

118TH CONGRESS
1ST SESSION

S. 3323

To establish the Office of the Ombudsperson for Immigrant Children in Immigration Custody, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2023

Mrs. GILLIBRAND (for herself, Mr. MERKLEY, Ms. WARREN, Mr. BLUMENTHAL, Ms. CORTEZ MASTO, Mr. DURBIN, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish the Office of the Ombudsperson for Immigrant Children in Immigration Custody, and for other purposes.

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 “Protection of Kids in
5 Immigrant Detention Act” or the “PROKID Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COMMITTEE.—The term “Committee”
2 means the expert advisory committee established
3 under section 5(a).

4 (2) DIRECTOR.—The term “Director” means
5 the Director of the Office of Refugee Resettlement.

6 (3) FACILITY.—The term “facility”—

7 (A) means a location at which 1 or more
8 immigrant children are detained by the Govern-
9 ment or held in immigration custody; and

10 (B) includes—

11 (i) an Office of Refugee Resettlement
12 facility; and

13 (ii) a Department of Homeland Secu-
14 rity facility, including—

15 (I) a U.S. Customs and Border
16 Protection temporary holding facility
17 and transportation contractor;

18 (II) a U.S. Immigration and Cus-
19 toms Enforcement family detention
20 facility;

21 (III) a U.S. Immigration and
22 Customs Enforcement juvenile facility;

23 (IV) a location operated by a pri-
24 vate entity, including a hotel room;
25 and

1 (V) any other location at which
2 the Department of Homeland Security
3 or the Department of Health and
4 Human Services detains or holds in
5 custody an immigrant child.

6 (4) IMMIGRATION CUSTODY.—The term “immi-
7 gration custody” means the physical custody of the
8 Secretary of Health and Human Services or the Sec-
9 retary of Homeland Security (or the head of any
10 successor agency of the Department of Health and
11 Human Services or the Department of Homeland
12 Security).

13 (5) INFLUX FACILITY.—The term “influx facil-
14 ity” means any facility established to provide tem-
15 porary emergency shelter and services for unaccom-
16 panied immigrant children during an influx or emer-
17 gency.

18 (6) FLORES SETTLEMENT AGREEMENT.—The
19 term “Flores settlement agreement” means the stip-
20 ulated settlement agreement filed in the United
21 States District Court for the Central District of
22 California on January 17, 1997 (CV 85–4544–
23 RJK).

24 (7) IMMIGRANT CHILD.—The term “immigrant
25 child” means an alien (as defined in section 101(a)

1 of the Immigration and Nationality Act (8 U.S.C.
2 1101(a)) under the age of 18 years.

3 (8) IN-NETWORK FACILITY.—The term “in-net-
4 work facility” means a facility operated by an Office
5 of Refugee Resettlement grantee, subgrantee, con-
6 tractor, or subcontractor.

7 (9) OFFICE OF REFUGEE RESETTLEMENT FA-
8 CILITY.—The term “Office of Refugee Resettlement
9 facility”—

10 (A) means—

11 (i) a shelter operated by an Office of
12 Refugee Resettlement grantee, subgrantee,
13 contractor, or subcontractor to hold immi-
14 grant children;

15 (ii) staff secure, secure care, or transi-
16 tional foster care housing or long term fos-
17 ter care so operated; or

18 (iii) any other location operated by
19 the Office of Refugee Resettlement to hold
20 immigrant children; and

21 (B) includes an in-network facility and an
22 out-of-network facility.

23 (10) OFFICE OF THE OMBUDSPERSON.—The
24 term “Office of the Ombudsperson” means the Of-

1 fice of the Ombudsperson for Immigrant Children in
2 Government Custody established by section 3(a).

3 (11) OMBUDSPERSON.—The term
4 “Ombudsperson” means the ombudsperson ap-
5 pointed under section 3(c).

6 (12) OUT-OF-NETWORK FACILITY.—The term
7 “out-of-network facility” means a facility at which
8 an immigrant child is placed as a result of an Office
9 of Refugee Resettlement determination that there is
10 no care provider available among in-network facili-
11 ties to provide specialized services required by the
12 immigrant child, such as medical or mental health
13 support.

