To protect United States citizens and residents from unlawful profiling, arrest, and detention, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. Menendez (for himself, Mrs. Gillibrand, Mr. Booker, Ms. Harris, Ms. Warren, and Mr. Wyden) 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 profiling, arrest, and detention, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

(a) Short Titles.—This Act may be cited as the “Protecting the Rights of Families and Immigrants Who Legally Entered From Detention Act” or the “PROFILED Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:
Congress finds the following:

(1) Officials at U.S. Immigration and Customs Enforcement have mistakenly detained and deported United States citizens and lawful permanent residents.

(2) Mistaken identities, bureaucratic mix-ups, and discriminatory attitudes further contribute to unconstitutional actions against United States citizens, lawful permanent residents, and other persons lawfully present in the United States.

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

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

SEC. 3. DEFINITIONS.

In this Act:

(1) DEPARTMENT.—The term “Department” means the Department of Homeland Security.

(2) DETAINED.—The term “detained”, with re-
spect to an individual, means an individual who is in government custody or subject any other deprivation of the freedom of movement by government agents.

(3) DETAINEE.—The term “detainee” means an individual detained during an immigration-related enforcement activity.

(4) DETENTION.—The term “detention”, in the context of an immigration-related enforcement activ-
ity, means government custody or any other deprivation of the freedom of movement of an individual by government agents.

(5) GOVERNMENTAL BODY.—The term “governmental body” means any department, agency, special purpose district, or other instrumentality of Federal, State, local, or Indian tribal government.
(6) HIT RATE.—The term “hit rate” means the percentage of stops and searches in which a law enforcement officer finds drugs, a gun, or something else that leads to an arrest. The hit rate is calculated by dividing the total number of searches by the number of searches that yield contraband. The hit rate is complementary to the rate of false stops.

(7) IMMIGRATION-RELATED ENFORCEMENT ACTIVITY.—The term “immigration-related enforcement activity” means any action by a government agent in which—

(A) an individual suspected of an immigration violation is detained for such violation; or

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

(8) LAW ENFORCEMENT AGENCY.—The term “law enforcement agency” means any Federal, State, local, or Indian tribal public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.

(9) LAW ENFORCEMENT AGENT.—The term “law enforcement agent” means any Federal, State, local, or Indian tribal official responsible for enforcing criminal, immigration, or customs laws, includ-
(10) RACIAL PROFILING.—The term “racial profiling” means the practice of a law enforcement agent or agency relying, to any degree, on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person with a particular characteristic described in this paragraph to an identified criminal incident or scheme.

(11) ROUTINE OR SPONTANEOUS INVESTIGATORY ACTIVITIES.—The term “routine or spontaneous investigatory activities” means the following activities by a law enforcement agent:

(A) Interviews.

(B) Traffic stops.

(C) Pedestrian stops.

(D) Frisks and other types of body searches.
(E) Consensual or nonconsensual searches of the persons, property, or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians.

(F) Data collection and analysis, assessments, and predicated investigations.

(G) Inspections and interviews of entrants into the United States that are more extensive than those customarily carried out.

(H) Immigration-related workplace investigations.

(I) Such other types of law enforcement encounters compiled for or by the Federal Bureau of Investigation or the Department of Justice Bureau of Justice Statistics.

(12) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(13) STATE.—The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(14) VULNERABLE POPULATION.—The term “vulnerable population” includes any of the following:
(A) Individuals with a nonfrivolous claim to United States citizenship.

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

(C) Pregnant or nursing women.

(D) Individuals who are detained with 1 or more of their children.

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

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

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

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

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

(J) Stateless individuals.

(K) Individuals who have applied or intend to apply for asylum, withholding of removal, or
protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984.

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

(M) Individuals who self-identify as lesbian, gay, bisexual, transgender, or queer (LGBTQ).

(N) Any group designated by the Secretary as a vulnerable population.

**TITLE I—PROHIBITION OF RACIAL PROFILING**

**SEC. 101. PROHIBITION.**

No law enforcement agent or law enforcement agency shall engage in racial profiling.

