

115TH CONGRESS
2D SESSION

S. 3162

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

JUNE 28, 2018

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 2018”.

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), by striking subparagraph
 24 (C), as redesignated, and inserting the following:

25 “(C) within a distance of 25 air miles from any
 26 external boundary of the United States, or such dis-

1 tance as may be prescribed by the Secretary pursu-
2 ant to paragraph (2), to board and search for aliens
3 any vessel within the territorial waters of the United
4 States and any railway car, aircraft, conveyance, or
5 vehicle for the purpose of patrolling the border to
6 prevent the illegal entry of aliens into the United
7 States; provided that no vehicle may be stopped at
8 a fixed checkpoint under this subparagraph beyond
9 a distance of 10 air miles from any such external
10 boundary without reasonable suspicion that an indi-
11 vidual in such vehicle is inadmissible or otherwise
12 not entitled to enter or remain in the United States;

13 “(D) within a distance of 10 air miles from any
14 such external boundary, or such distance as may be
15 prescribed by the Secretary pursuant to paragraph
16 (2), to have access to private lands, but not dwell-
17 ings, for the purpose of patrolling the border to pre-
18 vent the illegal entry of aliens into the United
19 States;” and

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

22 “(2)(A)(i) The Secretary of Homeland Security may
23 establish for a sector or district a distance less than or
24 greater than 25 air miles, but in no case greater than 100
25 air miles, as the maximum distance from an external

1 boundary of the United States in which the authority de-
2 scribed in paragraph (1)(C) may be exercised, if the Sec-
3 retary certifies that such a distance is necessary for the
4 purpose of patrolling the border to prevent the illegal
5 entry of aliens into the United States, and justified by the
6 considerations listed in subparagraph (B).

7 “(ii) The Secretary of Homeland Security may estab-
8 lish for a sector or district a distance less than or greater
9 than 10 air miles, but in no case greater than 25 air miles,
10 as the maximum distance from an external boundary of
11 the United States in which the authority described in
12 paragraph (1)(D) 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 “(B) In making the certifications described in sub-
18 paragraph (A), the Secretary shall consider, as appro-
19 priate, land topography, confluence of arteries of transpor-
20 tation leading from external boundaries, density of popu-
21 lation, possible inconvenience to the traveling public, types
22 of conveyances used, reliable information as to movements
23 of persons effecting illegal entry into the United States,
24 effects on private property and quality of life for relevant
25 communities and residents, consultations with affected

1 State, local, and tribal governments, including the gov-
 2 ernor of any relevant State, and other factors that the Sec-
 3 retary considers appropriate.

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

9 “(D) 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); and

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.”.

22 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

23 (1) AUTHORITIES WITHOUT A WARRANT.—Sec-
 24 tion 287(a) of the Immigration and Nationality Act
 25 (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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