14 (13) UNOBSTRUCTED ACCESS.—The term “un-
15 obstructed access” means—

16 (A) with respect to a facility, the ability to
17 enter the facility, including unannounced, to
18 tour and physically visit all areas of the facility;
19 and

20 (B) with respect to information, the ability
21 to obtain requested information in a timely
22 manner with the full cooperation of the Direc-
23 tor, the Secretary of Homeland Security, or the
24 Secretary of Health and Human Services, as
25 applicable.

1 (14) WORKING GROUP.—The term “Working
2 Group” means the interagency working group estab-
3 lished under section 6(b).

4 **SEC. 3. OFFICE OF THE OMBUDSPERSON FOR IMMIGRANT**
5 **CHILDREN IN IMMIGRATION CUSTODY.**

6 (a) ESTABLISHMENT.—There is established, within
7 the Department of Health and Human Services, an Office
8 of the Ombudsperson for Immigrant Children in Immigra-
9 tion Custody—

10 (1) to endorse and support the principle that
11 family separation and detention are generally not in
12 a child’s best interest; and

13 (2) in cases in which detention or immigration
14 custody is required—

15 (A) to ensure that immigrant children are
16 only detained or held in immigration custody in
17 the least restrictive setting;

18 (B) to advocate for the quick, safe, and ef-
19 ficient release of immigrant children from de-
20 tention or immigration custody whenever pos-
21 sible; and

22 (C) in any case in which an immigrant
23 child is held in Department of Homeland Secu-
24 rity custody together with his or her family
25 unit, to advocate for the release of the child and

1 concurrent release of the parent or legal guard-
 2 ian of the child not later than 72 hours after
 3 the time at which such child and parent or legal
 4 guardian were apprehended.

5 (b) INDEPENDENCE.—The Office of the
 6 Ombudsperson shall be an impartial, confidential resource
 7 fully independent of—

8 (1) the Office of Refugee Resettlement of the
 9 Department of Health and Human Services; and

10 (2) the Department of Homeland Security.

11 (c) OMBUDSPERSON.—

12 (1) IN GENERAL.—The Office of the
 13 Ombudsperson shall be headed by an
 14 Ombudsperson, who shall be appointed by, and re-
 15 port directly to, the Secretary of Health and Human
 16 Services.

17 (2) QUALIFICATIONS.—The individual ap-
 18 pointed as Ombudsperson shall have demonstrated
 19 experience in—

20 (A) immigration law; and

21 (B) child advocacy or child welfare.

22 (3) DUTIES AND AUTHORITIES.—

23 (A) MONITORING.—

24 (i) IN GENERAL.—The Ombudsperson
 25 shall monitor, including by making fre-

1 quent site visits, for compliance with all
2 applicable Federal and State laws, regula-
3 tions, and standards relating to immigrant
4 children in immigration custody.

5 (ii) INCLUSIONS.—The laws, regula-
6 tions, and standards referred to in clause
7 (i) include—

8 (I) the Flores settlement agree-
9 ment;

10 (II) section 235 of the William
11 Wilberforce Trafficking Victims Pro-
12 tection Reauthorization Act of 2008
13 (8 U.S.C. 1232);

14 (III) the applicable provisions of
15 the Prison Rape Elimination Act of
16 2003 (34 U.S.C. 30301 et seq.);

17 (IV) the standards of U.S. Cus-
18 toms and Border Protection entitled
19 “National Standards on Transport,
20 Escort, Detention, and Search” issued
21 in October 2015; and

22 (V) internal Office of Refugee
23 Resettlement policy guidance, includ-
24 ing the guidance entitled “ORR Policy
25 Guide: Children Entering the United

1 States Unaccompanied” issued on
2 January 30, 2015.

3 (iii) ONSITE VISITS FOR INFLUX FA-
4 CILITIES AND UNLICENSED FACILITIES.—

5 (I) IN GENERAL.—Not less fre-
6 quently than monthly during the pe-
7 riod in which an influx facility or an
8 unlicensed facility is in operation, the
9 Ombudsperson shall conduct a com-
10 prehensive onsite visit at such facility
11 to monitor for compliance with appli-
12 cable Federal and State law (includ-
13 ing regulations), including—

14 (aa) the Flores settlement
15 agreement; and

16 (bb) section 235 of the Wil-
17 liam Wilberforce Trafficking Vic-
18 tims Protection Reauthorization
19 Act of 2008 (8 U.S.C. 1232).

