

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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—116th Cong., 1st Sess.

S. 1494

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the end of the bill, add the following:

2 **SEC. ____ . OVERSIGHT OF POWER TO ENTER PRIVATE LAND**

3 **AND STOP VEHICLES WITHOUT A WARRANT.**

4 (a) **SHORT TITLE.**—This section may be cited as the
5 “Border Zone Reasonableness Restoration Act of 2019”.

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

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

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

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

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

10 (A) by inserting “(1)” before “Any offi-
11 cer”;

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

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

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

19 (5) in paragraph (1), as redesignated, by strik-
20 ing subparagraph (C), as redesignated, and inserting
21 the following:

22 “(C) within a distance of 25 miles from any ex-
23 ternal boundary of the United States, or such dis-
24 tance as may be prescribed by the Secretary pursu-
25 ant to paragraph (2), to board and search for aliens

1 any vessel within the territorial waters of the United
2 States and any railway car, aircraft, conveyance, or
3 vehicle for the purpose of patrolling the border to
4 prevent the illegal entry of aliens into the United
5 States, provided that—

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

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

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

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

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

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

23 “(B) In making the certifications described in sub-
24 paragraph (A), the Secretary shall consider, as appro-
25 priate, land topography, confluence of arteries of transpor-

1 tation leading from external boundaries, density of popu-
2 lation, possible inconvenience to the traveling public, types
3 of conveyances used, reliable information as to movements
4 of persons effecting illegal entry into the United States,
5 effects on private property and quality of life for relevant
6 communities and residents, consultations with affected
7 State, local, and tribal governments, including the gov-
8 ernor of any relevant State, and other factors that the Sec-
9 retary considers appropriate.

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

15 “(D)(i) Any person with an interest that is, or may
16 be, adversely affected by the maximum distance limita-
17 tions established pursuant to subparagraph (A) may com-
18 mence a civil action, in the appropriate district court of
19 the United States, against the Secretary of Homeland Se-
20 curity, asserting that a certification under such subpara-
21 graph is not based on reasonable grounds or otherwise
22 fails to meet the requirements under such subparagraph.

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

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

4 “(E) The Secretary shall submit an annual report to
5 the Committee on the Judiciary of the Senate, the Com-
6 mittee on Homeland Security and Governmental Affairs
7 of the Senate, the Committee on the Judiciary of the
8 House of Representatives, and the Committee on Home-
9 land Security of the House of Representatives that identi-
10 fies—

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

13 “(ii) for each such certification, the sector or
14 district and reasonable distance prescribed, the pe-
15 riod of time the certification has been in effect, and
16 the factors justifying the certification; and

17 “(iii) for permanent and temporary check-
18 points—

19 “(I) the location and duration of each
20 checkpoint;

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

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

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

3 “(cc) which law enforcement agencies
4 other than U.S. Customs and Border Pro-
5 tection have participated in checkpoint op-
6 erations;

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

9 “(IV) the number of secondary referrals,
10 including average, median and maximum dura-
11 tions and aggregate data, broken down by rea-
12 sons for referral;

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

15 “(aa) the quantities of drugs detected;

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

18 “(cc) the percentage of nonproductive
19 alerts; and

20 “(dd) an explanation of current train-
21 ing and certification protocols; and

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

1 “(F) All personally identifiable information about
2 specific individuals shall be redacted from each report re-
3 quired under subparagraph (E), except that aggregate na-
4 tionality and perceived race data shall be reported for
5 checkpoint secondary referrals and arrests described in
6 subclause (III) and (IV) of subparagraph (E)(iii).

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

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

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

15 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) AUTHORITIES WITHOUT A WARRANT.—Sec-
17 tion 287(a) of the Immigration and Nationality Act
18 (8 U.S.C. 1357(a)), in the undesignated matter fol-
19 lowing paragraph (2), as added by subsection (b)(5),
20 is amended—

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

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

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

2 (D) by striking “(ii) establish” and insert-

3 ing “(B) establish”;

4 (E) by striking “(iii) require” and insert-

5 ing “(C) require”; and

6 (F) by striking “clause (ii), and (iv)” and

7 inserting “subparagraph (B), and (D)”.

8 (2) CONFORMING AMENDMENT.—Section

9 287(e) of such Act (8 U.S.C. 1357(e)) is amended

10 by striking “paragraph (3) of subsection (a),” and

11 inserting “subsection (a)(1)(D),”.