, the Secretary shall make  
13 a record of the reasons and circumstances ne-  
14 cessitating such transfer.

15 (h) TRAINING.—The Secretary of Homeland Security  
16 shall provide all officers of the Department and State and  
17 local officers involved in immigration enforcement activi-  
18 ties with guidelines and periodic training regarding immi-  
19 gration law, due process protections, and humanitarian  
20 guidelines under current law, including—

- 21 (1) the right to access immigration legal coun-  
22 sel; and  
23 (2) the appropriate treatment of vulnerable  
24 populations during immigration-related enforcement  
25 activities.

1 **SEC. 5. SAFEGUARDS DURING ENFORCEMENT OPER-**  
2 **ATIONS.**

3 In any immigration-related enforcement activity that  
4 is expected to target more than 50 individuals, the Sec-  
5 retary of Homeland Security shall—

6 (1) screen each individual detained in an immi-  
7 gration-related enforcement activity to determine if  
8 such individual is a United States citizen, a lawful  
9 permanent resident of the United States, or an alien  
10 lawfully present in the United States;

11 (2) if an individual claims to be a United States  
12 citizen, a lawful permanent resident of the United  
13 States, or an alien lawfully present in the United  
14 States, ensure that the officer of the Department of  
15 Homeland Security investigates the individual's  
16 claims and considers the individual for release under  
17 section 7(a);

18 (3) notify State and local child welfare authori-  
19 ties of such immigration-related enforcement activity  
20 not later than 24 hours before the commencement of  
21 such activity;

22 (4) provide social workers or case managers em-  
23 ployed or contracted by a State or local social service  
24 agency with confidential access to individuals de-  
25 tained by the Department—

1 (A) to screen and interview such individ-  
2 uals for humanitarian concerns; and

3 (B) to offer psychosocial and mental health  
4 services to children and family members of such  
5 individuals;

6 (5) permit State and local social service pro-  
7 viders to determine whether nongovernmental orga-  
8 nizations may participate in screening individuals  
9 detained by the Department for humanitarian pur-  
10 poses;

11 (6) ensure that qualified medical personnel—

12 (A) conduct medical screenings of the indi-  
13 viduals subject to the immigration-related en-  
14 forcement activity; and

15 (B) identify and report any medical or  
16 other issues that might necessitate humani-  
17 tarian release or emergency assistance;

18 (7) before transferring any individual detained  
19 by the Department outside the district in which the  
20 arrest took place, determine, based on all informa-  
21 tion available to the Department and the rec-  
22 ommendations made by State and local social service  
23 agencies—

24 (A) if the individual is described in section  
25 7(a); and

1 (B) if the individual should be released;

2 (8) provide and advertise a toll-free number  
3 through which family members of the target popu-  
4 lation of the immigration-related enforcement activ-  
5 ity may obtain information about their detained  
6 family members, in English and the majority lan-  
7 guage of such detainees;

8 (9) determine whether an individual subject to  
9 detention—

10 (A) is a primary caretaker of a child in the  
11 United States; and

12 (B) should be released under the provisions  
13 set forth in section 236(b) of the Immigration  
14 and Nationality Act, as added by section 7(b);

15 (10) ensure that agents of the Department do  
16 not—

17 (A) interrogate individuals in the imme-  
18 diate presence of children; or

19 (B) interrogate, arrest, or detain any child  
20 without the presence or consent of a parent,  
21 legal guardian, or legal counsel;

22 (11) ensure that not fewer than one inde-  
23 pendent certified interpreter who is fluent in Span-  
24 ish or any language other than English spoken by  
25 more than 5 percent of the target population of the

1 operation for in-person translation is available for  
2 every 5 individuals targeted by an immigration-re-  
3 lated law enforcement activity;

4 (12) permit local nonprofit legal service pro-  
5 viders, organizations, and attorneys to offer free  
6 legal services to individuals subject to an immigra-  
7 tion-related enforcement activity at the time of the  
8 arrest or detention of such individual; and

9 (13) provide a legal orientation presentation for  
10 any individual detained through an immigration-re-  
11 lated enforcement activity through the Legal Ori-  
12 entation Program administered by the Executive Of-  
13 fice for Immigration Review.