20 (II) CERTAIN UNLICENSED FA-
21 CILITIES.—The onsite visits required
22 by subclause (I) shall include visits to
23 any unlicensed facility.

24 (B) INVESTIGATIONS.—

1 (i) IN GENERAL.—The Ombudsperson
2 shall investigate issues including—

3 (I) claims or reports of abuse,
4 neglect, or mistreatment of immigrant
5 children, by the Government or any
6 other entity, while in immigration cus-
7 tody;

8 (II) complaints against foster
9 care providers, including foster care
10 providers under State oversight;

11 (III) a lack of timely, confidential
12 access to professionals such as legal
13 counsel, legal services providers, child
14 advocates, and medical professionals;
15 and

16 (IV) complaints with respect to—

17 (aa) the conditions of cus-
18 tody or length of time in custody
19 in any facility; and

20 (bb) sexual abuse or sexual
21 harassment, including potential
22 violations of part 411 of title 45,
23 Code of Federal Regulations (re-
24 lating to standards to prevent,
25 detect, and respond to sexual

1 abuse and sexual harassment in-
 2 volving unaccompanied children).

3 (ii) STATE LICENSING VIOLATIONS.—

4 If in the course of an investigation under
 5 clause (i) the Ombudsperson discovers a
 6 State licensing violation, the
 7 Ombudsperson shall report the violation to
 8 the child welfare licensing agency of the
 9 applicable State.

10 (iii) VIOLATIONS IN UNLICENSED FA-
 11 CILITIES.—

12 (I) IN GENERAL.—The
 13 Ombudsperson shall investigate any
 14 potential violation of law, regulation,
 15 or standard in an influx facility or un-
 16 licensed facility, including any such
 17 facility the license of which has been
 18 revoked by a State.

19 (II) REPORT.—If in the course of
 20 an investigation under subclause (I),
 21 the Ombudsperson determines that a
 22 violation of law, regulation, or stand-
 23 ard has occurred, not later than 30
 24 days after making such determination,
 25 the Ombudsperson shall report the

1 violation the Secretary of Health and
2 Human Services for further action.

3 (C) PLACEMENT REVIEW PANELS.—

4 (i) IN GENERAL.—The Ombudsperson
5 shall provide oversight of placement review
6 panels (or successor review bodies or proc-
7 esses), convened by the Office of Refugee
8 Resettlement.

9 (ii) COOPERATION OF DIRECTOR.—

10 The Director may—

11 (I) not later than 5 days before
12 a placement review panel (or suc-
13 cessor review body or process), is con-
14 vened by the Office of Refugee Reset-
15 tlement, provide the Ombudsperson
16 with notice of the convening, including
17 the location of the immigrant child
18 concerned;

19 (II) allow the Ombudsperson to
20 attend the convening of such a panel
21 (or successor review body or process),
22 if the immigrant child concerned or
23 the legal counsel or child advocate of
24 such child requests the presence of the
25 Ombudsperson; and

1 (III) notify the Ombudsperson of
2 the decision of each such panel (or
3 successor review body or process).

4 (iii) CIVIL ACTION NOT PRE-
5 CLUDED.—Any review conducted by the
6 Ombudsperson under this subparagraph of
7 a decision by a placement review panel or
8 equivalent review body shall not preclude
9 an immigrant child, or the legal counsel,
10 child advocate, parent, or prospective spon-
11 sor of the immigrant child, from com-
12 mencing a civil action in any appropriate
13 district court of the United States.

14 (D) STAKEHOLDER MEETINGS.—Not less
15 frequently than quarterly, the Ombudsperson
16 shall invite community stakeholders, Flores set-
17 tlement agreement class counsel, and the Flores
18 settlement agreement court-appointed monitor
19 to participate in a meeting—

20 (i) to ensure that the Ombudsperson
21 is aware of stakeholder concerns and prior-
22 ities; and

23 (ii) to provide feedback on stakeholder
24 requests.

