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

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

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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Border Zone Reason- 
ability Restoration Act of 2019”.
SEC. 2. OVERSIGHT OF POWER TO ENTER PRIVATE LAND AND STOP VEHICLES WITHOUT A WARRANT.

(a) In General.—Section 287(a) of the Immigration and Nationality Act (8 U.S.C. 1357(a)) is amended—

(1) in paragraph (5), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

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

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

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

(A) by inserting “(1)” before “Any officer”;

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

(C) by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

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

(5) in paragraph (1), as redesignated, by striking subparagraph (C), as redesignated, and inserting the following:
“(C) within a distance of 25 miles from any external boundary of the United States, or such distance as may be prescribed by the Secretary pursuant to paragraph (2), to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States, provided that—

“(i) no vehicle may be stopped at a permanent or temporary checkpoint under this subparagraph beyond a distance of 10 miles from any such external boundary without reasonable suspicion that an individual in such vehicle is inadmissible or otherwise not entitled to enter or remain in the United States; and

“(ii) checkpoint enforcement operations may not use race, ethnicity, gender, national origin, religion, sex (including sexual orientation and gender identity) to any degree, except for reliance on the listed characteristics in a specific suspect description;

“(D) within a distance of 10 miles from any such external boundary, or such distance as may be prescribed by the Secretary pursuant to paragraph
(2), to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;”; and

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

“(2)(A)(i) The Secretary of Homeland Security may establish for a sector or district a distance less than or greater than 25 miles, but in no case greater than 100 miles, as the maximum distance from an external boundary of the United States in which the authority described in paragraph (1)(C) may be exercised, if the Secretary certifies that such a distance is necessary for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States, and justified by the considerations listed in subparagraph (B).

“(ii) The Secretary of Homeland Security may establish for a sector or district a distance less than or greater than 10 miles, but in no case greater than 25 miles, as the maximum distance from an external boundary of the United States in which the authority described in paragraph (1)(D) may be exercised, if the Secretary certifies that such a distance is necessary for the purpose of patrolling the border to prevent the illegal entry of aliens into
the United States, and justified by the considerations listed in subparagraph (B).

“(B) In making the certifications described in subparagraph (A), the Secretary shall consider, as appropriate, land topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, reliable information as to movements of persons effecting illegal entry into the United States, effects on private property and quality of life for relevant communities and residents, consultations with affected State, local, and tribal governments, including the governor of any relevant State, and other factors that the Secretary considers appropriate.

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

“(D)(i) Any person with an interest that is, or may be, adversely affected by the maximum distance limitations established pursuant to subparagraph (A) may commence a civil action, in the appropriate district court of the United States, against the Secretary of Homeland Security, asserting that a certification under such subpara-
graph is not based on reasonable grounds or otherwise fails to meet the requirements under such subparagraph.

“(ii) The court may enter a judgment or decree against the United States arising from a civil action commenced under clause (i).

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

“(E) The Secretary shall submit an annual report to the Committee on the Judiciary of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on the Judiciary of the House of Representatives, and the Committee on Homeland Security of the House of Representatives that identifies—

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

“(ii) for each such certification, the sector or district and reasonable distance prescribed, the period of time the certification has been in effect, and the factors justifying the certification; and

“(iii) for permanent and temporary checkpoints—

“(I) the location and duration of each checkpoint;
“(II) an assessment of each checkpoint’s impacts on local communities, including—

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

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

“(cc) which law enforcement agencies other than U.S. Customs and Border Protection have participated in checkpoint operations;

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

“(IV) the number of secondary referrals, including average, median and maximum durations and aggregate data, broken down by reasons for referral;

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

“(aa) the quantities of drugs detected;

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

“(cc) the percentage of nonproductive alerts; and
“(dd) an explanation of current training and certification protocols; and

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

“(F) All personally identifiable information about specific individuals shall be redacted from each report required under subparagraph (E), except that aggregate nationality and perceived race data shall be reported for checkpoint secondary referrals and arrests described in subclause (III) and (IV) of subparagraph (E)(iii).

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

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

“(ii) provides a written explanation for the exemption’s applicability.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) AUTHORITIES WITHOUT A WARRANT.—Section 287(a) of the Immigration and Nationality Act (8 U.S.C. 1357(a)), the undesignated matter fol-
lowing paragraph (2), as added by subsection (a)(5), is amended—

(A) by inserting “(3)” before “Under regulations”;

(B) by striking “paragraph (5)(B)” both places that term appears and inserting “subparagraph (F)(ii)”;

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

(D) by striking “(ii) establish” and inserting “(B) establish”;

(E) by striking “(iii) require” and inserting “(C) require”; and

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

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