14 **SEC. 6. CONDUCT IN ENFORCEMENT ACTIONS.**

15 Section 274A(e) of the Immigration and Nationality  
16 Act (8 U.S.C. 1324a(e)) is amended by adding at the end  
17 the following:

18 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

19 “(A) COORDINATION WITH THE DEPART-  
20 MENT OF LABOR OR OTHER RELEVANT AGEN-  
21 CIES IN AN ENFORCEMENT ACTION.—During an  
22 enforcement action undertaken by the Depart-  
23 ment of Homeland Security in which the De-  
24 partment receives information of a pending  
25 labor dispute or information in retaliation



1           against employees for exercising their employ-  
2           ment rights, the Secretary shall ensure that—

3                   “(i) any aliens who are arrested or de-  
4                   tained, and are necessary for the prosecu-  
5                   tion of any labor or employment law viola-  
6                   tions, are not removed from the United  
7                   States until the appropriate law enforce-  
8                   ment agency that has jurisdiction over  
9                   such violations has been given an oppor-  
10                  tunity to interview such aliens; and

11                  “(ii) no aliens entitled to a stay of re-  
12                  moval under this section are removed.

13                  “(B) INTERVIEWS.—Any arrangements for  
14                  aliens to be held or interviewed shall be made  
15                  in consultation with the relevant labor and em-  
16                  ployment law enforcement agencies.

17                  “(C) STAY OF REMOVAL.—

18                   “(i) IN GENERAL.—An alien against  
19                   whom removal proceedings have been initi-  
20                   ated pursuant to chapter 4 of title II, and  
21                   who has filed a workplace claim or is a ma-  
22                   terial witness in any pending or anticipated  
23                   proceeding involving a workplace claim,  
24                   shall be entitled to a stay of removal and  
25                   an employment authorized endorsement

1 unless the Department establishes, by a  
2 preponderance of the evidence in pro-  
3 ceedings before the immigration judge pre-  
4 siding over that alien's removal hearing,  
5 that—

6 “(I) the Department initiated the  
7 alien's removal proceeding for wholly  
8 independent reasons and not in any  
9 respect based on, or as a result of,  
10 any information provided to or ob-  
11 tained by the Department from the  
12 alien's employer, from any outside  
13 source, including any anonymous  
14 source, or as a result of the filing or  
15 prosecution of the workplace claim;  
16 and

17 “(II) the workplace claim was  
18 filed in a bad faith with the intent to  
19 delay or avoid the alien's removal.

20 “(ii) DURATION.—Any stay of re-  
21 moval or work authorization issued pursu-  
22 ant to subsection (i) shall remain valid and  
23 in effect during the pendency of the pro-  
24 ceedings concerning the workplace claim  
25 described in clause (i). The Secretary of

1 Homeland Security shall extend such relief  
2 for a period of not longer than 3 additional  
3 years upon determining that—

4 “(I) such relief would enable the  
5 alien asserting the workplace claim to  
6 be made whole;

7 “(II) the deterrent goals of any  
8 statute underlying the workplace  
9 claim would thereby be served; or

10 “(III) such extension would oth-  
11 erwise further the interests of justice.

12 “(iii) DEFINITIONS.—In this sec-  
13 tion—

14 “(I) the term ‘material witness’  
15 means an individual who presents a  
16 declaration from an attorney pros-  
17 ecuting or defending the workplace  
18 claim, or from the presiding officer  
19 overseeing the workplace claim, attest-  
20 ing that, to the best of the declarant’s  
21 knowledge and belief, reasonable  
22 cause exists to believe that the testi-  
23 mony of the individual will be crucial  
24 to the outcome of the workplace claim;  
25 and

1                   “(II) the term ‘workplace claim’  
2 includes any claim, charge, complaint,  
3 or grievance filed with, or submitted  
4 to, the employer, a Federal or State  
5 agency or court, or an arbitrator, to  
6 challenge an employer’s alleged civil  
7 or criminal violation of any legal or  
8 administrative rule or requirement af-  
9 fecting the terms or conditions of its  
10 workers’ employment, the treatment  
11 of workers, or the hiring or firing of  
12 its workers.”.

13 **SEC. 7. BASIC PROTECTIONS FOR VULNERABLE POPU-**  
14 **LATIONS.**

15 (a) PROTECTION OF VULNERABLE POPULATIONS.—

16 (1) IN GENERAL.—Not later than 72 hours  
17 after the commencement of an immigration-related  
18 enforcement activity, the Department of Homeland  
19 Security shall screen each detainee to determine if  
20 they belong to any of the groups listed in paragraph  
21 (2).

22 (2) VULNERABLE POPULATION GROUPS.—An  
23 individual is eligible for release under paragraph (3)  
24 if the individual belongs to any of the following  
25 groups:

1 (A) Individuals who have serious medical  
2 or mental health needs or a disability.

3 (B) Pregnant or nursing women.

4 (C) Individuals who are being detained  
5 with 1 or more of their children, and their de-  
6 tained children.