1 (E) REGIONAL OFFICES.—The
2 Ombudsperson shall establish regional offices of
3 the Office of the Ombudsperson—

4 (i) to ensure the inclusion of pertinent
5 local and regional issues, trends, and chal-
6 lenges for consideration by the
7 Ombudsperson;

8 (ii) to strengthen State oversight;

9 (iii) to coordinate with State licensing
10 entities; and

11 (iv) to identify and address differences
12 among State child protection laws.

13 (F) INDIVIDUAL CASE ASSISTANCE.—

14 (i) IN GENERAL.—With respect to an
15 immigration child in immigration custody,
16 after consultation with the child’s attorney
17 or legal service provider contracted to pro-
18 vide legal services, the Ombudsperson may
19 offer individual case assistance to the child
20 if the case of the immigrant child is long-
21 pending or otherwise requires expedited
22 processing or elevated attention, as deter-
23 mined by the Ombudsperson.

24 (ii) COMMUNICATION.—

1 (I) IN GENERAL.—To ensure a
2 complete understanding of the status
3 of a case described in clause (i), the
4 Ombudsperson may communicate
5 with—

6 (aa) the immigrant child
7 concerned;

8 (bb) the family members
9 and potential sponsor of such
10 child; and

11 (cc) the child advocate, legal
12 counsel, Office of Refugee Reset-
13 tlement case manager and Fed-
14 eral field specialist, the General
15 Dynamics Information Tech-
16 nology case coordinator, and any
17 other relevant individual charged
18 with case management of such
19 child.

20 (II) NOTIFICATION.—In any
21 communication with an individual de-
22 scribed in items (aa) through (cc), the
23 Ombudsperson shall—

24 (aa) inform such individual
25 that the individual may refuse to

1 continue communication with the
2 Ombudsperson; and

3 (bb) disclose the purpose of
4 the communication and the scope
5 of the role of the Ombudsperson.

6 (G) SUBPOENA AUTHORITY.—

7 (i) IN GENERAL.—Subject to the ap-
8 proval of the Secretary of Health and
9 Human Services, the Ombudsperson
10 may—

11 (I) issue a subpoena to require
12 the production of all information, re-
13 ports, and other documentary evidence
14 necessary to carry out the duties of
15 the Ombudsperson; and

16 (II) invoke the aid of any appro-
17 priate court of the United States.

18 (ii) TIMELINE FOR PRODUCTION OF
19 INFORMATION.—To prevent undue delay of
20 the placement of an immigrant child, re-
21 quirements set forth in a subpoena under
22 clause (i)(I) shall be satisfactorily fulfilled
23 not later than 7 days after the date on
24 which the Ombudsperson issues the sub-
25 poena.

1 (H) REPORTING MECHANISMS.—

2 (i) IN GENERAL.—The Ombudsperson
3 shall establish and maintain—

4 (I) a toll-free telephone number
5 to receive complaints and reports of
6 matters for investigation; and

7 (II) an email address to receive
8 complaints, such reports, and requests
9 for review of placement decisions.

10 (ii) AVAILABILITY.—The
11 Ombudsperson shall ensure that—

12 (I) such telephone number is
13 made available, and a telephone is ac-
14 cessible, to each immigrant child in a
15 facility; and

16 (II) such email address is made
17 available to sponsors, Flores settle-
18 ment agreement class counsel, and
19 legal services providers and child ad-
20 vocates who serve such immigrant
21 children.

22 (I) REPORT TO CONGRESS.—

23 (i) IN GENERAL.—Not later than Sep-
24 tember 30 each year, the Ombudsperson
25 shall submit to Congress a report on the

1 accomplishments and challenges of the Of-
2 fice of the Ombudsperson during the fiscal
3 year ending on that date.

4 (ii) ELEMENTS.—Each report re-
5 quired by clause (i) shall include the fol-
6 lowing:

7 (I) For the preceding fiscal
8 year—

9 (aa) a description of the ac-
10 complishments and challenges re-
11 lating to implementation and
12 compliance with this Act; and

13 (bb) a summary of—

14 (AA) each site visit
15 conducted;

16 (BB) any interview
17 with an immigrant child or
18 facility staff;

19 (CC) facility audits and
20 corrective actions taken or
21 recommended;

22 (DD) appeals made to
23 the Ombudsperson; and

1 (EE) any other infor-
2 mation the Ombudsperson
3 considers relevant.

