

115TH CONGRESS
1ST SESSION

H. R. 3697

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2017

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the Immigration and Nationality Act with respect to aliens associated with criminal 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Criminal Alien Gang
3 Member Removal Act”.

4 **SEC. 2. GROUNDS OF INADMISSIBILITY AND DEPORT-**
5 **ABILITY FOR ALIEN GANG MEMBERS.**

6 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
7 of the Immigration and Nationality Act (8 U.S.C.
8 1101(a)) is amended by adding at the end the following:

9 “(53) The term ‘criminal gang’ means an ongoing
10 group, club, organization, or association of 5 or more per-
11 sons that has as one of its primary purposes the commis-
12 sion of 1 or more of the following criminal offenses and
13 the members of which engage, or have engaged within the
14 past 5 years, in a continuing series of such offenses, or
15 that has been designated as a criminal gang by the Sec-
16 retary of Homeland Security, in consultation with the At-
17 torney General, as meeting these criteria. The offenses de-
18 scribed, whether in violation of Federal or State law or
19 foreign law and regardless of whether the offenses oc-
20 curred before, on, or after the date of the enactment of
21 this paragraph, are the following:

22 “(A) A ‘felony drug offense’ (as defined in sec-
23 tion 102 of the Controlled Substances Act (21
24 U.S.C. 802)).

25 “(B) An offense under section 274 (relating to
26 bringing in and harboring certain aliens), section

1 277 (relating to aiding or assisting certain aliens to
2 enter the United States), or section 278 (relating to
3 importation of alien for immoral purpose).

4 “(C) A crime of violence (as defined in section
5 16 of title 18, United States Code).

6 “(D) A crime involving obstruction of justice,
7 tampering with or retaliating against a witness, vic-
8 tim, or informant, or burglary.

9 “(E) Any conduct punishable under sections
10 1028 and 1029 of title 18, United States Code (re-
11 lating to fraud and related activity in connection
12 with identification documents or access devices), sec-
13 tions 1581 through 1594 of such title (relating to
14 peonage, slavery, and trafficking in persons), section
15 1951 of such title (relating to interference with com-
16 merce by threats or violence), section 1952 of such
17 title (relating to interstate and foreign travel or
18 transportation in aid of racketeering enterprises),
19 section 1956 of such title (relating to the laundering
20 of monetary instruments), section 1957 of such title
21 (relating to engaging in monetary transactions in
22 property derived from specified unlawful activity), or
23 sections 2312 through 2315 of such title (relating to
24 interstate transportation of stolen motor vehicles or
25 stolen property).

1 “(F) A conspiracy to commit an offense de-
2 scribed in subparagraphs (A) through (E).”.

3 (b) INADMISSIBILITY.—Section 212(a)(2) of such Act
4 (8 U.S.C. 1182(a)(2)) is amended by adding at the end
5 the following:

6 “(J) ALIENS ASSOCIATED WITH CRIMINAL
7 GANGS.—Any alien is inadmissible who a con-
8 sular officer, the Secretary of Homeland Secu-
9 rity, or the Attorney General knows or has rea-
10 son to believe—

11 “(i) to be or to have been a member
12 of a criminal gang (as defined in section
13 101(a)(53)); or

14 “(ii) to have participated in the activi-
15 ties of a criminal gang (as defined in sec-
16 tion 101(a)(53)), knowing or having reason
17 to know that such activities will promote,
18 further, aid, or support the illegal activity
19 of the criminal gang.”.

20 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-
21 migration and Nationality Act (8 U.S.C. 1227(a)(2)) is
22 amended by adding at the end the following:

23 “(G) ALIENS ASSOCIATED WITH CRIMINAL
24 GANGS.—Any alien is deportable who—

1 “(i) is or has been a member of a
2 criminal gang (as defined in section
3 101(a)(53)); or

4 “(ii) has participated in the activities
5 of a criminal gang (as so defined), knowing
6 or having reason to know that such activi-
7 ties will promote, further, aid, or support
8 the illegal activity of the criminal gang.”.

9 (d) DESIGNATION.—

10 (1) IN GENERAL.—Chapter 2 of title II of the
11 Immigration and Nationality Act (8 U.S.C. 1182) is
12 amended by inserting after section 219 the fol-
13 lowing:

14 “DESIGNATION OF CRIMINAL GANG

15 “SEC. 220. (a) DESIGNATION.—

16 “(1) IN GENERAL.—The Secretary of Homeland Se-
17 curity, in consultation with the Attorney General, may
18 designate a group, club, organization, or association of 5
19 or more persons as a criminal gang if the Secretary finds
20 that their conduct is described in section 101(a)(53).