7 (D) Individuals who provide financial,  
8 physical, and other direct support to their  
9 minor children, parents, or other dependents.

10 (E) Individuals who are over 65 years of  
11 age.

12 (F) Children under 18 years of age.

13 (G) Victims of abuse, violence, crime, or  
14 human trafficking.

15 (H) Individuals who have been referred for  
16 a credible fear interview, a reasonable fear  
17 interview, or an asylum hearing.

18 (I) Individuals who have applied or intend  
19 to apply for asylum, withholding of removal, or  
20 protection under the Convention Against Tor-  
21 ture and Other Cruel, Inhuman or Degrading  
22 Treatment or Punishment, done at New York  
23 December 10, 1984.

1           (J) Any other group designated in regula-  
2           tions or guidance promulgated by the Secretary  
3           of Homeland Security.

4           (K) Individuals who have a non-frivolous  
5           claim to United States citizenship.

6           (L) Individuals who are eligible for relief  
7           under any provision of the Immigration and  
8           Nationality Act (8 U.S.C. 1101 et seq.).

9           (3) ELIGIBILITY FOR RELEASE.—An individual  
10          shall be released on parole or a reasonable bond,  
11          subject to the requirements under section 236(b) of  
12          the Immigration and Nationality Act, as amended by  
13          subsection (b), if the individual—

14               (A) belongs to a group described in para-  
15               graph (2); and

16               (B) meets the criteria set forth under such  
17               section 236(b).

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

22               (1) in subsection (a)—

23                     (A) in the matter preceding paragraph (1)  
24                     by striking “(c)” and inserting “(d)”; and

25                     (B) in paragraph (2)—

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

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

5 (iii) by inserting after subparagraph  
6 (B) the following:

7 “(C) the individual’s own recognizance;  
8 and”;

9 (2) by inserting after subsection (a) the fol-  
10 lowing:

11 “(b) CUSTODY DECISIONS FOR VULNERABLE POPU-  
12 LATIONS.—

13 “(1) IN GENERAL.—Not later than 72 hours  
14 after an individual is detained under this section, the  
15 individual shall be released from the custody of the  
16 Department of Homeland Security and shall not be  
17 subject to electronic monitoring if the Department  
18 demonstrates that the individual—

19 “(A) is not subject to mandatory detention  
20 under section 235(b)(1)(B)(iii)(IV), 236(c), or  
21 236A;

22 “(B) does not pose a flight risk, a risk to  
23 others, or a risk to the national security of the  
24 United States; and

1           “(C) is a member of a vulnerable popu-  
2           lation (as defined in section 7(a)(2) of the Pro-  
3           tect Citizens and Residents from Unlawful  
4           Raids and Detention Act.

5           “(2) RELEASE.—An individual shall be released  
6           under this subsection—

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

8           “(B) by posting a minimum bond under  
9           subsection (a)(2)(a); or

10           “(C) on parole in accordance with section  
11           212(d)(5)(A).

12           “(3) DECISION TO REMOVE OR RELEASE AN  
13           ALIEN.—

14           “(A) IN GENERAL.—Any decision under  
15           paragraph (1)—

16           “(i) shall be made in writing;

17           “(ii) if the decision is made to con-  
18           tinue detention without bond or parole,  
19           shall specify the reasons for such decision;  
20           and

21           “(iii) shall be served upon the indi-  
22           vidual in the language spoken by the indi-  
23           vidual—



1                   “(I) not later than 72 hours after  
2                   the commencement of the alien’s de-  
3                   tention; or

4                   “(II) in the case of an alien sub-  
5                   ject to section 235 or 241(a)(5) who  
6                   must establish a credible fear of per-  
7                   secution or torture in order to proceed  
8                   to immigration court, not later than  
9                   72 hours after a positive credible fear  
10                  of persecution or reasonable fear of  
11                  persecution or torture determination.

12                  “(B) REDETERMINATION.—

13                  “(i) IN GENERAL.—Any alien detained  
14                  under this section, including any alien eli-  
15                  gible for a removal hearing under section  
16                  240, may, at any time after being served  
17                  with the Secretary’s decision under sub-  
18                  paragraph (A), request a redetermination  
19                  of that decision by an immigration judge.

20                  “(ii) OTHER DECISIONS.—All custody  
21                  decisions by the Secretary shall be subject  
22                  to redetermination by an immigration  
23                  judge.

24                  “(iii) SAVINGS PROVISION.—Nothing  
25                  in this subparagraph may be construed to

1           prevent an individual from requesting a  
2           bond redetermination.”; and

3           (3) in subsection (d)(2), as redesignated in  
4           paragraph (2), by inserting “or for humanitarian  
5           reasons,” after “such an investigation,”.