4 (II) A summary of complaints
5 made and investigations carried out
6 during the preceding fiscal year, in-
7 cluding—

8 (aa) the number of com-
9 plaints and number and nature
10 of other contacts;

11 (bb) the number of com-
12 plaints made, including the type
13 and source;

14 (cc) the number of investiga-
15 tions carried out;

16 (dd) the trends and issues
17 that arose in the course of inves-
18 tigating complaints; and

19 (ee) the number of pending
20 complaints.

21 (III) A detailed analysis of the
22 data collected under section 4.

23 (IV) Recommendations—

1 (aa) for improving imple-
2 mentation and compliance with
3 this Act; and

4 (bb) as to whether the Di-
5 rector should renew or cancel
6 contracts with particular Office
7 of Refugee Resettlement grant-
8 ees.

9 (V) A description of the priorities
10 for the subsequent fiscal year.

11 (J) RECOMMENDATIONS TO OFFICE OF
12 REFUGEE RESETTLEMENT.—

13 (i) IN GENERAL.—Not less frequently
14 than every 180 days, the Ombudsperson
15 shall make written recommendations to the
16 Director with respect to the proposed and
17 established policies and procedures of the
18 Office of Refugee Resettlement relating to
19 the protection of unaccompanied immigra-
20 tion children in the care of the Office of
21 Refugee Resettlement.

22 (ii) RESPONSE.—Not later than 90
23 days after the date on which the Director
24 receives recommendations under clause (i),

1 the Director shall respond to the
2 Ombudsperson in writing.

3 (iii) ROLE OF SECRETARY OF HEALTH
4 AND HUMAN SERVICES.—In the case of a
5 recommendation under clause (i) that is
6 not addressed and resolved by the Direc-
7 tor, the Ombudsperson may elevate the
8 recommendation to the Secretary of Health
9 and Human Services for resolution.

10 (K) ADDITIONAL DUTIES.—The
11 Ombudsperson shall—

12 (i) conduct a review of data collection,
13 as described in section 4(a);

14 (ii) establish the Committee, as de-
15 scribed in section 5; and

16 (iii) enter into a memorandum of un-
17 derstanding, as described in section 6(a).

18 (d) ACCESS TO FACILITIES.—The Secretary of
19 Health and Human Services and the Secretary of Home-
20 land Security shall ensure—

21 (1) unobstructed access by the Ombudsperson
22 to any facility; and

23 (2) the ability of the Ombudsperson—

24 (A) to monitor any facility; and

25 (B) to meet confidentially with—

- 1 (i) staff of any facility;
- 2 (ii) employees and contractors of the
- 3 Office of Refugee Resettlement and the
- 4 Department of Homeland Security; and
- 5 (iii) any immigrant child in immigra-
- 6 tion custody, after notification of the immi-
- 7 grant child's counsel, as applicable.

8 (e) ACCESS TO INFORMATION.—The Secretary of

9 Health and Human Services shall ensure unobstructed

10 and timely access by the Ombudsperson to—

11 (1) the case files, records, reports, audits, docu-

12 ments, papers, recommendations, or any other perti-

13 nent information relating to the care and custody of

14 an immigrant child; and

15 (2) the written policies and procedures of all

16 Office of Refugee Resettlement facilities.

17 **SEC. 4. DATA COLLECTION.**

18 (a) INDEPENDENT REVIEW BY OMBUDSPERSON.—

19 (1) IN GENERAL.—The Ombudsperson shall

20 regularly review data collected by the Secretary of

21 Health and Human Services and the Secretary of

22 Homeland Security relating to immigrant children in

23 facilities.

24 (2) COLLABORATION REQUIRED.—The Sec-

25 retary of Health and Human Services and the Sec-

1 retary of Homeland Security shall provide the
2 Ombudsperson unobstructed access to—

3 (A) real-time custody and detention data
4 for each immigrant child detained by the Gov-
5 ernment or held in immigration custody, includ-
6 ing—

7 (i) the location and level of placement;

8 (ii) biographical information, includ-
9 ing full name, date of birth, country of citi-
10 zenship, race, and alien number;

11 (iii) all locations at which the immi-
12 grant child has been detained or held in
13 custody;

14 (iv) the dates and times the immi-
15 grant child is booked in and booked out of
16 any facility; and

17 (v) transfer and discharge informa-
18 tion; and

19 (B) Department of Homeland Security and
20 Department of Health and Human Services
21 data personnel for the purpose of reviewing
22 data collection and integrity issues.

