

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2933

To amend the Immigration and Nationality Act to render inadmissible and deportable aliens who have participated in criminal street gangs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2005

Mr. FORBES (for himself, Mr. GALLEGLY, Mrs. JO ANN DAVIS of Virginia, Mr. GOODLATTE, Mr. BOOZMAN, Mr. BURTON of Indiana, Mr. NORWOOD, Mr. DEAL of Georgia, Ms. HARRIS, Ms. GINNY BROWN-WAITE of Florida, Mr. ISSA, Mr. FEENEY, and Mr. KING of Iowa) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to render inadmissible and deportable aliens who have participated in criminal street gangs, 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 TITLE.**

4       This Act may be cited as the “Alien Gang Removal  
5       Act of 2005”.

1 **SEC. 2. RENDERING INADMISSIBLE AND DEPORTABLE**  
2 **ALIENS PARTICIPATING IN CRIMINAL**  
3 **STREET GANGS.**

4 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-  
5 gration and Nationality Act (8 U.S.C. 1182(a)(2)) is  
6 amended by adding at the end the following:

7 “(J) CRIMINAL STREET GANG PARTICIPA-  
8 TION.—

9 “(i) IN GENERAL.—Any alien is inad-  
10 missible if—

11 “(I) the alien has been removed  
12 under section 237(a)(2)(F); or

13 “(II) the consular officer or the  
14 Secretary of Homeland Security  
15 knows, or has reasonable ground to  
16 believe that the alien—

17 “(aa) is a member of a  
18 criminal street gang and has  
19 committed, conspired, or threat-  
20 ened to commit, or seeks to enter  
21 the United States to engage sole-  
22 ly, principally, or incidentally in,  
23 a gang crime or any other unlaw-  
24 ful activity; or

1                   “(bb) is a member of a  
2                   criminal street gang designated  
3                   under section 219A.

4                   “(ii) DEFINITIONS.—For purposes of  
5                   this subparagraph:

6                   “(I) CRIMINAL STREET GANG.—  
7                   The term ‘criminal street gang’ means  
8                   a formal or informal group or associa-  
9                   tion of 3 or more individuals, who  
10                  commit 2 or more gang crimes (one of  
11                  which is a crime of violence, as de-  
12                  fined in section 16 of title 18, United  
13                  States Code) in 2 or more separate  
14                  criminal episodes in relation to the  
15                  group or association.

16                  “(II) GANG CRIME.—The term  
17                  ‘gang crime’ means conduct consti-  
18                  tuting any Federal or State crime,  
19                  punishable by imprisonment for one  
20                  year or more, in any of the following  
21                  categories:

22                         “(aa) A crime of violence (as  
23                         defined in section 16 of title 18,  
24                         United States Code) .

1           “(bb) A crime involving ob-  
2           struction of justice, tampering  
3           with or retaliating against a wit-  
4           ness, victim, or informant, or  
5           burglary.

6           “(cc) A crime involving the  
7           manufacturing, importing, dis-  
8           tributing, possessing with intent  
9           to distribute, or otherwise dealing  
10          in a controlled substance or listed  
11          chemical (as those terms are de-  
12          fined in section 102 of the Con-  
13          trolled Substances Act (21  
14          U.S.C. 802)).

15          “(dd) Any conduct punish-  
16          able under section 844 of title  
17          18, United States Code (relating  
18          to explosive materials), sub-  
19          section (d), (g)(1) (where the un-  
20          derlying conviction is a violent  
21          felony (as defined in section  
22          924(e)(2)(B) of such title) or is a  
23          serious drug offense (as defined  
24          in section 924(e)(2)(A)), (i), (j),  
25          (k), (o), (p), (q), (u), or (x) of

1 section 922 of such title (relating  
2 to unlawful acts), or subsection  
3 (b), (c), (g), (h), (k), (l), (m), or  
4 (n) of section 924 of such title  
5 (relating to penalties), section  
6 930 of such title (relating to pos-  
7 session of firearms and dan-  
8 gerous weapons in Federal facili-  
9 ties), section 931 of such title  
10 (relating to purchase, ownership,  
11 or possession of body armor by  
12 violent felons), sections 1028 and  
13 1029 of such title (relating to  
14 fraud and related activity in con-  
15 nection with identification docu-  
16 ments or access devices), section  
17 1952 of such title (relating to  
18 interstate and foreign travel or  
19 transportation in aid of racket-  
20 eering enterprises), section 1956  
21 of such title (relating to the laun-  
22 dering of monetary instruments),  
23 section 1957 of such title (relat-  
24 ing to engaging in monetary  
25 transactions in property derived

1 from specified unlawful activity),  
2 or sections 2312 through 2315 of  
3 such title (relating to interstate  
4 transportation of stolen motor ve-  
5 hicles or stolen property).