**SEC. 102. ENFORCEMENT.**

(a) Remedy.—The United States, or an individual injured by racial profiling, may enforce this part in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States.
(b) PARTIES.—In any action brought under this part, relief may be obtained against—

(1) any governmental body that employed any law enforcement agent who engaged in racial profiling;

(2) any agent of a governmental body who engaged in racial profiling; and

(3) any person with supervisory authority over an agent described in paragraph (2).

(c) NATURE OF PROOF.—Proof that the routine or spontaneous investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact on individuals with a particular characteristic described in section 3(11) shall constitute prima facie evidence of a violation of this part.

(d) ATTORNEY’S FEES.—In any action or proceeding to enforce this part against any governmental body, the court may allow a prevailing plaintiff, other than the United States, reasonable attorney’s fees as part of the costs, and may include expert fees as part of the attorney’s fee.

SEC. 103. POLICIES TO ELIMINATE RACIAL PROFILING.

(a) IN GENERAL.—Federal, State, local, and Indian tribal law enforcement agencies shall—
(1) maintain adequate policies and procedures
designed to eliminate racial profiling; and

(2) cease practices in effect on the date before
the date of enactment of this Act that allow racial
profiling.

(b) POLICIES.—The policies and procedures de-
scribed in subsection (a)(1) shall include—

(1) a prohibition on racial profiling;

(2) training on racial profiling issues as part of
law enforcement training;

(3) the collection of data in accordance with the
regulations issued by the Attorney General under
section 104;

(4) procedures for receiving, investigating, and
responding meaningfully to complaints alleging ra-
cial profiling by law enforcement agents; and

(5) any other policies and procedures the Attor-
ney General determines to be necessary to eliminate
racial profiling by law enforcement agencies.

SEC. 104. ATTORNEY GENERAL TO ISSUE REGULATIONS.

(a) REGULATIONS.—Not later than 6 months after
the date of enactment of this Act, the Attorney General,
in consultation with stakeholders, including Federal,
State, and local law enforcement agencies and community,
professional, research, and civil rights organizations, shall
issue regulations for the collection and compilation of data under section 103.

(b) REQUIREMENTS.—The regulations issued under subsection (a) shall—

(1) provide for the collection of data on all routine or spontaneous investigatory activities;

(2) provide that the data collected shall—

(A) be collected by race, ethnicity, national origin, gender, and religion, as perceived by the law enforcement officer;

(B) include the date, time, and location of such investigatory activities;

(C) include detail sufficient to permit an analysis of whether a law enforcement agency is engaging in racial profiling; and

(D) not include personally identifiable information;

(3) provide that a standardized form shall be made available to law enforcement agencies for the submission of collected data to the Department of Justice;

(4) provide that law enforcement agencies shall compile data on the standardized form made available under paragraph (3), and submit the form to
the Civil Rights Division and the Department of Justice Bureau of Justice Statistics;

(5) provide that law enforcement agencies shall maintain all data collected under this subtitle for not less than 4 years;

(6) include guidelines for setting comparative benchmarks, consistent with best practices, against which collected data shall be measured;

(7) provide that the Department of Justice Bureau of Justice Statistics shall—

(A) analyze the data for any statistically significant disparities, including—

(i) disparities in the percentage of drivers or pedestrians stopped relative to the proportion of the population passing through the neighborhood;

(ii) disparities in the hit rate; and

(iii) disparities in the frequency of searches performed on racial or ethnic minority drivers and the frequency of searches performed on non-minority drivers; and

(B) not later than 3 years after the date of enactment of this Act, and annually thereafter—
(i) prepare a report regarding the findings of the analysis conducted under subparagraph (A);

(ii) provide such report to Congress; and

(iii) make such report available to the public, including on a website of the Department of Justice; and

(8) protect the privacy of individuals whose data is collected by—

(A) limiting the use of the data collected under this subtitle to the purposes set forth in this subtitle;

(B) except as otherwise provided in this subtitle, limiting access to the data collected under this subtitle to those Federal, State, local, or tribal employees or agents who require such access in order to fulfill the purposes for the data set forth in this subtitle;

(C) requiring contractors or other non-governmental agents who are permitted access to the data collected under this subtitle to sign use agreements incorporating the use and disclosure restrictions set forth in subparagraph (A); and
(D) requiring the maintenance of adequate security measures to prevent unauthorized access to the data collected under this subtitle.