23 (b) OFFICE OF REFUGEE RESETTLEMENT DATA
24 COLLECTION SYSTEM.—

1 (1) IN GENERAL.—To support the data collec-
2 tion and monitoring duties of the Ombudsperson and
3 to facilitate public monitoring, the Director shall de-
4 velop a data collection system that collects and
5 maintains the following information:

6 (A) The total number of immigrant chil-
7 dren held in custody by the Director,
8 disaggregated by placement level, specific Office
9 of Refugee Resettlement facility, country of citi-
10 zenship, race, and age.

11 (B) The average and median number of
12 days immigrant children remain in such cus-
13 tody, disaggregated by placement level, specific
14 Office of Refugee Resettlement facility, and
15 age.

16 (C) For all immigrant children in the cus-
17 tody of the Secretary of Health and Human
18 Services, the median time-to-release,
19 disaggregated by—

20 (i) children released to parents or
21 legal guardians;

22 (ii) children released to other spon-
23 sors;

24 (iii) children who have home studies
25 mandated by section 235 of the Traf-

1 ficking Victims Protection Reauthorization
2 Act of 2008 (8 U.S.C. 1232);

3 (iv) children granted home studies
4 through the discretion of the Director; and
5 (v) all other children.

6 (D) The average and median number of
7 days immigrant children stay in an Office of
8 Refugee Resettlement facility, disaggregated by
9 placement level, specific Office of Refugee Re-
10 settlement facility, and age.

11 (E) The number of immigrant children dis-
12 charged to sponsors, disaggregated by sponsor
13 category, placement level, specific Office of Ref-
14 ugee Resettlement facility, and age.

15 (F) The sponsor category and age of each
16 immigrant child held at each Office of Refugee
17 Resettlement facility.

18 (G) The average and median number of
19 days immigrant children stay in an Office of
20 Refugee Resettlement facility, disaggregated by
21 sponsor category.

22 (H) The number and percentage of immi-
23 grant children held in an Office of Refugee Re-
24 settlement facility with more than 25 immi-

1 grant children, disaggregated by placement level
2 and age.

3 (I) The percentage of filled capacity across
4 all Office of Refugee Resettlement facilities,
5 disaggregated by placement level.

6 (J) The total number of children held at
7 out-of-network facilities, disaggregated by
8 placement level and age.

9 (K) For each Office of Refugee Resettle-
10 ment facility—

11 (i) the percentage of filled capacity;

12 (ii) the maximum number of available
13 beds;

14 (iii) the number and percentage of im-
15 migrant children with special needs or dis-
16 abilities (as defined in section 3 of the
17 Americans with Disabilities Act of 1990
18 (42 U.S.C. 12102)), disaggregated by
19 placement level and age; and

20 (iv) the number and percentage of im-
21 migrant children receiving mandatory
22 home studies, discretionary home studies,
23 and tier 1, tier 2, and tier 3 post-release
24 services, disaggregated by placement level
25 and age.

1 (2) PUBLICATION.—Not later than the 15th of
2 each month, the Director shall make the data col-
3 lected under paragraph (1) for the preceding month
4 available to the public on the internet website of the
5 Office of Refugee Resettlement.

6 (c) PROHIBITION ON CERTAIN USES OF DATA.—

7 (1) IN GENERAL.—The data collected under
8 this section may not be used for immigration en-
9 forcement or law enforcement purposes, and the Of-
10 fice of the Ombudsperson may not—

11 (A) use or disclose such data for any pur-
12 pose other than carrying out the duties of the
13 Office of the Ombudsperson;

14 (B) publish or share individually identifi-
15 able information;

16 (C) transmit individually identifiable infor-
17 mation, including to a local, State, or Federal
18 law enforcement agency, for any purpose other
19 than carrying out the duties of the Office of the
20 Ombudsperson; or

21 (D) allow any individual, other than an of-
22 ficer or employee of the Office of the
23 Ombudsperson who is subject to this sub-
24 section, to access or examine such individually
25 identifiable information.

