

109TH CONGRESS
1ST 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.

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

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).”.

○