SEC. 105. PUBLICATION OF DATA.

The Department of Justice Bureau of Justice Statistics shall provide to Congress and make available to the public, together with each annual report described in section 104(b)(7)(B), the data collected pursuant to this subtitle, excluding any personally identifiable information described in section 106.

SEC. 106. LIMITATIONS ON PUBLICATION OF DATA.

The name or identifying information of a law enforcement officer, complainant, or any other individual involved in any activity for which data is collected and compiled under this subtitle shall not be—

(1) released to the public;

(2) disclosed to any person, except for—

(A) such disclosures as are necessary to comply with this subtitle;

(B) disclosures of information regarding a particular person to that person; or

(C) disclosures pursuant to litigation; or

(3) subject to disclosure under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), except for disclo-
sures of information regarding a particular person to
that person.

**TITLE II—PROTECTION FROM
UNLAWFUL ARREST AND DE-
TENTION**

**SEC. 201. PROTECTIONS AGAINST UNLAWFUL DETENTIONS
OF CITIZENS OF THE UNITED STATES.**

(a) **Notifications.**—

(1) **In general.**—Prior to questioning an indi-
vidual who has been detained on the basis of a sus-
pected immigration violation or has been detained
during an immigration-related enforcement activity,
any law enforcement agent shall first advise the in-
dividual, in the language requested by the individual
that—

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

(B) the individual may remain silent; and

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

(2) **Effect of violation.**—Any evidence ob-
tained by a law enforcement agent from an indi-
vidual in violation of paragraph (1) may not be—
(A) admissible in a removal proceeding against the individual; or

(B) used to confirm that the individual is not a citizen of the United States.

(b) ACCESS TO COUNSEL.—

(1) IN GENERAL.—An individual who is subject to, or detained during, an immigration-related enforcement activity may be represented by legal counsel at any time.

(2) LIST OF FREE LEGAL SERVICES.—The examining officer shall, in the language requested by the individual being detained—

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

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

(3) AMENDMENT.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—
(A) by redesignating subsection (e) as subsection (k);

(B) by redesignating subsections (b), (c), and (d) as subsections (f), (g), and (h), respectively; and

(C) by inserting before subsection (k), as so redesignated, the following:

“(j) Right of Access to Counsel.—An individual may be represented by counsel of the individual’s choosing while being subject to any immigration-related enforcement activity, including—

“(1) interviews;

“(2) processing appointments;

“(3) booking or intake questions;

“(4) hearings; and

“(5) any procedure that may result in a conclusion that the detainee will be detained or removed from the United States.”.

(c) Notice.—

(1) Amendment.—Section 236 of such Act, as amended by subsection (b)(3), is further amended by inserting before subsection (j), the following:

“(i) Notice and Charges.—

“(1) In General.—Not later than 48 hours after the commencement of a detention of an indi-
individual under this section, the Secretary of Homeland
Security shall—

“(A) file a Notice to Appear or other rel-
evant charging document with the immigration
court closest to the location at which the indi-
vidual was apprehended; and

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

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

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

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

“(B) is prima facie eligible for immigration
benefits or demonstrates prima facie eligibility
for a defense against removal.”.
(2) **Applicability of Other Law.**—Nothing in subsection (i) of section 236 of the Immigration and Nationality Act, as added by paragraph (1), may be construed to repeal section 236A of such Act (8 U.S.C. 1226a).