6 “(ee) Any conduct punish-  
7 able under section 274 (relating  
8 to bringing in and harboring cer-  
9 tain aliens), section 277 (relating  
10 to aiding or assisting certain  
11 aliens to enter the United  
12 States), or section 278 (relating  
13 to importation of alien for im-  
14 moral purpose) of this Act.”.

15 (b) DEPORTABLE.—Section 237(a)(2) of the Immi-  
16 gration and Nationality Act (8 U.S.C. 1227(a)(2)) is  
17 amended by adding at the end the following:

18 “(F) CRIMINAL STREET GANG PARTICIPA-  
19 TION.—

20 “(i) IN GENERAL.—Any alien is de-  
21 portable who—

22 “(I) is a member of a criminal  
23 street gang and is convicted of com-  
24 mitting, or conspiring, threatening, or

1 attempting to commit, a gang crime;  
2 or

3 “(II) is determined by the Sec-  
4 retary of Homeland Security to be a  
5 member of a criminal street gang des-  
6 ignated under section 219A.

7 “(ii) DEFINITIONS.—For purposes of  
8 this subparagraph, the terms ‘criminal  
9 street gang’ and ‘gang crime’ have the  
10 meaning given such terms in section  
11 212(a)(2)(J)(ii). ”.

12 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

13 (1) IN GENERAL.—Chapter 2 of title II of the  
14 Immigration and Nationality Act (8 U.S.C. 1181 et  
15 seq.) is amended by adding at the end the following:

16 “DESIGNATION OF CRIMINAL STREET GANGS  
17 “SEC. 219A. (a) DESIGNATION.—

18 “(1) IN GENERAL.—The Attorney General is  
19 authorized to designate a group or association as a  
20 criminal street gang in accordance with this sub-  
21 section if the Attorney General finds that the group  
22 or association meets the criteria described in section  
23 212(a)(2)(J)(ii)(I).

24 “(2) PROCEDURE.—

25 “(A) NOTICE.—

1           “(i) TO CONGRESSIONAL LEADERS.—  
2           Seven days before making a designation  
3           under this subsection, the Attorney Gen-  
4           eral shall, by classified communication, no-  
5           tify the Speaker and Minority Leader of  
6           the House of Representatives, the Presi-  
7           dent pro tempore, Majority Leader, and  
8           Minority Leader of the Senate, and the  
9           members of the relevant committees of the  
10          House of Representatives and the Senate,  
11          in writing, of the intent to designate a  
12          group or association under this subsection,  
13          together with the findings made under  
14          paragraph (1) with respect to that group  
15          or association, and the factual basis there-  
16          for.

17           “(ii) PUBLICATION IN FEDERAL REG-  
18          ISTER.—The Attorney shall publish the  
19          designation in the Federal Register seven  
20          days after providing the notification under  
21          clause (i).

22          “(B) EFFECT OF DESIGNATION.—

23           “(i) A designation under this sub-  
24          section shall take effect upon publication  
25          under subparagraph (A)(ii).



1           “(ii) Any designation under this sub-  
2           section shall cease to have effect upon an  
3           Act of Congress disapproving such des-  
4           ignation.

5           “(3) RECORD.—In making a designation under  
6           this subsection, the Attorney General shall create an  
7           administrative record.

8           “(4) PERIOD OF DESIGNATION.—

9           “(A) IN GENERAL.—A designation under  
10          this subsection shall be effective for all purposes  
11          until revoked under paragraph (5) or (6) or set  
12          aside pursuant to subsection (b).

13          “(B) REVIEW OF DESIGNATION UPON PE-  
14          TITION.—

15          “(i) IN GENERAL.—The Attorney  
16          General shall review the designation of a  
17          criminal street gang under the procedures  
18          set forth in clauses (iii) and (iv) if the des-  
19          ignated gang or association files a petition  
20          for revocation within the petition period  
21          described in clause (ii).

