

Background

The Border Network for Human Rights (BNHR) and our allies representing various stakeholders have promoted solutions to the unintended consequences of recent border enforcement surges along the Southern border. The recommendations we have offered are based on the methodically identified needs of thousands of residents and citizens of the borderlands in Southern New Mexico and West Texas and through consultation with local government and local law enforcement officials, experts in academia as well as leadership of faith and community-based institutions from all along the Southern border. These recommendations can be categorized as administrative remedies or as legislative remedies. While there is overlap between what DHS-CBP can accomplish through leadership directives and what can be legislated, the Border Enforcement Accountability, Oversight, and Stakeholder Engagement Act of 2014 offers a common sense and incremental approach to ensuring that the 'good government' values that Americans demand of their law enforcement institutions can be sustained across administrations in the long term.

The Border Enforcement Accountability, Oversight and Stakeholder Engagement Act of 2014 is co-authored by Congressman Steve Pearce (NM-2) and Congressman Beto O'Rourke (TX-16). Mr. Pearce (R) represents all of the border region of New Mexico including the Federal Law Enforcement Training Center (FLETC) in Artesia, NM where our Border Patrol officers are trained. Mr. O'Rourke (D) represents the largest metropolitan border community in America of El Paso, TX and Ciudad Juarez, Mexico. He sits on the House Homeland Security Committee. Together, they represent the El Paso Sector of the Border Patrol, where BNHR has developed a unique 'engagement model with law enforcement,' including a dialogue process with Border Patrol that has contributed to the most innovative best practices in community relations resulting in many of the recommendations included as provisions in this bill.

What Does This Bill Do?

The bill intends to increase transparency and oversight of DHS border enforcement operations as well as proposing several mechanisms for border stakeholders and DHS to engage in consultation and review processes together. Additionally, it seeks to improve agent and community safety by updating training curriculum for border enforcement agents.

What are the various aspects of this bill?

Section 2: DHS Border Oversight Commission

- Establishment of an independent commission
- Composed of members representing various stakeholder interests from the Northern (10 members) and Southern (10 members) border, including a representative of CBP
- Members appointed by House and Senate leadership, as well as the President to serve four year terms
- Duties include
 - o identifying impacts of enforcement operations to border communities and developing recommendations to mitigate any unintended consequences
 - o evaluate policies, programs and strategies for impacts on civil, human, property rights and to reduce the number of migrant deaths
 - o develop recommendations to improve agent and officer safety
 - o evaluate training including establishing training courses for supervisor in Border Patrol Sectors and Ports of Entry, facilitate workforce development, and post academy refreshers
- Powers include
 - o Hold hearings, administer oaths and receive evidence and testimony
 - o Review documents and records
 - o Issue and serve subpoenas limited to the scope of its duties
- Does not affect investigative and disciplinary procedures of DHS with respect to its agents and officers
- Annual reports to DHS Secretary with notification requirement to appropriate Congressional Committees

Sections 3: Ombudsman for Border and Immigration Related Concerns

For information contact BNHR Policy Director, Jose Manuel Escobedo, at jmescobedo@bnhr.org or 915-494-1191.

- Establishes a semi-independent and adequately resourced ombudsman reporting directly to the Secretary
- Functions
 - o Establish process to receive, investigate and resolve complaints and requests for information from individuals, employees and associations
 - o Conduct inspections of CBP, ICE and CIS facilities, including contracted facilities
 - o Assist individuals and families affected by crimes committed by aliens and by use of force by agents and officers
 - o Identify areas of concern for individuals, associations, employers in their interactions with CBP, ICE, CIS
 - o Propose administrative changes to address those concerns
 - o Review and make recommendation regarding border and immigration enforcement
 - o Establish a uniform and standardized complaint process for CBP including
 - Independent review within one year
 - Written communication with complainants
 - Centralized, multilingual online complaint form
 - Referral procedures to Office for Civil Rights and civil Liberties, Office of Inspector General and other appropriate agency
 - Publicly accessible database to track and analyze complaints and resolutions
 - Establish an online detainee locator system
 - Monitor allocation of local offices of the ombudsman
 - Maintain privacy rights and protections for complainants
 - o Authorized to request Inspector General of the Department to make inspections and investigations of complaint records
 - o Establishes protocol for coordination and collaboration between ombudsman and CBP, ICE, CIS leadership
 - o Annual report to Congress regarding inventory of complaints and recommendations to improve services and responsiveness
 - o Establishes a Border Community Liaison Office to foster cooperation and consultation between border communities and BP and OFO and to receive assessments of BP and OFO
 - o Secretary Report on the impact of border operation and technologies on communities
 - o GAO report on CBP operations and claimed authority and impact on Constitutional rights