(d) **Access to Telephones.**—

(1) **In General.**—Not later than 6 hours after the commencement of a detention of an individual during an immigration-related enforcement activity, an official of the Department or a law enforcement agency shall provide the individual with access to a telephone to make telephone calls at no charge to the detainee to—

(A) the consulate of the individual;

(B) designated free legal-service providers or legal representatives who are providing free representation for the individual;

(C) an office of the U.S. Immigration and Customs Enforcement;

(D) an immigration court or the Board of Immigration Appeals;

(E) the Office of the Inspector General of the Department;

(F) the Office for Civil Rights and Civil Liberties of the Department; and
(G) any Federal or State court in which the detainee is or may become involved in a legal proceeding.

(2) CONFIDENTIAL TELEPHONE CALLS.—

(A) IN GENERAL.—A detainee shall be permitted to make confidential telephone calls at no charge to the detainee if the detainee—

(i) is subject to expedited removal;

(ii) has dependents; or

(iii) is experiencing a personal or family emergency.

(B) ADDITIONAL CONFIDENTIAL TELEPHONE CALLS.—A detainee shall be permitted to make additional confidential telephone calls at no cost to the Federal Government.

(e) PROTECTION OF COMMUNITY-BASED ORGANIZATIONS, FAITH-BASED ORGANIZATIONS AND OTHER INSTITUTIONS.—

(1) IN GENERAL.—The Secretary shall issue regulations requiring officials of the Department or law enforcement agencies—

(A) to prohibit the apprehension of an individual as part of an immigration-related enforcement activity on the premises or in the immediate vicinity of—
• a childcare provider;
• a school;
• a legal-service provider;
• a Federal court or State court proceeding;
• an administrative proceeding;
• a funeral home;
• a cemetery;
• a college, university, or community college;
• a victim services agency;
• a social service agency;
• a hospital or emergency care center;
• a health care clinic; and
• a place of worship; and

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

(2) EXCEPTION.—

(A) IN GENERAL.—Notwithstanding paragraph (1), an immigration-related enforcement activity may be carried out in a location described under paragraph (1)(A) if the Secretary
determines that exigent circumstances exist and
approves such activity.

(B) EXIGENT CIRCUMSTANCES DEFINED.—In this paragraph, the term “exigent
circumstances” means, with respect to an immi-
gration-related enforcement activity, that such
activity—

(i) involves a national security or ter-
rorism matter;

(ii) involves an imminent risk of
death, violence, or physical harm to any
person or property;

(iii) involves the immediate arrest or
pursuit of a dangerous felon, terrorist sus-
p ect, or any other individual that present
an imminent danger to public safety; or

(iv) involves an imminent risk of de-
s truction of evidence material to an ongo-
ing criminal case.

(3) NOTICE TO APPEAR.—The Secretary shall
amend the Notice to Appear form to include a state-
ment that no immigration-related enforcement activ-
ity was undertaken in any of the locations described
under paragraph (1)(A) unless such activity was ap-
proved under paragraph (2).
(f) TRANSFER OF DETAINES.—

(1) PROCEDURES.—In adopting procedures relating to the transfer of individuals detained under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), the Secretary shall promulgate regulations requiring officials of the Department to give substantial weight to—

(A) the access of the detainee to legal representation;

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

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

(D) the stage of any legal proceeding involving the detainee, including Federal, State, or administrative proceedings;

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

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

(G) whether the detainee has a pending application for relief with U.S. Citizenship and Immigration Services or the Executive Office for Immigration Review.
(2) NOTICE.—Unless emergency circumstances, such as a natural disaster or comparable exigency, dictate an immediate transfer, the Secretary—

(A) shall provide at least 72-hour notice to the detainee in the language requested by the detainee and to the representative of record before transferring a detainee to another facility; and

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

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Absent emergency circumstances, such as a natural disaster or comparable exigency, the Secretary or law enforcement agent may not transfer a detainee who has an existing attorney-client relationship to another facility if the transfer of the detainee would—

(i) impair the existing attorney-client relationship;

(ii) prejudice the rights of the detainee in any legal proceeding; or

(iii) affect the ability of the detainee to present evidence or witnesses.
(B) **LEGAL RIGHTS OF DETAINEES.**—In any custody, bond, or removal decision involving a detainee detained under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226)—

(i) legal precedent in the location of apprehension shall control any custody, bond, or removal decision; and

(ii) in cases of ambiguity, an immigration judge shall use the rule of lenity in choosing from among the laws of the relevant circuits.