6 **SEC. 8. DETENTION SAFEGUARDS FOR CITIZENS, NATION-**  
7 **ALS, RESIDENTS AND IMMIGRANTS.**

8           (a) ALTERNATIVE CUSTODY PROGRAMS.—

9           (1) IN GENERAL.—The Secretary of Homeland  
10          Security shall ensure that United States citizens,  
11          lawful permanent residents, and other individuals  
12          are not unlawfully detained by establishing secure  
13          alternative custody programs, which—

14                 (A) shall use a continuum of methods to  
15                 ensure individuals attend all immigration court  
16                 proceedings; and

17                 (B) may be used for individuals who would  
18                 otherwise be subject to detention under section  
19                 236 of the Immigration and Nationality Act (8  
20                 U.S.C. 1226).

21           (2) CONSIDERATION.—If an individual belongs  
22          to one of the vulnerable population groups described  
23          in section 7(a)(2), but does not meet the require-  
24          ments for parole, release, or bond under section  
25          236(a) of the Immigration and Nationality Act, the

1 Secretary shall consider the individual for placement  
2 in a secure alternative custody program.

3 (3) INDIVIDUALIZED DETERMINATION.—The  
4 Secretary shall determine, on an individual basis,  
5 whether an individual described in paragraph (2)  
6 should be subject to less restrictive forms of custo-  
7 dial detention, including electronic monitoring by  
8 ankle bracelets and similar devices.

9 (4) ALTERNATIVE TO DETENTION PROGRAMS.—

10 (A) CONTRACTING.—The Secretary shall  
11 contract with nongovernmental organizations to  
12 create alternative to detention programs, which  
13 shall—

- 14 (i) conduct screening of detainees;  
15 (ii) provide noncustodial appearance  
16 assistance services; or  
17 (iii) operate group homes or other  
18 community-based alternatives to detention  
19 programs.

20 (B) LEGAL ORIENTATION.—The Attorney  
21 General shall contract with nongovernmental  
22 organizations to conduct legal orientation serv-  
23 ices.

24 (b) DETENTION ADVISORY COMMITTEE.—

1           (1) ESTABLISHMENT.—To ensure that all indi-  
2           viduals being detained by the Department of Home-  
3           land Security are treated humanely, the Secretary of  
4           Homeland Security shall establish a detention advi-  
5           sory committee, which shall review and revise the  
6           guidelines in the Detention Operations Manual used  
7           by United States Immigration and Customs En-  
8           forcement based on—

9                   (A) identifiable deficiencies in the Deten-  
10                  tion Operations Manual; and

11                  (B) practices that treat individuals safely  
12                  and humanely.

13           (2) COMPOSITION.—The detention advisory  
14           committee shall be comprised of experts from the  
15           United States Government and an equal number of  
16           independent experts from nongovernmental organiza-  
17           tions and intergovernmental organizations with ex-  
18           pertise in working on behalf of detainees, immi-  
19           grants, and vulnerable populations.

20           (3) REPORT.—Not later than 1 year after the  
21           date of the enactment of this Act, the detention ad-  
22           visory committee shall submit a report to the Sec-  
23           retary that describes the results of the review and  
24           revisions carried out pursuant to paragraph (1).

1 (c) RULEMAKING.—Not later than the earlier of 1  
2 year after the Secretary of Homeland Security receives the  
3 report under subsection (b)(2) or 1 year after such report  
4 is due, the Secretary shall promulgate regulations gov-  
5 erning the humane treatment of individuals in the custody  
6 of the Department of Homeland Security based on the in-  
7 formation contained in such report.

8 **SEC. 9. REPORT ON PROTECTIONS FOR UNITED STATES**  
9 **CITIZENS, NATIONALS, AND LAWFUL PERMA-**  
10 **NENT RESIDENTS FROM UNLAWFUL DETEN-**  
11 **TION.**

12 (a) REQUIREMENT FOR REPORTS.—Not later than 1  
13 year after the date of the enactment of this Act, and annu-  
14 ally thereafter, the Secretary of Homeland Security shall  
15 submit a report to Congress that describes the impact of  
16 worksite operations and fugitive operations on United  
17 States citizens, lawful permanent residents, and individ-  
18 uals otherwise lawfully present in the United States.

