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2^D SESSION

H. R. 6094

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2006

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

AN ACT

To restore the Secretary of Homeland Security's authority to detain dangerous aliens, to ensure the removal of deportable criminal aliens, and combat alien gang crime.

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 “Community Protection
3 Act of 2006”.

4 **TITLE I—DANGEROUS ALIEN**
5 **DETENTION ACT OF 2006**

6 **SEC. 101. DETENTION OF DANGEROUS ALIENS.**

7 Section 241(a) of the Immigration and Nationality
8 Act (8 U.S.C. 1231(a)) is amended—

9 (1) by striking “Attorney General” each place
10 it appears, except for the first reference in para-
11 graph (4)(B)(i), and inserting “Secretary of Home-
12 land Security”;

13 (2) in paragraph (1), by adding at the end of
14 subparagraph (B) the following:

15 “If, at that time, the alien is not in the custody
16 of the Secretary of Homeland Security (under
17 the authority of this Act), the Secretary shall
18 take the alien into custody for removal, and the
19 removal period shall not begin until the alien is
20 taken into such custody. If the Secretary trans-
21 fers custody of the alien during the removal pe-
22 riod pursuant to law to another Federal agency
23 or a State or local government agency in con-
24 nection with the official duties of such agency,
25 the removal period shall be tolled, and shall
26 begin anew on the date of the alien’s return to

1 the custody of the Secretary, subject to clause
2 (ii).”;

3 (3) by amending clause (ii) of paragraph (1)(B)
4 to read as follows:

5 “(ii) If a court, the Board of Immi-
6 gration Appeals, or an immigration judge
7 orders a stay of the removal of the alien,
8 the date the stay of removal is no longer
9 in effect.”;

10 (4) by amending paragraph (1)(C) to read as
11 follows:

12 “(C) SUSPENSION OF PERIOD.—The re-
13 moval period shall be extended beyond a period
14 of 90 days and the alien may remain in deten-
15 tion during such extended period if the alien
16 fails or refuses to make all reasonable efforts to
17 comply with the removal order, or to fully co-
18 operate with the Secretary of Homeland Secu-
19 rity’s efforts to establish the alien’s identity and
20 carry out the removal order, including making
21 timely application in good faith for travel or
22 other documents necessary to the alien’s depar-
23 ture, or conspires or acts to prevent the alien’s
24 removal subject to an order of removal.”;

1 (5) in paragraph (2), by adding at the end the
2 following: “If a court, the Board of Immigration Ap-
3 peals, or an immigration judge orders a stay of re-
4 moval of an alien who is subject to an administra-
5 tively final order of removal, the Secretary, in the
6 exercise of the Secretary’s discretion, may detain the
7 alien during the pendency of such stay of removal.”;

8 (6) by amending paragraph (3)(D) to read as
9 follows:

10 “(D) to obey reasonable restrictions on the
11 alien’s conduct or activities, or perform affirma-
12 tive acts, that the Secretary of Homeland Secu-
13 rity prescribes for the alien, in order to prevent
14 the alien from absconding, or for the protection
15 of the community, or for other purposes related
16 to the enforcement of the immigration laws.”;

17 (7) in paragraph (6), by striking “removal pe-
18 riod and, if released,” and inserting “removal period,
19 in the discretion of the Secretary of Homeland Secu-
20 rity, without any limitations other than those speci-
21 fied in this section, until the alien is removed. If an
22 alien is released, the alien”;

23 (8) by redesignating paragraph (7) as para-
24 graph (10) and inserting after paragraph (6) the fol-
25 lowing:

1 “(7) PAROLE.—If an alien detained pursuant to
2 paragraph (6) is an applicant for admission, the
3 Secretary of Homeland Security, in the Secretary’s
4 discretion, may parole the alien under section
5 212(d)(5) and may provide, notwithstanding such
6 section, that the alien shall not be returned to cus-
7 tody unless either the alien violates the conditions of
8 the alien’s parole or the alien’s removal becomes rea-
9 sonably foreseeable, but in no circumstance shall
10 such alien be considered admitted.

11 “(8) ADDITIONAL RULES FOR DETENTION OR
12 RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN
13 ENTRY.—The following procedures apply only with
14 respect to an alien who has effected an entry into
15 the United States. These procedures do not apply to
16 any other alien detained pursuant to paragraph (6):

17 “(A) ESTABLISHMENT OF A DETENTION
18 REVIEW PROCESS FOR ALIENS WHO FULLY CO-
19 OPERATE WITH REMOVAL.—For an alien who
20 has made all reasonable efforts to comply with
21 a removal order and to cooperate fully with the
22 Secretary of Homeland Security’s efforts to es-
23 tablish the alien’s identity and carry out the re-
24 moval order, including making timely applica-
25 tion in good faith for travel or other documents

1 necessary to the alien's departure, and has not
2 conspired or acted to prevent removal, the Sec-
3 retary shall establish an administrative review
4 process to determine whether the alien should
5 be detained or released on conditions. The Sec-
6 retary shall make a determination whether to
7 release an alien after the removal period in ac-
8 cordance with subparagraph (B). The deter-
9 mination shall include consideration of any evi-
10 dence submitted by the alien, and may include
11 consideration of any other evidence, including
12 any information or assistance provided by the
13 Secretary of State or other Federal official and
14 any other information available to the Secretary
15 of Homeland Security pertaining to the ability
16 to remove the alien.

