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S. 2832

To require the collection of data by officers enforcing United States laws and regulations, including at border security stops within United States borders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2018

Mrs. GILLIBRAND (for herself, Mr. MERKLEY, Ms. WARREN, and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To require the collection of data by officers enforcing United States laws and regulations, including at border security stops within United States borders, and for other purposes.

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 TITLES.**

4 This Act may be cited as the “Department of Home-
5 land Security Accountability and Transparency Act” or
6 the “DATA Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) BORDER SECURITY.—The term “border se-
2 curity” means the prevention of unlawful entries
3 into the United States, including entries by individ-
4 uals, instruments of terrorism, narcotics, and other
5 contraband.

6 (2) CHECKPOINT.—The term “checkpoint”
7 means a location—

8 (A) at which vehicles or individuals trav-
9 eling through the location are stopped by a law
10 enforcement official for the purposes of enforce-
11 ment of United States laws and regulations;
12 and

13 (B) that is not located at a port of entry
14 along an international border of the United
15 States.

16 (3) LAW ENFORCEMENT OFFICIAL.—The term
17 “law enforcement official” means—

18 (A) an officer or agent of U.S. Customs
19 and Border Protection;

20 (B) an officer or agent of U.S. Immigra-
21 tion and Customs Enforcement; or

22 (C) an officer or employee of a State, or a
23 political subdivision of a State, who is carrying
24 out the functions of an immigration officer pur-
25 suant to—

1 (i) an agreement entered into under
2 section 287(g) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1357(g));

4 (ii) authorization under title IV of the
5 Tariff Act of 1930 (19 U.S.C. 1401 et
6 seq.); or

7 (iii) any other agreement with the De-
8 partment of Homeland Security, including
9 any Federal grant program.

10 (4) PATROL STOP.—The term “patrol stop”
11 means search, seizure, or interrogation of a motor-
12 ist, passenger, or pedestrian initiated anywhere ex-
13 cept as part of an inspection at a port of entry or
14 a primary inspection at a checkpoint.

15 (5) PRIMARY INSPECTION.—The term “primary
16 inspection” means an initial inspection of a vehicle
17 or individual at a checkpoint.

18 (6) SECONDARY INSPECTION.—The term “sec-
19 ondary inspection” means a further inspection of a
20 vehicle or individual that is conducted following a
21 primary inspection.

1 **SEC. 3. DATA COLLECTION BY LAW ENFORCEMENT OFFI-**
2 **CIALS ENFORCING UNITED STATES LAWS**
3 **AND REGULATIONS AND MAKING BORDER SE-**
4 **CURITY STOPS.**

5 (a) REQUIREMENT FOR DATA COLLECTION REGARD-
6 ING STOPS AND SEARCHES.—A law enforcement official
7 who initiates a patrol stop or who detains any individual
8 beyond a brief and limited inquiry, such as a primary in-
9 spection at a checkpoint, shall record—

10 (1) the date, time, and location of the contact;

11 (2) the law enforcement official's basis for, or
12 circumstances surrounding, the contact, including if
13 such individual's perceived race or ethnicity contrib-
14 uted to the basis for, and circumstances sur-
15 rounding, the contact;

16 (3) the identifying characteristics of such indi-
17 vidual, including the individual's perceived race, gen-
18 der, ethnicity, and approximate age;

19 (4) the duration of the stop, detention, or
20 search, whether consent was requested and obtained
21 for the contact, including any search;

22 (5) a description of any articulable facts and
23 behavior by the individual that justify initiating the
24 contact or probable cause to justify any search pur-
25 suant to such contact;

1 (6) a description of any items seized during
2 such search, including contraband or money, and a
3 specification of the type of search conducted;

4 (7) whether any arrest, detention, warning, or
5 citation resulted from such contact and the basis for
6 such action;

7 (8) the immigration status of the individual, if
8 obtained during the ordinary course of the contact
9 without additional questioning in accordance with
10 this Act, and whether removal proceedings were sub-
11 sequently initiated against the individual;

12 (9) whether a body-worn camera or any other
13 video or audio recording exists that recorded the
14 stop or detention;

15 (10) whether force was used by the law enforce-
16 ment official and, if so, the type of force, justifica-
17 tion for using force, and whether the use of force re-
18 sulted in injury or death;

19 (11) whether any complaint was made by the
20 individual subject to the contact, and if so—

21 (A) which oversight components within or
22 outside of the Department of Homeland Secu-
23 rity investigated the complaint;

24 (B) how long the investigation lasted;

1 (C) a description of the methods of inves-
2 tigation used; and

3 (D) the badge number of the law enforce-
4 ment official involved in the complaint;

5 (12) if the contact was initiated by a State or
6 local law enforcement agency—

7 (A) the reason for involvement of a Fed-
8 eral law enforcement official;

9 (B) the duration of the contact prior to
10 contact with any Federal law enforcement offi-
11 cial;

12 (C) the method by which a Federal law en-
13 forcement official was informed of the stop; and

14 (D) whether the individual was being held
15 by State or local officials on State criminal
16 charges at the time of such contact;

17 (13) if the contact was initiated by a State or
18 local law enforcement agency of a State, whether
19 such agency was acting pursuant to—

