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.

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

SECTION 1. SHORT TITLE.

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

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. FENEY, and Mr. KING of Iowa) introduced the following bill; which was referred to the Committee on the Judiciary

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.
SEC. 2. RENDERING INADMISSIBLE AND DEPORTABLE

ALIENS PARTICIPATING IN CRIMINAL

STREET GANGS.

(a) INADMISSIBLE.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

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

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

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

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

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

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

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

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

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

“(aa) A crime of violence (as
defined in section 16 of title 18,
United States Code).
“(bb) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

“(cc) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

“(dd) Any conduct punishable under section 844 of title 18, United States Code (relating to explosive materials), subsection (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of such title) or is a serious drug offense (as defined in section 924(e)(2)(A)), (i), (j), (k), (o), (p), (q), (u), or (x) of
section 922 of such title (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 of such title (relating to penalties), section 930 of such title (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 of such title (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 of such title (relating to fraud and related activity in connection with identification documents or access devices), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived
from specified unlawful activity),
or sections 2312 through 2315 of
such title (relating to interstate
transportation of stolen motor ve-
hicles or stolen property).

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

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

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

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

“(I) is a member of a criminal
street gang and is convicted of com-
mitting, or conspiring, threatening, or
attempting to commit, a gang crime;
or
“(II) is determined by the Secretary of Homeland Security to be a member of a criminal street gang designated under section 219A.
“(ii) DEFINITIONS.—For purposes of this subparagraph, the terms ‘criminal street gang’ and ‘gang crime’ have the meaning given such terms in section 212(a)(2)(J)(ii).”.

(c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

“DETECTION OF CRIMINAL STREET GANGS

“Sec. 219A. (a) DESIGNATION.—

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

“(A) NOTICE.—
“(i) To congressional leaders.—

Seven days before making a designation under this subsection, the Attorney General shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group or association under this subsection, together with the findings made under paragraph (1) with respect to that group or association, and the factual basis therefore.

“(ii) Publication in Federal Register.—The Attorney shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

“(B) Effect of designation.—

“(i) A designation under this subsection shall take effect upon publication under subparagraph (A)(ii).
“(ii) Any designation under this subsection shall cease to have effect upon an
Act of Congress disapproving such designation.

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

“(4) PERIOD OF DESIGNATION.—

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

“(B) REVIEW OF DESIGNATION UPON PETITION.—

“(i) IN GENERAL.—The Attorney General shall review the designation of a criminal street gang under the procedures set forth in clauses (iii) and (iv) if the designated gang or association files a petition for revocation within the petition period described in clause (ii).

“(ii) PETITION PERIOD.—For purposes of clause (i)—

“(I) if the designated gang or association has not previously filed a pe-
tition for revocation under this sub-
paragraph, the petition period begins
2 years after the date on which the
designation was made; or

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

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

“(iv) DETERMINATION.—

“(I) IN GENERAL.—Not later
than 180 days after receiving a peti-
tion for revocation submitted under
this subparagraph, the Attorney Gen-
eral shall make a determination as to such revocation.

“(II) Publication of Determination.—A determination made by the Attorney General under this clause shall be published in the Federal Register.

“(III) Procedures.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).

“(C) Other Review of Designation.—

“(i) In General.—If in a 5-year period no review has taken place under subparagraph (B), the Attorney General shall review the designation of the criminal street gang in order to determine whether such designation should be revoked pursuant to paragraph (6).

“(ii) Procedures.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established
by the Attorney General. The results of such review and the applicable procedures shall not be reviewable in any court.

“(iii) Publication of results of review.—The Attorney General shall publish any determination made pursuant to this subparagraph in the Federal Register.

“(5) Revocation by act of Congress.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

“(6) Revocation based on change in circumstances.—

“(A) In general.—The Attorney General may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Attorney General finds that—

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

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

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

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

“(b) JUDICIAL REVIEW OF DESIGNATION.—

“(1) IN GENERAL.—Not later than 30 days
after publication of the designation in the Federal
Register, an group or association designated as a
criminal street gang may seek judicial review of the
designation in the United States Court of Appeals
for the District of Columbia Circuit.
“(2) Basis of review.—Review under this subsection shall be based solely upon the administrative record.

“(3) Scope of review.—The Court shall hold unlawful and set aside a designation the court finds to be—

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

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

“(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

“(D) lacking substantial support in the administrative record taken as a whole; or

“(E) not in accord with the procedures required by law.

“(4) Judicial review invoked.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

“(c) Relevant Committee Defined.—As used in this section, the term ‘relevant committees’ means the
Committees on the Judiciary of the House of Representatives and of the Senate.”.

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

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

SEC. 3. MANDATORY DETENTION OF SUSPECTED CRIMINAL STREET GANG MEMBERS.

(a) IN GENERAL.—Section 236(c)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)(D)) is amended—

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

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

(b) ANNUAL REPORT.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate Federal agencies, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by subsection (a).
SEC. 4. INELIGIBILITY FROM PROTECTION FROM REMOVAL AND ASYLUM.

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

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

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

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

and

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

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

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

“(C) LIMITATION ON JUDICIAL REVIEW.—

There shall be no judicial review of any finding
under subparagraph (B) that an alien is described in section 208(b)(2)(A)(vi).”.