Section 4: Training and Continuing Education

- Training to improve agent safety and professionalism
- Training to improve awareness, accountability and oversight including
 - o Community relations
 - o Community policing
 - o Limits of enforcement locations and cooperation with local law enforcement
 - o Best practices in responding to grievances
 - o Interdiction
 - Proper command language
 - Situational awareness
 - Use of force procedures and guidelines
 - Agent and community safety including tactical withdrawal and non-lethal force certification
 - o Identifying and responding to vulnerable populations such as children and victims of human trafficking
 - o Cultural sensitivity
 - o Standards of professional conduct including lawful use of force, complying with chain of command, conduct towards the public and respect for civil rights
- Supervisor training including management best practices, use of force, identify and address issues with management roles

- Secretary establishes a review process to ensure that supervisor evaluation takes into consideration actions, evaluations, educational development, and standards of conduct of their staffs
- Annual continuing education including Constitutional authority regarding civil, human, privacy rights with an emphasis on scope of enforcement and use of force as well as authority on interrogation, stops, searches, arrests, detentions and detecting fraudulent documents
- Assessment by the Comptroller General of the United States to appropriate Congressional committees regarding the training and education required in this section

Section 5: Management of Ports of Entry

- An assessment within 180 days by the Secretary to appropriate House and Senate Committees including
 - o Staffing levels and need of additional staffing
 - o Rules governing actions of OFO agents
 - o Average delay through air, land, and sea ports of entry
 - o Existing efforts and technologies used and their impact on border communities
 - o Economic impact of policies and practices of OFO and CBP Agricultural specialists
 - o Physical infrastructure and technology needs at ports of entry
- Secretary to establish updated guidelines and standards for managing ports of entry upon review of assessment including, if applicable,
 - o Increased staff, publishing rules on handling documents, increase use of or updating technology at ports where there is a two hour delay, standards of conduct for vulnerable populations

Section 6: Reporting Requirements

- CBP Report on Migrant Deaths
 - o Within 180 days the CBP Commissioner will report to appropriate House and Senate Committees
 - The number of documented migrant deaths
 - Geographical breakdown of locations where deaths occur
 - Cause of death whenever possible
 - The extent to which physical barriers, technology and programs have contributed to the deaths
 - Detailed description of CBP plans to reduce the deaths including assessment of water stations and rescue beacons
- GAO Report on Migrant Deaths
 - o Within 90 days of the CBP Commissioner report, Comptroller General of the United States will review the CBP Commissioner's report for validity of statistical analysis, extent to which CBP has utilized low cost measures to mitigate migrant deaths, extent of data and info sharing and cooperation between CBP, local law enforcement, foreign consular posts, and NGO's to identify bodies, notify families and compare biometrics to missing person registries
- GAO Report on Use of Force
 - o Within one year of enactment GAO will study CBP and ICE clarification of use of force policies and make recommendations regarding
 - Implementation of new training and tactics to conform to law enforcement best practices and to better equip agents and officers to respond to threats
 - Identify additional or alternative weapons and equipment to de-escalate confrontations
 - Engagement of stakeholders to better inform and enhance CBP use of force training
 - Establishment of metrics to track effectiveness of use of force training and ensure better reporting of use of force incidents and to examine if use of force could have been avoided given different training, tactics, supervision, tools or better policy
 - Utilization of best law enforcement practices for transparency and communication with family members of individuals injured or killed by CBP
 - o DHS Secretary shall direct CBP Commissioner to implement recommendations in the report and, if not done so, explain to appropriate Congressional committees why