

116TH CONGRESS
1ST SESSION

S. 2180

To provide oversight of the border zone in which Federal agents may conduct vehicle checkpoints and stops and enter private land without a warrant, and to make technical corrections.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2019

Mr. LEAHY (for himself and Mrs. MURRAY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide oversight of the border zone in which Federal agents may conduct vehicle checkpoints and stops and enter private land without a warrant, and to make technical corrections.

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 “Border Zone Reason-
5 ableness Restoration Act of 2019”.

1 **SEC. 2. OVERSIGHT OF POWER TO ENTER PRIVATE LAND**
 2 **AND STOP VEHICLES WITHOUT A WARRANT.**

3 (a) IN GENERAL.—Section 287(a) of the Immigra-
 4 tion and Nationality Act (8 U.S.C. 1357(a)) is amended—

5 (1) in paragraph (5), by redesignating subpara-
 6 graphs (A) and (B) as clauses (i) and (ii), respec-
 7 tively;

8 (2) by redesignating paragraphs (1) through
 9 (3) as subparagraphs (A) through (C), respectively;

10 (3) by redesignating paragraphs (4) and (5) as
 11 subparagraphs (E) and (F), respectively;

12 (4) in the matter preceding subparagraph (A),
 13 as redesignated—

14 (A) by inserting “(1)” before “Any offi-
 15 cer”;

16 (B) by striking “Service” and inserting
 17 “Department of Homeland Security”;

18 (C) by striking “Attorney General” and in-
 19 serting “Secretary of Homeland Security”; and

20 (D) by inserting “, to the extent permitted
 21 by the Fourth Amendment to the Constitution
 22 of the United States” after “warrant”;

23 (5) in paragraph (1), as redesignated, by strik-
 24 ing subparagraph (C), as redesignated, and inserting
 25 the following:

1 “(C) within a distance of 25 miles from any ex-
2 ternal boundary of the United States, or such dis-
3 tance as may be prescribed by the Secretary pursu-
4 ant to paragraph (2), to board and search for aliens
5 any vessel within the territorial waters of the United
6 States and any railway car, aircraft, conveyance, or
7 vehicle for the purpose of patrolling the border to
8 prevent the illegal entry of aliens into the United
9 States, provided that—

10 “(i) no vehicle may be stopped at a perma-
11 nent or temporary checkpoint under this sub-
12 paragraph beyond a distance of 10 miles from
13 any such external boundary without reasonable
14 suspicion that an individual in such vehicle is
15 inadmissible or otherwise not entitled to enter
16 or remain in the United States; and

17 “(ii) checkpoint enforcement operations
18 may not use race, ethnicity, gender, national or-
19 igin, religion, sex (including sexual orientation
20 and gender identity) to any degree, except for
21 reliance on the listed characteristics in a spe-
22 cific suspect description;

23 “(D) within a distance of 10 miles from any
24 such external boundary, or such distance as may be
25 prescribed by the Secretary pursuant to paragraph

1 (2), to have access to private lands, but not dwell-
2 ings, for the purpose of patrolling the border to pre-
3 vent the illegal entry of aliens into the United
4 States;” and

5 (6) by inserting after the flush text following
6 subparagraph (F), as redesignated, the following:

7 “(2)(A)(i) The Secretary of Homeland Security may
8 establish for a sector or district a distance less than or
9 greater than 25 miles, but in no case greater than 100
10 miles, as the maximum distance from an external bound-
11 ary of the United States in which the authority described
12 in paragraph (1)(C) may be exercised, if the Secretary cer-
13 tifies that such a distance is necessary for the purpose
14 of patrolling the border to prevent the illegal entry of
15 aliens into the United States, and justified by the consid-
16 erations listed in subparagraph (B).

17 “(ii) The Secretary of Homeland Security may estab-
18 lish for a sector or district a distance less than or greater
19 than 10 miles, but in no case greater than 25 miles, as
20 the maximum distance from an external boundary of the
21 United States in which the authority described in para-
22 graph (1)(D) may be exercised, if the Secretary certifies
23 that such a distance is necessary for the purpose of patrol-
24 ling the border to prevent the illegal entry of aliens into

1 the United States, and justified by the considerations list-
2 ed in subparagraph (B).

3 “(B) In making the certifications described in sub-
4 paragraph (A), the Secretary shall consider, as appro-
5 priate, land topography, confluence of arteries of transpor-
6 tation leading from external boundaries, density of popu-
7 lation, possible inconvenience to the traveling public, types
8 of conveyances used, reliable information as to movements
9 of persons effecting illegal entry into the United States,
10 effects on private property and quality of life for relevant
11 communities and residents, consultations with affected
12 State, local, and tribal governments, including the gov-
13 ernor of any relevant State, and other factors that the Sec-
14 retary considers appropriate.