21 “(2) PROCEDURE.—

22 “(A) NOTIFICATION.—Seven days before mak-
23 ing a designation under this subsection, the Sec-
24 retary shall, by classified communication, notify the
25 Speaker and Minority Leader of the House of Rep-
26 resentatives, the President pro tempore, Majority

1 Leader, and Minority Leader of the Senate, and the
2 members of the relevant committees of the House of
3 Representatives and the Senate, in writing, of the
4 intent to designate a group, club, organization, or
5 association of 5 or more persons under this sub-
6 section and the factual basis therefor.

7 “(B) PUBLICATION IN THE FEDERAL REG-
8 ISTER.—The Secretary shall publish the designation
9 in the Federal Register seven days after providing
10 the notification under subparagraph (A).

11 “(3) RECORD.—

12 “(A) IN GENERAL.—In making a designation
13 under this subsection, the Secretary shall create an
14 administrative record.

15 “(B) CLASSIFIED INFORMATION.—The Sec-
16 retary may consider classified information in making
17 a designation under this subsection. Classified infor-
18 mation shall not be subject to disclosure for such
19 time as it remains classified, except that such infor-
20 mation may be disclosed to a court ex parte and in
21 camera for purposes of judicial review under sub-
22 section (c).

23 “(4) PERIOD OF DESIGNATION.—

24 “(A) IN GENERAL.—A designation under this
25 subsection shall be effective for all purposes until re-

1 voked under paragraph (5) or (6) or set aside pursu-
2 ant to subsection (c).

3 “(B) REVIEW OF DESIGNATION UPON PETI-
4 TION.—

5 “(i) IN GENERAL.—The Secretary shall re-
6 view the designation of a criminal gang under
7 the procedures set forth in clauses (iii) and (iv)
8 if the designated group, club, organization, or
9 association of 5 or more persons files a petition
10 for revocation within the petition period de-
11 scribed in clause (ii).

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

14 “(I) if the designated group, club, or-
15 ganization, or association of 5 or more per-
16 sons has not previously filed a petition for
17 revocation under this subparagraph, the
18 petition period begins 2 years after the
19 date on which the designation was made;
20 or

21 “(II) if the designated group, club, or-
22 ganization, or association of 5 or more per-
23 sons has previously filed a petition for rev-
24 ocation under this subparagraph, the peti-
25 tion period begins 2 years after the date of

1 the determination made under clause (iv)
2 on that petition.

3 “(iii) PROCEDURES.—Any group, club, or-
4 ganization, or association of 5 or more persons
5 that submits a petition for revocation under
6 this subparagraph of its designation as a crimi-
7 nal gang must provide evidence in that petition
8 that it is not described in section 101(a)(53).

9 “(iv) DETERMINATION.—

10 “(I) IN GENERAL.—Not later than
11 180 days after receiving a petition for rev-
12 ocation submitted under this subpara-
13 graph, the Secretary shall make a deter-
14 mination as to such revocation.

15 “(II) CLASSIFIED INFORMATION.—
16 The Secretary may consider classified in-
17 formation in making a determination in re-
18 sponse to a petition for revocation. Classi-
19 fied information shall not be subject to dis-
20 closure for such time as it remains classi-
21 fied, except that such information may be
22 disclosed to a court ex parte and in camera
23 for purposes of judicial review under sub-
24 section (c).

1 “(III) PUBLICATION OF DETERMINA-
2 TION.—A determination made by the Sec-
3 retary under this clause shall be published
4 in the Federal Register.

5 “(IV) PROCEDURES.—Any revocation
6 by the Secretary shall be made in accord-
7 ance with paragraph (6).

8 “(C) OTHER REVIEW OF DESIGNATION.—

9 “(i) IN GENERAL.—If in a 5-year period no
10 review has taken place under subparagraph (B),
11 the Secretary shall review the designation of the
12 criminal gang in order to determine whether
13 such designation should be revoked pursuant to
14 paragraph (6).

15 “(ii) PROCEDURES.—If a review does not
16 take place pursuant to subparagraph (B) in re-
17 sponse to a petition for revocation that is filed
18 in accordance with that subparagraph, then the
19 review shall be conducted pursuant to proce-
20 dures established by the Secretary. The results
21 of such review and the applicable procedures
22 shall not be reviewable in any court.

23 “(iii) PUBLICATION OF RESULTS OF RE-
24 VIEW.—The Secretary shall publish any deter-

1 mination made pursuant to this subparagraph
2 in the Federal Register.