(C) **RECORD.**—If a detainee is transferred, the Secretary or law enforcement agent shall prepare a record of—

(i) the reasons necessitating the transfer; and

(ii) actions taken to ameliorate any adverse effect on the legal rights of the detainee.

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

(g) **TRAINING.**—
(1) IN GENERAL.—The Secretary, in consultation with the Civil Rights and Civil Liberties Officer, shall provide all officers of the Department, other Federal agencies, and all State and local officers involved in immigration-related enforcement activities with periodic training regarding—

(A) immigration law;

(B) civil rights law;

(C) medical and mental health needs and treatment;

(D) due process protections;

(E) humanitarian guidelines under current law, including—

(i) the right of access to immigration legal counsel; and

(ii) the appropriate treatment of vulnerable populations during immigration-related enforcement activities; and

(F) racial profiling and implicit bias.

(2) IMPLICIT BIAS DEFINED.—In this subsection, the term “implicit bias” means—

(A) bias in judgment or behavior that results from subtle cognitive processes, including implicit attitudes and implicit stereotypes, that
often operate at a level below conscious awareness and without intentional control; and

(B) implicit attitudes and stereotypes that result in beliefs or simple associations that a person makes between an object and its evaluation that are automatically activated by the mere presence (actual or symbolic) of the attitude object.

SEC. 202. PROTECTIONS FOR PRIMARY CAREGIVERS WITH CHILDREN.

(a) APPREHENSION PROCEDURES.—In any immigration-related enforcement activity, the Secretary and any entity cooperating with the Secretary on such activity shall—

(1) as soon as possible after an individual is subject to detention in an immigration-related enforcement activity, but generally not later than 2 hours after the commencement of such detention, determine whether the individual is a parent or primary caregiver of a child in the United States and, if the individual is a parent or primary caregiver, provide the individual with—

(A) the opportunity to make a minimum of 2 telephone calls to arrange for the care of such child in the individual’s absence; and
(B) contact information for—

   (i) child welfare agencies and family
courts in the jurisdiction in which the child
is located; and

   (ii) consulates, attorneys, and legal
service providers capable of providing free
legal advice or representation regarding
child welfare, child custody determinations,
and immigration matters;

(2) notify the child welfare agency with jurisdic-
tion over the child if the child’s parent or primary
caregiver is unable to make care arrangements for
the child or if the child is in imminent risk of seri-
ous harm;

(3) ensure that personnel of the Department
and cooperating entities do not, absent medical ne-
cessity or extraordinary circumstances, compel or re-
quest children to interpret or translate for interviews
of their parents or of other individuals who are en-
countered as part of an immigration enforcement ac-
tion; and

(4) ensure that any parent or primary caregiver
of a child in the United States—

   (A) absent medical necessity or extraor-
dinary circumstances, is not transferred from
his or her area of apprehension until the individual—

(i) has made arrangements for the care of such child; or

(ii) if such arrangements are unavailable or the individual is unable to make such arrangements, is informed of the care arrangements made for the child and of a means to maintain communication with the child;

(B) absent medical necessity or extraordinary circumstances, and to the extent practicable, is placed in a detention facility either—

(i) proximate to the location of apprehension; or

(ii) proximate to the individual’s habitual place of residence; and

(C) receives due consideration of the best interests of such child in any decision or action relating to his or her detention, release, or transfer between detention facilities.