20 (A) an agreement entered into under sec-
21 tion 287(g) of the Immigration and Nationality
22 Act (8 U.S.C. 1357(g));

23 (B) authorization under title IV of the
24 Tariff Act of 1930 (19 U.S.C. 1401 et seq.); or

1 (C) pursuant to any other agreement with
2 the Department of Homeland Security, includ-
3 ing any Federal grant program;

4 (14) if the contact involved an individual whose
5 primary language of communication is not English,
6 the means of communication used;

7 (15) if the contact occurred at a location proxi-
8 mate to a place of worship or religious ceremony,
9 school or education-related place or event, court-
10 house or other civic building providing services ac-
11 cessible to the public, hospital, medical treatment, or
12 health care facility, at a public demonstration, or an
13 attorney's office, including a public defender or legal
14 aid office; and

15 (16) if the contact occurred at a location de-
16 scribed in paragraph (15), why that location was
17 chosen and any supervisory approval that was
18 sought to carry out the contact at the location.

19 (b) REQUIREMENT FOR U.S. CUSTOMS AND BORDER
20 PROTECTION DATA COLLECTION REGARDING CHECK-
21 POINTS.—The Commissioner of U.S. Customs and Border
22 Protection shall collect data on—

23 (1) the number of permanent and temporary
24 checkpoints utilized by officers of U.S. Customs and
25 Border Protection;

1 (2) the location of each such checkpoint;

2 (3) the dates on which a temporary checkpoint
3 was used; and

4 (4) a description of each such checkpoint, in-
5 cluding the presence of any other law enforcement
6 agencies and the use of law enforcement resources,
7 such as canines and surveillance technologies, in-
8 cluding license plate readers.

9 (c) RULEMAKING.—Not later than 180 days after the
10 date of the enactment of this Act, the Secretary of Home-
11 land Security, in consultation with stakeholders, including
12 research, civil and human rights organizations, shall pro-
13 mulgate regulations relating to the collection and report-
14 ing of data required under subsections (a) and (b), which
15 shall—

16 (1) specify all data to be reported; and

17 (2) provide standards, definitions, and technical
18 specifications to ensure uniform reporting.

19 (d) COMPILATION OF DATA.—

20 (1) DEPARTMENT OF HOMELAND SECURITY
21 LAW ENFORCEMENT OFFICIALS.—The Secretary of
22 Homeland Security shall compile—

23 (A) the data collected under subsection (a)
24 by U.S. Immigration and Customs Enforcement

1 officers and U.S. Customs and Border Protec-
2 tion officers;

3 (B) the data collected under subsection (b)
4 by the Commissioner of U.S. Customs and Bor-
5 der Protection; and

6 (C) an analysis for all incidents inves-
7 tigated by the Department of Homeland Secu-
8 rity's Office of Inspector General, U.S. Customs
9 and Border Protection's Office of Professional
10 Responsibility, or U.S. Immigration and Cus-
11 toms Enforcement's Office of Professional Re-
12 sponsibility to determine whether the data re-
13 quired to be collected under this Act were prop-
14 erly recorded and, if not, the corrective meas-
15 ures that were or will be taken.

16 (2) OTHER LAW ENFORCEMENT OFFICIALS.—
17 The head of each agency, department, or other enti-
18 ty that employs law enforcement officials other than
19 officers referred to in paragraph (1) shall—

20 (A) compile the data collected by such law
21 enforcement officials pursuant to subsection
22 (a); and

23 (B) submit the compiled data to the Sec-
24 retary of Homeland Security.

1 (e) USE OF DATA.—The Secretary of Homeland Se-
2 curity shall consider the data compiled under subsection
3 (d) in making policy and program decisions.

4 (f) AUDIT AND REPORT.—Not later than 1 year after
5 the effective date of the regulations promulgated under
6 subsection (c), the Comptroller General of the United
7 States shall—

8 (1) conduct an audit of the data compiled under
9 subsection (d) to determine whether law enforcement
10 officials are complying with the data collection re-
11 quirements under subsection (a); and

12 (2) submit a report to Congress that contains
13 a summary of the findings of such audit.

14 **SEC. 4. ANNUAL REPORT.**

15 (a) REQUIREMENT.—Not later than 1 year after the
16 effective date of this Act, and annually thereafter, the Sec-
17 retary of Homeland Security shall submit a report to Con-
18 gress on the data compiled under section 3(d), including
19 all such data for the previous year.

20 (b) AVAILABILITY.—Each report submitted under
21 subsection (a) shall be made available to the public, except
22 for particular data if the Secretary—

23 (1) explicitly invokes an exemption contained in
24 paragraphs (1) through (9) of section 552(b) of title
25 5, United States Code; and

1 (2) provides a written explanation for the ex-
2 emption's applicability.

3 (c) PRIVACY.—The Secretary may not report unique
4 personal identifying information of persons stopped,
5 searched, or subjected to a property seizure, for purposes
6 of this section.

7 (d) PUBLICATION.—The data compiled under section
8 3(d) shall be made available to the public to the extent
9 the release of such data is permissible under Federal law.

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