3 “(5) REVOCATION BY ACT OF CONGRESS.—The Con-
4 gress, by an Act of Congress, may block or revoke a des-
5 ignation made under paragraph (1).

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

8 “(A) IN GENERAL.—The Secretary may revoke
9 a designation made under paragraph (1) at any
10 time, and shall revoke a designation upon completion
11 of a review conducted pursuant to subparagraphs
12 (B) and (C) of paragraph (4) if the Secretary finds
13 that—

14 “(i) the group, club, organization, or asso-
15 ciation of 5 or more persons that has been des-
16 ignated as a criminal gang is no longer de-
17 scribed in section 101(a)(53); or

18 “(ii) the national security or the law en-
19 forcement interests of the United States war-
20 rants a revocation.

21 “(B) PROCEDURE.—The procedural require-
22 ments of paragraphs (2) and (3) shall apply to a
23 revocation under this paragraph. Any revocation
24 shall take effect on the date specified in the revoca-

1 tion or upon publication in the Federal Register if
2 no effective date is specified.

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

7 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
8 ING.—If a designation under this subsection has become
9 effective under paragraph (2) an alien in a removal pro-
10 ceeding shall not be permitted to raise any question con-
11 cerning the validity of the issuance of such designation
12 as a defense or an objection.

13 “(b) AMENDMENTS TO A DESIGNATION.—

14 “(1) IN GENERAL.—The Secretary may amend
15 a designation under this subsection if the Secretary
16 finds that the group, club, organization, or associa-
17 tion of 5 or more persons has changed its name,
18 adopted a new alias, dissolved and then reconsti-
19 tuted itself under a different name or names, or
20 merged with another group, club, organization, or
21 association of 5 or more persons.

22 “(2) PROCEDURE.—Amendments made to a
23 designation in accordance with paragraph (1) shall
24 be effective upon publication in the Federal Register.
25 Paragraphs (2), (4), (5), (6), (7), and (8) of sub-

1 section (a) shall also apply to an amended designa-
2 tion.

3 “(3) ADMINISTRATIVE RECORD.—The adminis-
4 trative record shall be corrected to include the
5 amendments as well as any additional relevant infor-
6 mation that supports those amendments.

7 “(4) CLASSIFIED INFORMATION.—The Sec-
8 retary may consider classified information in amend-
9 ing a designation in accordance with this subsection.
10 Classified information shall not be subject to disclo-
11 sure for such time as it remains classified, except
12 that such information may be disclosed to a court ex
13 parte and in camera for purposes of judicial review
14 under subsection (c) of this section.

15 “(c) JUDICIAL REVIEW OF DESIGNATION.—

16 “(1) IN GENERAL.—Not later than 30 days
17 after publication in the Federal Register of a des-
18 ignation, an amended designation, or a determina-
19 tion in response to a petition for revocation, the des-
20 ignated group, club, organization, or association of 5
21 or more persons may seek judicial review in the
22 United States Court of Appeals for the District of
23 Columbia Circuit.

24 “(2) BASIS OF REVIEW.—Review under this
25 subsection shall be based solely upon the administra-

1 tive record, except that the Government may submit,
2 for ex parte and in camera review, classified infor-
3 mation used in making the designation, amended
4 designation, or determination in response to a peti-
5 tion for revocation.

6 “(3) SCOPE OF REVIEW.—The Court shall hold
7 unlawful and set aside a designation, amended des-
8 ignation, or determination in response to a petition
9 for revocation the court finds to be—

10 “(A) arbitrary, capricious, an abuse of dis-
11 cretion, or otherwise not in accordance with
12 law;

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

15 “(C) in excess of statutory jurisdiction, au-
16 thority, or limitation, or short of statutory
17 right;

18 “(D) lacking substantial support in the ad-
19 ministrative record taken as a whole or in clas-
20 sified information submitted to the court under
21 paragraph (2); or

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

24 “(4) JUDICIAL REVIEW INVOKED.—The pend-
25 ency of an action for judicial review of a designation,

1 amended designation, or determination in response
2 to a petition for revocation shall not affect the appli-
3 cation of this section, unless the court issues a final
4 order setting aside the designation, amended des-
5 ignation, or determination in response to a petition
6 for revocation.