15 “(C) A certification made under subparagraph (A)
16 shall be valid for a period of 5 years and may be renewed
17 for additional 5-year periods. If the Secretary finds at any
18 time that circumstances no longer justify a certification,
19 the Secretary shall terminate the certification.

20 “(D)(i) Any person with an interest that is, or may
21 be, adversely affected by the maximum distance limita-
22 tions established pursuant to subparagraph (A) may com-
23 mence a civil action, in the appropriate district court of
24 the United States, against the Secretary of Homeland Se-
25 curity, asserting that a certification under such subpara-

1 graph is not based on reasonable grounds or otherwise
 2 fails to meet the requirements under such subparagraph.

3 “(ii) The court may enter a judgment or decree
 4 against the United States arising from a civil action com-
 5 menced under clause (i).

6 “(iii) Nothing in this subsection may be construed to
 7 restrict any right which any person (or class of persons)
 8 may have under any statute or under the common law.

9 “(E) The Secretary shall submit an annual report to
 10 the Committee on the Judiciary of the Senate, the Com-
 11 mittee on Homeland Security and Governmental Affairs
 12 of the Senate, the Committee on the Judiciary of the
 13 House of Representatives, and the Committee on Home-
 14 land Security of the House of Representatives that identi-
 15 fies—

16 “(i) the number of certifications made under
 17 subparagraph (A);

18 “(ii) for each such certification, the sector or
 19 district and reasonable distance prescribed, the pe-
 20 riod of time the certification has been in effect, and
 21 the factors justifying the certification; and

22 “(iii) for permanent and temporary check-
 23 points—

24 “(I) the location and duration of each
 25 checkpoint;

1 “(II) an assessment of each checkpoint’s
2 impacts on local communities, including—

3 “(aa) how the checkpoint minimizes
4 interference with legitimate traffic and
5 areas of population density;

6 “(bb) what outreach has taken place
7 with stakeholders; and

8 “(cc) which law enforcement agencies
9 other than U.S. Customs and Border Pro-
10 tection have participated in checkpoint op-
11 erations;

12 “(III) arrest and apprehension statistics,
13 broken down by charge;

14 “(IV) the number of secondary referrals,
15 including average, median and maximum dura-
16 tions and aggregate data, broken down by rea-
17 sons for referral;

18 “(V) a summary of canine activity at each
19 checkpoint, including—

20 “(aa) the quantities of drugs detected;

21 “(bb) the number of persons detected,
22 including how many of those were arrested;

23 “(cc) the percentage of nonproductive
24 alerts; and

1 “(dd) an explanation of current train-
 2 ing and certification protocols; and

3 “(VI) until the recommendations are
 4 closed, a status update on the implementation
 5 of the Government Accountability Office’s 2009
 6 recommendations regarding checkpoints.

7 “(F) All personally identifiable information about
 8 specific individuals shall be redacted from each report re-
 9 quired under subparagraph (E), except that aggregate na-
 10 tionality and perceived race data shall be reported for
 11 checkpoint secondary referrals and arrests described in
 12 subclause (III) and (IV) of subparagraph (E)(iii).

13 “(G) Each report submitted under subparagraph (E)
 14 shall be made available to the public, except for specifically
 15 identified data if the Secretary—

16 “(i) explicitly invokes an exemption under para-
 17 graphs (1) through (9) of section 552(b) of title 5,
 18 United States Code, with respect to such data; and

19 “(ii) provides a written explanation for the ex-
 20 emption’s applicability.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) AUTHORITIES WITHOUT A WARRANT.—Sec-
 23 tion 287(a) of the Immigration and Nationality Act
 24 (8 U.S.C. 1357(a)), the undesignated matter fol-

1 lowing paragraph (2), as added by subsection (a)(5),
 2 is amended—

3 (A) by inserting “(3)” before “Under regu-
 4 lations”;

5 (B) by striking “paragraph (5)(B)” both
 6 places that term appears and inserting “sub-
 7 paragraph (F)(ii)”;

8 (C) by striking “(i)” and inserting “(A)”;

9 (D) by striking “(ii) establish” and insert-
 10 ing “(B) establish”;

11 (E) by striking “(iii) require” and insert-
 12 ing “(C) require”; and

13 (F) by striking “clause (ii), and (iv)” and
 14 inserting “subparagraph (B), and (D)”.

15 (2) CONFORMING AMENDMENT.—Section
 16 287(e) of such Act (8 U.S.C. 1357(e)) is amended
 17 by striking “paragraph (3) of subsection (a),” and
 18 inserting “subsection (a)(1)(D),”.

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