(b) REQUESTS TO LOCAL AND STATE ENTITIES.—

If the Secretary requests a State or local entity to hold in custody an individual who the Department has reason to believe is removable pending transfer of that individual
to the custody of the Secretary or to a detention facility, 
the Secretary shall also request that the State or local en-
tity provide the individual the protections specified in 
paragraphs (1) and (2) of subsection (a), if that individual 
is found to be the parent or primary caregiver of a child 
in the United States. 

(e) ACCESS TO CHILDREN, STATE AND LOCAL 
COURTS, CHILD WELFARE AGENCIES, AND CONSULAR 
OFFICIALS.—At all detention facilities, the Secretary 
shall—

(1) prominently post in a manner accessible to 
detainees and visitors and include in detainee hand-
books information on the protections of this title as 
well as information on potential eligibility for parole 
or release; 

(2) absent extraordinary circumstances, ensure 
that individuals who are detained by the Department 
and are parents of children in the United States 
are—

(A) permitted regular phone calls and con-
tact visits with their children; 

(B) provided with contact information for 
child welfare agencies and family courts in the 
relevant jurisdictions;
(C) able to participate fully, and to the extent possible in-person, in all family court proceedings and any other proceedings that may impact their right to custody of their children;

(D) granted free and confidential telephone calls to relevant child welfare agencies and family courts as often as is necessary to ensure that the best interest of their children, including a preference for family unity whenever appropriate, can be considered in child welfare agency or family court proceedings;

(E) able to fully comply with all family court or child welfare agency orders impacting custody of their children;

(F) provided access to United States passport applications or other relevant travel document applications for the purpose of obtaining travel documents for their children;

(G) afforded timely access to a notary public for the purpose of applying for a passport for their children or executing guardianship or other agreements to ensure the safety of their children; and

(H) granted adequate time before removal to obtain passports, apostilled birth certificates,
travel documents, and other necessary records on behalf of their children if such children will accompany them on their return to their country of origin or join them in their country of origin; and

(3) if doing so would not impact public safety or national security, facilitate the ability of a detained individual who is a parent or primary caregiver to share information regarding travel arrangements with their consulate, children, child welfare agencies, or other caregivers in advance of the detained individual’s departure from the United States.

SEC. 203. BASIC PROTECTIONS FOR VULNERABLE POPULATIONS.

(a) VULNERABLE POPULATIONS.—Not later than 72 hours after the commencement of an immigration-related enforcement activity, the Department shall screen each detainee to determine whether the detainee is a member of a vulnerable population.

(b) OPTIONS REGARDING DETENTION DECISIONS FOR VULNERABLE POPULATIONS.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), as amended by this Act, is further amended—

(1) in subsection (a)—
(A) in the matter preceding paragraph (1),
by striking “(c)” and inserting “(g)”;

(B) in paragraph (2)—

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

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

(iii) by adding at the end the following:

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

(C) by redesignating paragraph (3) as paragraph (4); and

(D) by inserting after paragraph (2) the following:

“(3) may enroll the alien in an alternatives pro-
gram; but”; and

(2) by inserting after subsection (a) the follow-

“(b) Detention Decisions.—

“(1) Criteria to be Considered.—If an
alien is not subject to mandatory detention under
subsection (g) or section 236A, the criteria that the
Secretary or the Attorney General shall use to dem-
onstrate that detention of the alien is necessary are
the following:
“(A) Whether the alien poses a risk to public safety, including a risk to national security.

“(B) Whether—

“(i) the alien poses a risk of flight;

and

“(ii) there are no conditions of release that will reasonably ensure that the alien will appear for immigration proceedings, including bond or other conditions of release that reduce the risk of flight.

“(2) Exception for Mandatory Detainees.—The requirements described in paragraph (1) shall not apply if the Secretary of Homeland Security demonstrates by substantial evidence that the alien is subject to detention under subsection (g).