1 (d) PRIVACY PROTECTIONS.—Any data collected,
2 stored, received, or published under this Act shall be—

3 (1) collected, stored, received, or published in a
4 manner that protects the privacy of individuals
5 whose information is included in such data;

6 (2) de-identified or anonymized in a manner
7 that protects the identity of all individuals whose in-
8 formation is included in such data; and

9 (3) limited in use for the purpose of carrying
10 out the duties of the Office of the Ombudsperson
11 and be protected from all other internal use by any
12 entity that collects, stores, or receives the data, and
13 from any other inappropriate uses.

14 **SEC. 5. EXPERT ADVISORY COMMITTEE.**

15 (a) ESTABLISHMENT.—Not later than 90 days after
16 the date of the enactment of this Act, the Ombudsperson
17 shall establish an expert advisory committee to assist the
18 Ombudsperson in—

19 (1) identifying relevant trends relating to immi-
20 grant children in immigration custody;

21 (2) conducting fact-finding missions and inves-
22 tigations of facilities; and

23 (3) ensuring Government and private contractor
24 compliance with applicable law and standards for fa-
25 cilities.

1 (b) MEMBERSHIP.—The members of the Committee
2 shall—

3 (1) be appointed by the Ombudsperson;

4 (2) represent various geographical regions; and

5 (3) be comprised of subject matter experts, in-
6 cluding—

7 (A) legal advocates or specialists in the
8 fields of child and family welfare, immigration,
9 and human rights;

10 (B) pediatricians or other appropriate pe-
11 diatric health care experts;

12 (C) child or adolescent psychiatrists or
13 psychologists;

14 (D) social workers;

15 (E) data analysis experts; and

16 (F) any other relevant subject matter ex-
17 pert.

18 (c) MEETINGS.—The Committee shall meet not less
19 frequently than quarterly.

20 (d) DUTIES.—The Committee shall regularly—

21 (1) review facility compliance with applicable
22 law and standards relating to Government detention
23 and custody of immigrant children, including the
24 Flores settlement agreement and section 235 of the

1 William Wilberforce Trafficking Victims Protection
2 Reauthorization Act of 2008 (8 U.S.C. 1232); and

3 (2) submit to the Ombudsperson recommenda-
4 tions for improvement.

5 (e) ONSITE MONITORING VISITS.—

6 (1) IN GENERAL.—Not less frequently than
7 monthly, 1 or more individuals designated by the
8 Committee shall conduct a comprehensive onsite
9 monitoring visit of each facility for the purpose of
10 interviewing immigrant children held in immigration
11 custody, after notification of counsel, as applicable.

12 (2) ELEMENTS.—Each onsite monitoring visit
13 conducted under paragraph (1) shall include—

14 (A) an evaluation of the compliance of the
15 facility with—

16 (i) all applicable laws and standards;

17 and

18 (ii) the facility standards under the
19 Prison Rape Elimination Act of 2003 (34
20 U.S.C. 30301 et seq.);

21 (B) an assessment of the delivery of, and
22 immigrant children’s access to, health care and
23 mental health care services;

24 (C) an assessment of immigrant children’s
25 access to counsel and legal services; and

1 (D) private, confidential interviews with
2 immigrant children housed in the facility.

3 **SEC. 6. COORDINATION WITH DEPARTMENT OF HOMELAND**
4 **SECURITY.**

5 (a) MEMORANDUM OF UNDERSTANDING.—

6 (1) IN GENERAL.—On the date of the enact-
7 ment of this Act, the Secretary of Homeland Secu-
8 rity and the Ombudsperson shall enter into a memo-
9 randum of understanding to coordinate oversight be-
10 tween the Department of Homeland Security and
11 the Department of Health and Human Services.