7 “(d) DEFINITIONS.—As used in this section—

8 “(1) the term ‘classified information’ has the
9 meaning given that term in section 1(a) of the Clas-
10 sified Information Procedures Act (18 U.S.C. App.);

11 “(2) the term ‘national security’ means the na-
12 tional defense, foreign relations, or economic inter-
13 ests of the United States;

14 “(3) the term ‘relevant committees’ means the
15 Committees on the Judiciary of the Senate and of
16 the House of Representatives; and

17 “(4) the term ‘Secretary’ means the Secretary
18 of Homeland Security, in consultation with the At-
19 torney General.”.

20 (2) CLERICAL AMENDMENT.—The table of con-
21 tents for such Act is amended by inserting after the
22 item relating to section 219 the following:

“Sec. 220. Designation.”.

23 (e) MANDATORY DETENTION OF CRIMINAL GANG
24 MEMBERS.—

1 (1) IN GENERAL.—Section 236(c)(1) of the Im-
2 migration and Nationality Act (8 U.S.C. 1226(c)(1))
3 is amended—

4 (A) in subparagraph (C), by striking “or”
5 at the end;

6 (B) in subparagraph (D), by inserting
7 “or” at the end; and

8 (C) by inserting after subparagraph (D)
9 the following:

10 “(E) is inadmissible under section
11 212(a)(2)(J) or deportable under section
12 217(a)(2)(G),”.

13 (2) ANNUAL REPORT.—Not later than March 1
14 of each year (beginning 1 year after the date of the
15 enactment of this Act), the Secretary of Homeland
16 Security, after consultation with the appropriate
17 Federal agencies, shall submit a report to the Com-
18 mittees on the Judiciary of the House of Represent-
19 atives and of the Senate on the number of aliens de-
20 tained under the amendments made by paragraph
21 (1).

22 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-
23 ATION.—

24 (1) INAPPLICABILITY OF RESTRICTION ON RE-
25 MOVAL TO CERTAIN COUNTRIES.—Section

1 241(b)(3)(B) of the Immigration and Nationality
2 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
3 matter preceding clause (i), by inserting “who is de-
4 scribed in section 212(a)(2)(J)(i) or section
5 237(a)(2)(G)(i) or who is” after “to an alien”.

6 (2) INELIGIBILITY FOR ASYLUM.—Section
7 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
8 (as amended by section 201 of this Act) is further
9 amended—

10 (A) in clause (v), by striking “or” at the
11 end;

12 (B) by redesignating clause (vi) as clause
13 (vii); and

14 (C) by inserting after clause (v) the fol-
15 lowing:

16 “(vi) the alien is described in section
17 212(a)(2)(J)(i) or section 237(a)(2)(G)(i);
18 or”.

19 (g) TEMPORARY PROTECTED STATUS.—Section 244
20 of such Act (8 U.S.C. 1254a) is amended—

21 (1) by striking “Attorney General” each place
22 it appears and inserting “Secretary of Homeland Se-
23 curity”;

24 (2) in subparagraph (c)(2)(B)—

1 (A) in clause (i), by striking “or” at the
2 end;

3 (B) in clause (ii), by striking the period
4 and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(iii) the alien is, or at any time has
7 been, described in section 212(a)(2)(J) or
8 section 237(a)(2)(G).”; and

9 (3) in subsection (d)—

10 (A) by striking paragraph (3); and

11 (B) in paragraph (4), by adding at the end
12 the following: “The Secretary of Homeland Se-
13 curity may detain an alien provided temporary
14 protected status under this section whenever
15 appropriate under any other provision of law.”.

16 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
17 101(a)(27)(J)(iii) of the Immigration and Nationality Act
18 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

19 (1) in subclause (I), by striking “and”;

20 (2) in subclause (II), by adding “and” at the
21 end; and

22 (3) by adding at the end the following:

23 “(III) no alien who is, or at any
24 time has been, described in section
25 212(a)(2)(J) or section 237(a)(2)(G)

1 shall be eligible for any immigration
2 benefit under this subparagraph;”.

3 (i) PAROLE.—An alien described in section
4 212(a)(2)(J) of the Immigration and Nationality Act, as
5 added by subsection (b), shall not be eligible for parole
6 under section 212(d)(5)(A) of such Act unless—

7 (1) the alien is assisting or has assisted the
8 United States Government in a law enforcement
9 matter, including a criminal investigation; and

10 (2) the alien’s presence in the United States is
11 required by the Government with respect to such as-
12 sistance.

13 (j) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date of the enactment
15 of this Act and shall apply to acts that occur before, on,
16 or after the date of the enactment of this Act.

Passed the House of Representatives September 14,
2017.

Attest:

KAREN L. HAAS,
Clerk.