“(c) Custody Decisions for Vulnerable Populations.—

“(1) In General.—Not later than 72 hours after an individual is detained under this section (unless the 72-hour requirement is waived in writing by the individual), an individual who is a member of a vulnerable population (as defined in section 3 of the Protecting the Rights of Families and Immigrants Who Legally Entered From Detention Act)
shall be released from the custody of the Department of Homeland Security and shall not be subject to electronic monitoring unless the Department demonstrates by a preponderance of the evidence that the individual—

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

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

“(C) is a flight risk and the risk cannot be mitigated through supervision or placement in an alternative program.

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

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

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

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

“(d) DECISIONS TO DETAIN ALIENS.—

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

“(A) be made in writing by an official of the Department of Homeland Security;
“(B) specify the reasons for the decision, if the decision is made to continue the detention without bond or parole; and

“(C) be served upon the detainee, in the language spoken by the alien, not later than 72 hours after—

“(i) the commencement of the detention; or

“(ii) a positive determination of credible fear of persecution or reasonable fear of persecution or torture, if the detainee is subject to section 235 or 241(a)(5).

“(2) Redetermination.—

“(A) Request.—Any alien detained by the Department of Homeland Security, at any time after being served with the decision described in paragraph (1)(A), may request a redetermination of such decision by an immigration judge.

“(B) Other Decisions.—All custody decisions by the Secretary of Homeland Security shall be subject to redetermination by an immigration judge.

“(C) Savings Provision.—Nothing in this paragraph may be construed to prevent a
detainee from requesting a bond redetermina-
tion.

“(e) ALTERNATIVES PROGRAMS.—

“(1) IN GENERAL.—The Secretary of Homeland
Security shall establish secure alternatives programs
to ensure public safety and appearances at immigra-
tion proceedings.

“(2) CONTRACT AUTHORITY.—The Secretary
shall contract with nongovernmental organizations to
conduct screening of detainees, provide appearance
assistance services, and operate community-based
supervision programs.

“(3) INDIVIDUALIZED DETERMINATIONS.—
When deciding whether to use secure alternatives,
the Secretary shall make an individualized deter-
mination and review each case on a monthly basis.

“(4) CUSTODY.—If an individual is not eligible
for release from custody, the Secretary shall con-
sider the alien for placement in secure alternatives
that maintain custody over the alien, including the
use of electronic ankle devices. The Secretary may
use secure alternatives programs to maintain cus-
tody over any alien detained under this Act except
for aliens detained under section 236A.
“(5) Secure alternatives program defined.—In this section, the term ‘secure alternatives program’ means any custodial or noncustodial program under which an individual is screened and provided with appearance assistance services or placed in supervision programs, as needed, to ensure that the individual appears at all immigration interviews, appointments, and removal or deportation hearings.”.

SEC. 204. REPORTS ON PROTECTIONS FROM UNLAWFUL DETENTION.

(a) Report requirement.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report that describes the impact of worksite and fugitive operations on citizens of the United States, lawful permanent residents, and individuals otherwise lawfully present in the United States.

(b) Content.—Each report submitted under subsection (a) shall include an assessment of—

(1) the number of individuals detained during worksite or nonworksite operations who are children, United States citizens, or adult lawful permanent residents;
(2) immigration-related enforcement activity at homes, schools, places of worship, medical care facilities, victim services agencies, social services agencies, and community centers;

(3) arrests, detentions, and removals of individuals who are—

(A) sole caregivers;

(B) primary earners of income in a family;

(C) pregnant or nursing mothers; or

(D) members of other vulnerable groups subject to immigration-related enforcement activity;

(4) transfers of immigrants during the course of a raid or immigration-enforcement activity, including—

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

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

(C) whether the immigrants, if primary or sole caregivers, were given an opportunity to make care arrangements for their children;

(5)(A) U.S. Immigration and Customs Enforcement protocol for humanitarian screening during a worksite enforcement action;
(B) the compliance with such protocol; and

(C) the nature of any related protocol in smaller worksite or nonworksite actions;

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

(7) whether individuals detained in an immigration-related enforcement activity are notified of their right to counsel;

(8) whether U.S. Immigration and Customs Enforcement agents or any law enforcement agents—