19 (b) CONTENT.—The 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 arrests at homes,  
2 schools, places of worship, medical care facilities,  
3 victim services agencies, social services agencies, and  
4 community centers;

5           (3) arrests, detentions, and removals of sole  
6 caregivers, primary breadwinners, pregnant and  
7 nursing mothers, and other vulnerable groups during  
8 an immigration-related enforcement activity;

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

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

14                   (B) whether the immigrant received notice  
15 of an impending transfer;

16           (5)(A) United States Immigration and Customs  
17 Enforcement (ICE) protocol for humanitarian  
18 screening during a worksite enforcement action;

19                   (B) the compliance with such protocol; and

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

22           (6) collateral arrests under the National Fugitive  
23 Operations Program and worksite enforcement  
24 initiatives;

1           (7) whether individuals detained in an immigra-  
2           tion-related enforcement activity are notified about  
3           their right to counsel;

4           (8) whether ICE uses excessive force in exe-  
5           cuting warrants, arrests, detentions, or other immi-  
6           gration enforcement activities;

7           (9) whether ICE enters private homes or resi-  
8           dences without a search warrant or consent;

9           (10) whether ICE displays and uses weapons  
10          during immigration enforcement activities or interro-  
11          gations;

12          (11) the extent to which ICE cooperates and  
13          coordinates with State and local law enforcement  
14          during immigration enforcement activities;

15          (12) whether ICE agents identify themselves  
16          when entering a location for enforcement purposes;

17          (13) the conditions under which individuals are  
18          confined;

19          (14) whether confined individuals are provided  
20          access to a telephone;

21          (15) whether confined individuals are notified of  
22          their rights in a language they can understand;

23          (16) whether individuals detained during a raid  
24          or immigration enforcement activity are forced or co-





1 ment Ombudsman (in this section referred to as the ‘Om-  
2 budsman’). The Ombudsman shall report directly to the  
3 Assistant Secretary for Immigration and Customs En-  
4 forcement (referred to in this section as the ‘Assistant  
5 Secretary’) and shall have a background in immigration  
6 law.

7 “(b) FUNCTIONS.—It shall be the function of the  
8 Ombudsman—

9 “(1) to undertake regular and unannounced in-  
10 spections of detention facilities to determine the fa-  
11 cilities’ compliance with relevant policies, procedures,  
12 standards, laws, and regulations;

13 “(2) to report all findings of a detention facili-  
14 ty’s compliance or noncompliance to the Secretary  
15 and the Assistant Secretary;

16 “(3) to develop procedures for detainees or  
17 their representatives to submit confidential written  
18 complaints directly to the Ombudsman;

19 “(4) to investigate and resolve all complaints,  
20 including confidential and anonymous complaints,  
21 related to decisions, recommendations, acts, or omis-  
22 sions made by the Assistant Secretary or the Com-  
23 missioner of United States Customs and Border  
24 Protection in the course of custody and detention  
25 operations;

1           “(5) to initiate investigations into allegations of  
2 systemic problems at detention facilities;

3           “(6) to conduct any review or audit relating to  
4 detention, as directed by the Secretary or Assistant  
5 Secretary;

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

11           “(8) to propose changes in the policies or prac-  
12 tices of United States Immigration and Customs  
13 Enforcement to improve the treatment of United  
14 States citizens and residents, immigrants, detainees,  
15 and others encountered during immigration-related  
16 enforcement operations;

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

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

24                   “(B) current practices of United States  
25 Immigration and Customs Enforcement; and

1           “(10) to recommend personnel action based on  
2 any finding of noncompliance to be considered by  
3 the Assistant Secretary.

4           “(c) ANNUAL REPORT.—

5           “(1) OBJECTIVES.—Not later than June 30 of  
6 each calendar year, the Ombudsman shall submit a  
7 report to the Committee on the Judiciary of the  
8 Senate and the Committee on the Judiciary of the  
9 House of Representatives on the objectives of the  
10 Office of the Ombudsman for the fiscal year begin-  
11 ning in such calendar year.

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

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

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

18           “(C) a description of each detention facil-  
19 ity found to be in noncompliance with the De-  
20 partment’s detention standards or other appli-  
21 cable regulations;

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

1           “(E) information regarding whether the  
2           actions referred to in subparagraph (D) were  
3           successful and resulted in compliance with de-  
4           tention standards;

5           “(F) a summary of the most pervasive and  
6           serious problems encountered by individuals af-  
7           fected by the Department’s enforcement oper-  
8           ations, including a description of the nature of  
9           such problems; and

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

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

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

16           **SEC. 11. RULEMAKING.**

17           Not later than 1 year after the date of the enactment  
18           of this Act, the Secretary of Homeland Security shall pro-  
19           mulgate regulations to implement this Act and the amend-  
20           ments made by this Act.

○