22          “(ii) PETITION PERIOD.—For pur-  
23          poses of clause (i)—

24                  “(I) if the designated gang or as-  
25                  sociation has not previously filed a pe-

1           tition for revocation under this sub-  
2           paragraph, the petition period begins  
3           2 years after the date on which the  
4           designation was made; or

5           “(II) if the designated gang or  
6           association has previously filed a peti-  
7           tion for revocation under this sub-  
8           paragraph, the petition period begins  
9           2 years after the date of the deter-  
10          mination made under clause (iv) on  
11          that petition.

12          “(iii) PROCEDURES.—Any criminal  
13          street gang that submits a petition for rev-  
14          ocation under this subparagraph must pro-  
15          vide evidence in that petition that the rel-  
16          evant circumstances described in para-  
17          graph (1) are sufficiently different from  
18          the circumstances that were the basis for  
19          the designation such that a revocation with  
20          respect to the gang is warranted.

21          “(iv) DETERMINATION.—

22          “(I) IN GENERAL.—Not later  
23          than 180 days after receiving a peti-  
24          tion for revocation submitted under  
25          this subparagraph, the Attorney Gen-

1 eral shall make a determination as to  
2 such revocation.

3 “(II) PUBLICATION OF DETER-  
4 MINATION.—A determination made by  
5 the Attorney General under this  
6 clause shall be published in the Fed-  
7 eral Register.

8 “(III) PROCEDURES.—Any rev-  
9 ocation by the Attorney General shall  
10 be made in accordance with para-  
11 graph (6).

12 “(C) OTHER REVIEW OF DESIGNATION.—

13 “(i) IN GENERAL.—If in a 5-year pe-  
14 riod no review has taken place under sub-  
15 paragraph (B), the Attorney General shall  
16 review the designation of the criminal  
17 street gang in order to determine whether  
18 such designation should be revoked pursu-  
19 ant to paragraph (6).

20 “(ii) PROCEDURES.—If a review does  
21 not take place pursuant to subparagraph  
22 (B) in response to a petition for revocation  
23 that is filed in accordance with that sub-  
24 paragraph, then the review shall be con-  
25 ducted pursuant to procedures established

1 by the Attorney General. The results of  
2 such review and the applicable procedures  
3 shall not be reviewable in any court.

4 “(iii) PUBLICATION OF RESULTS OF  
5 REVIEW.—The Attorney General shall pub-  
6 lish any determination made pursuant to  
7 this subparagraph in the Federal Register.

8 “(5) REVOCATION BY ACT OF CONGRESS.—The  
9 Congress, by an Act of Congress, may block or re-  
10 voke a designation made under paragraph (1).

11 “(6) REVOCATION BASED ON CHANGE IN CIR-  
12 CUMSTANCES.—

13 “(A) IN GENERAL.—The Attorney General  
14 may revoke a designation made under para-  
15 graph (1) at any time, and shall revoke a des-  
16 ignation upon completion of a review conducted  
17 pursuant to subparagraphs (B) and (C) of  
18 paragraph (4) if the Attorney General finds  
19 that—

20 “(i) the circumstances that were the  
21 basis for the designation have changed in  
22 such a manner as to warrant revocation; or

23 “(ii) the national security of the  
24 United States warrants a revocation.

1           “(B) PROCEDURE.—The procedural re-  
2           quirements of paragraphs (2) and (3) shall  
3           apply to a revocation under this paragraph. Any  
4           revocation shall take effect on the date specified  
5           in the revocation or upon publication in the  
6           Federal Register if no effective date is specified.

7           “(7) EFFECT OF REVOCATION.—The revocation  
8           of a designation under paragraph (5) or (6) shall  
9           not affect any action or proceeding based on conduct  
10          committed prior to the effective date of such revoca-  
11          tion.

12          “(8) USE OF DESIGNATION IN HEARING.—If a  
13          designation under this subsection has become effec-  
14          tive under paragraph (2)(B) an alien in a removal  
15          proceeding shall not be permitted to raise any ques-  
16          tion concerning the validity of the issuance of such  
17          designation as a defense or an objection at any hear-  
18          ing.

