

116TH CONGRESS  
1ST SESSION

# H. R. 3852

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2019

Mr. WELCH (for himself, Ms. PINGREE, Mrs. KIRKPATRICK, Mr. MCGOVERN, Ms. JAYAPAL, and Ms. KUSTER of New Hampshire) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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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