(A) use excessive force in executing warrants, arrests, detentions, or other immigration-related enforcement activities;

(B) enter private homes or residences without a search warrant or consent;

(C) use ruses to conceal their identity during enforcement activities; or

(D) display and use weapons during immigration-related enforcement activity or interrogations;

(9) the extent to which U.S. Immigration and Customs Enforcement cooperates and coordinates
with State and local law enforcement during immig-
ration-related enforcement activity;

(10) whether U.S. Immigration and Customs
Enforcement agents or other law enforcement agents
identify themselves when entering a location for en-
forcement purposes;

(11) the conditions under which individuals are
confined and whether detainees are provided access
to a telephone;

(12) the number of children left behind when a
parent or parents are detained;

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

(14) whether individuals detained during an im-
migration-related enforcement activity are forced or
coerced to sign any documents or waive any rights
without consulting with an attorney;

(15) the procedures used by the Department or
law enforcement agency—

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

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

(16) the per detainee cost of each raid involving
more than 50 detainees;
(17) the number of U.S. Immigration and Customs Enforcement agents disciplined for violations in detention proceedings; and

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

(c) Authorization of Appropriations.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 205. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.

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

“SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.

“(a) In General.—There established in the Department a position of Immigration and Customs Enforcement Ombudsman (referred to in this section as the ‘Ombudsman’).

“(b) Requirements.—The Ombudsman shall—

“(1) report directly to the Director for U.S. Immigration and Customs Enforcement (referred to in this section as the ‘Director’); and

“(2) have a background in immigration law.

“(c) Functions.—The Ombudsman shall—
“(1) undertake regular and unannounced inspections of detention facilities and local offices of U.S. Immigration and Customs Enforcement to determine whether the facilities and offices comply with relevant policies, procedures, standards, laws, and regulations;

“(2) report all findings of compliance or non-compliance of the facilities and local offices described in paragraph (1) to the Secretary and the Director;

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

“(4) investigate and resolve all complaints, including confidential and anonymous complaints, related to decisions, recommendations, acts, or omissions made by the Director or the Commissioner of U.S. Customs and Border Protection in the course of custody and detention operations;

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

“(6) conduct any review or audit relating to detention, as directed by the Secretary or Director;

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

“(8) propose changes in the policies or practices of U.S. Immigration and Customs Enforcement to improve the treatment of United States citizens and residents, immigrants, detainees, and others subject to immigration-related enforcement operations;

“(9) establish a public advisory group consisting of nongovernmental organization representatives and Federal, State, and local government officials with expertise in detention and vulnerable populations to provide the Ombudsman with input on—

“(A) the priorities of the Ombudsman; and

“(B) current practices of U.S. Immigration and Customs Enforcement; and

“(10) recommend to the Director personnel action based on any finding of noncompliance.

“(d) ANNUAL REPORT.—

“(1) OBJECTIVES.—Not later than June 30 of each year, the Ombudsman shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the objectives of the Office of the Ombudsman for the next fiscal year.
“(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

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

“(B) statistical information regarding such objectives;

“(C) a description of each detention facility found to be in noncompliance with the detention standards of the Department or other applicable regulations;

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

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

“(F) a summary of the most pervasive and serious problems encountered by individuals subject to the enforcement operations of the Department, including a description of the nature of such problems; and

“(G) such other information as the Ombudsman may consider advisable.

“(3) DEFINITIONS.—In this section:
“(A) DETAINEE.—The term ‘detainee’ has the meaning given that term in section 3 of the Protecting the Rights of Families and Immigrants Who Legally Entered From Detention Act.

“(B) DETENTION FACILITY.—The term ‘detention facility’ means any Federal, State, or local government facility, or any facility providing services under government contract, which is used to hold detainees for more than 72 hours.”.

(b) AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2135) is amended by inserting after the item relating to section 446 the following:

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

SEC. 206. RULEMAKING.

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

SEC. 207. RESCISSION.

ment Improvements” are rescinded and shall not have any legal effect.