19          “(b) JUDICIAL REVIEW OF DESIGNATION.—

20                 “(1) IN GENERAL.—Not later than 30 days  
21                 after publication of the designation in the Federal  
22                 Register, an group or association designated as a  
23                 criminal street gang may seek judicial review of the  
24                 designation in the United States Court of Appeals  
25                 for the District of Columbia Circuit.

1           “(2) BASIS OF REVIEW.—Review under this  
2 subsection shall be based solely upon the administra-  
3 tive record.

4           “(3) SCOPE OF REVIEW.—The Court shall hold  
5 unlawful and set aside a designation the court finds  
6 to be—

7                   “(A) arbitrary, capricious, an abuse of dis-  
8 cretion, or otherwise not in accordance with  
9 law;

10                   “(B) contrary to constitutional right,  
11 power, privilege, or immunity;

12                   “(C) in excess of statutory jurisdiction, au-  
13 thority, or limitation, or short of statutory  
14 right;

15                   “(D) lacking substantial support in the ad-  
16 ministrative record taken as a whole; or

17                   “(E) not in accord with the procedures re-  
18 quired by law.

19           “(4) JUDICIAL REVIEW INVOKED.—The pend-  
20 ency of an action for judicial review of a designation  
21 shall not affect the application of this section, unless  
22 the court issues a final order setting aside the des-  
23 ignation.

24           “(c) RELEVANT COMMITTEE DEFINED.—As used in  
25 this section, the term ‘relevant committees’ means the

1 Committees on the Judiciary of the House of Representa-  
2 tives and of the Senate.”.

3 (2) CLERICAL AMENDMENT.—The table of con-  
4 tents for the Immigration and Nationality Act (8  
5 U.S.C. 1101 et seq.) is amended by inserting after  
6 the item relating to section 219 the following:

“Sec. 219A. Designation of criminal street gangs.”.

7 **SEC. 3. MANDATORY DETENTION OF SUSPECTED CRIMINAL**  
8 **STREET GANG MEMBERS.**

9 (a) IN GENERAL.—Section 236(c)(1)(D) of the Im-  
10 migration and Nationality Act (8 U.S.C. 1226(c)(1)(D))  
11 is amended—

12 (1) by inserting “or 212(a)(2)(J)” after  
13 “212(a)(3)(B)”; and

14 (2) by inserting “or 237(a)(2)(F)” before  
15 “237(a)(4)(B)”.

16 (b) ANNUAL REPORT.—Not later than March 1 of  
17 each year (beginning 1 year after the date of the enact-  
18 ment of this Act), the Secretary of Homeland Security,  
19 after consultation with the appropriate Federal agencies,  
20 shall submit a report to the Committees on the Judiciary  
21 of the House of Representatives and of the Senate on the  
22 number of aliens detained under the amendments made  
23 by subsection (a).

1 **SEC. 4. INELIGIBILITY FROM PROTECTION FROM REMOVAL**  
2 **AND ASYLUM.**

3 (a) INAPPLICABILITY OF RESTRICTION ON REMOVAL  
4 TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the  
5 Immigration and Nationality Act (8 U.S.C.  
6 1251(b)(3)(B)) is amended, in the matter preceding  
7 clause (i), by inserting “who is described in section  
8 212(a)(2)(J)(i) or section 237(a)(2)(F)(i) or who is” after  
9 “to an alien”.

10 (b) INELIGIBILITY FOR ASYLUM.—Section  
11 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is  
12 amended—

13 (1) in clause (v), by striking “or” at the end;

14 (2) by redesignating clause (vi) as clause (vii);

15 and

16 (3) by inserting after clause (v) the following:

17 “(vi) the alien is described in section  
18 212(a)(2)(J)(i) or section 237(a)(2)(F)(i)  
19 (relating to participation in criminal street  
20 gangs); or”.

21 (c) DENIAL OF REVIEW OF DETERMINATION OF IN-  
22 ELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—  
23 Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is  
24 amended by adding at the end the following:

25 “(C) LIMITATION ON JUDICIAL REVIEW.—

26 There shall be no judicial review of any finding



1           under subparagraph (B) that an alien is in de-  
2           scribed in section 208(b)(2)(A)(vi).”.

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