12 (2) ELEMENTS.—The memorandum of under-
13 standing required by paragraph (1) shall do the fol-
14 lowing:

15 (A) Require the Secretary of Homeland
16 Security to provide information, on a real-time
17 basis, to the Ombudsperson with respect to
18 each immigrant child detained by U.S. Customs
19 and Border Protection or U.S. Immigration and
20 Customs Enforcement, or who is otherwise in
21 the custody of the Secretary of Homeland Secu-
22 rity, including—

23 (i) the location of the immigrant child;

1 (ii) biographical information, includ-
2 ing full name, date of birth, country of citi-
3 zenship, race, and alien number;

4 (iii) all locations at which the immi-
5 grant child has been so detained or held in
6 Department of Homeland Security cus-
7 tody;

8 (iv) exact times at which the immi-
9 grant child was booked in and booked out
10 of such custody;

11 (v) the date on which the immigrant
12 child is released from such custody or
13 transferred to the custody of the Secretary
14 of Health and Human Services;

15 (vi) in the case of an immigrant child
16 who remains in Department of Homeland
17 Security custody for more than 72 hours,
18 the reason for such continued custody; and

19 (vii) any other information the
20 Ombudsperson considers relevant to the
21 oversight and monitoring duties described
22 in section 3(c)(3).

23 (B) Establish the right of the
24 Ombudsperson and the Committee to monitor
25 Department of Homeland Security facilities for

1 compliance with applicable standards of cus-
2 tody.

3 (C) Provide the Ombudsperson and the
4 Committee full and unobstructed access to—

5 (i) Department of Homeland Security
6 facilities for regular site visits; and

7 (ii) the written policies and procedures
8 of Department of Homeland Security fa-
9 cilities.

10 (3) LIMITATION.—The memorandum of under-
11 standing may only allow the Ombudsperson to share
12 information with the Secretary of Homeland Secu-
13 rity on a case-by-case basis, and with the informed
14 consent of the immigrant child concerned, if the
15 Ombudsperson determines that such information
16 sharing may facilitate the release of the immigrant
17 child from custody.

18 (4) EVALUATION.—Not later than 2 years after
19 the Ombudsperson and the Secretary of Homeland
20 Security enter into the memorandum of under-
21 standing required by this subsection, the Comp-
22 troller General of the United States shall evaluate
23 the coordination between the Ombudsperson and the
24 Secretary to determine whether such memorandum

1 of understanding is sufficient to ensure the oversight
2 and monitoring required by this Act.

3 (5) RECOMMENDATIONS.—If the Comptroller
4 General makes a determination under paragraph (4)
5 that the memorandum of understanding is insuffi-
6 cient, the Comptroller General shall recommend ac-
7 tionable steps to be implemented—

8 (A) to improve coordination between the
9 Ombudsperson and the Secretary of Homeland
10 Security; and

11 (B) to ensure effectiveness of the mandate
12 of the Ombudsperson.

13 (b) INTERAGENCY WORKING GROUP.—

14 (1) ESTABLISHMENT.—There is established an
15 interagency working group to identify and discuss
16 concerns relating to immigrant children in facilities.

17 (2) MEMBERSHIP.—The Working Group shall
18 be composed of representatives of—

19 (A) the Department of Justice;

20 (B) the Department of Health and Human
21 Services, including the Director or a senior rep-
22 resentative of the Office of Refugee Resettle-
23 ment;

24 (C) U.S. Customs and Border Protection;

1 (D) U.S. Immigration and Customs En-
2 forcement;

3 (E) relevant oversight offices, including—

4 (i) the Immigration Detention Om-
5 budsman of the Department of Homeland
6 Security; and

7 (ii) the Inspectors General of the De-
8 partment of Justice, the Department of
9 Health and Human Services, U.S. Cus-
10 toms and Border Protection, and U.S. Im-
11 migration and Customs Enforcement; and

12 (F) any other relevant Federal agency or
13 office.

14 (3) MEETINGS.—The Working Group shall—

15 (A) hold meetings not less frequently than
16 quarterly;

17 (B) invite representatives of nongovern-
18 mental organizations that provide services to
19 immigrant children to participate in such meet-
20 ings as the Ombudsperson considers appro-
21 priate; and

22 (C) provide to the Ombudsperson a sum-
23 mary of each such meeting.

1 **SEC. 7. RULE OF CONSTRUCTION.**

2 Nothing in the Act shall be construed to preclude or
3 limit Flores settlement agreement class counsel from con-
4 ducting independent investigations or seeking enforcement
5 actions relating to violations of the Flores settlement
6 agreement in any appropriate district court of the United
7 States.

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