17 “(B) AUTHORITY TO DETAIN BEYOND THE
18 REMOVAL PERIOD.—

19 “(i) IN GENERAL.—The Secretary of
20 Homeland Security, in the exercise of the
21 Secretary's discretion, without any limita-
22 tions other than those specified in this sec-
23 tion, may continue to detain an alien for
24 90 days beyond the removal period (includ-

1 ing any extension of the removal period as
2 provided in paragraph (1)(C)).

3 “(ii) SPECIFIC CIRCUMSTANCES.—The
4 Secretary of Homeland Security, in the ex-
5 ercise of the Secretary’s discretion, without
6 any limitations other than those specified
7 in this section, may continue to detain an
8 alien beyond the 90 days authorized in
9 clause (i)—

10 “(I) until the alien is removed, if
11 the Secretary determines that there is
12 a significant likelihood that the
13 alien—

14 “(aa) will be removed in the
15 reasonably foreseeable future; or

16 “(bb) would be removed in
17 the reasonably foreseeable future,
18 or would have been removed, but
19 for the alien’s failure or refusal
20 to make all reasonable efforts to
21 comply with the removal order,
22 or to cooperate fully with the
23 Secretary’s efforts to establish
24 the aliens’ identity and carry out
25 the removal order, including

1 making timely application in
2 good faith for travel or other doc-
3 uments necessary to the alien’s
4 departure, or conspiracies or acts
5 to prevent removal;

6 “(II) until the alien is removed,
7 if the Secretary of Homeland Security
8 certifies in writing—

9 “(aa) in consultation with
10 the Secretary of Health and
11 Human Services, that the alien
12 has a highly contagious disease
13 that poses a threat to public safe-
14 ty;

15 “(bb) after receipt of a writ-
16 ten recommendation from the
17 Secretary of State, that release
18 of the alien is likely to have seri-
19 ous adverse foreign policy con-
20 sequences for the United States;

21 “(cc) based on information
22 available to the Secretary of
23 Homeland Security (including
24 classified, sensitive, or national
25 security information, and without

1 regard to the grounds upon
2 which the alien was ordered re-
3 moved), that there is reason to
4 believe that the release of the
5 alien would threaten the national
6 security of the United States; or

7 “(dd) that the release of the
8 alien will threaten the safety of
9 the community or any person,
10 conditions of release cannot rea-
11 sonably be expected to ensure the
12 safety of the community or any
13 person, and either (AA) the alien
14 has been convicted of one or
15 more aggravated felonies (as de-
16 fined in section 101(a)(43)(A))
17 or of one or more crimes identi-
18 fied by the Secretary of Home-
19 land Security by regulation, or of
20 one or more attempts or conspir-
21 acies to commit any such aggra-
22 vated felonies or such identified
23 crimes, if the aggregate term of
24 imprisonment for such attempts
25 or conspiracies is at least 5

1 years; or (BB) the alien has com-
2 mitted one or more crimes of vio-
3 lence (as defined in section 16 of
4 title 18, United States Code, but
5 not including a purely political
6 offense) and, because of a mental
7 condition or personality disorder
8 and behavior associated with that
9 condition or disorder, the alien is
10 likely to engage in acts of vio-
11 lence in the future; or

12 “(ee) that the release of the
13 alien will threaten the safety of
14 the community or any person,
15 conditions of release cannot rea-
16 sonably be expected to ensure the
17 safety of the community or any
18 person, and the alien has been
19 convicted of at least one aggra-
20 vated felony (as defined in sec-
21 tion 101(a)(43)); or

22 “(III) pending a determination
23 under subclause (II), so long as the
24 Secretary of Homeland Security has
25 initiated the administrative review

1 process not later than 30 days after
2 the expiration of the removal period
3 (including any extension of the re-
4 moval period, as provided in sub-
5 section (a)(1)(C)).

6 “(C) RENEWAL AND DELEGATION OF CER-
7 TIFICATION.—

8 “(i) RENEWAL.—The Secretary of
9 Homeland Security may renew a certifi-
10 cation under subparagraph (B)(ii)(II)
11 every 6 months without limitation, after
12 providing an opportunity for the alien to
13 request reconsideration of the certification
14 and to submit documents or other evidence
15 in support of that request. If the Secretary
16 does not renew a certification, the Sec-
17 retary may not continue to detain the alien
18 under subparagraph (B)(ii)(II).

19 “(ii) DELEGATION.—Notwithstanding
20 section 103, the Secretary of Homeland
21 Security may not delegate the authority to
22 make or renew a certification described in
23 item (bb), (cc), or (ee) of subparagraph
24 (B)(ii)(II) below the level of the Assistant

1 Secretary for Immigration and Customs
2 Enforcement.

3 “(iii) HEARING.—The Secretary of
4 Homeland Security may request that the
5 Attorney General or the Attorney General’s
6 designee provide for a hearing to make the
7 determination described in item (dd)(BB)
8 of subparagraph (B)(ii)(II).

9 “(D) RELEASE ON CONDITIONS.—If it is
10 determined that an alien should be released
11 from detention, the Secretary of Homeland Se-
12 curity, in the exercise of the Secretary’s discre-
13 tion, may impose conditions on release as pro-
14 vided in paragraph (3).

15 “(E) REDETENTION.—The Secretary of
16 Homeland Security, in the exercise of the Sec-
17 retary’s discretion, without any limitations
18 other than those specified in this section, may
19 again detain any alien subject to a final re-
20 moval order who is released from custody if the
21 alien fails to comply with the conditions of re-
22 lease, or to continue to satisfy the conditions
23 described in subparagraph (A), or if, upon re-
24 consideration, the Secretary determines that the
25 alien can be detained under subparagraph (B).

1 Paragraphs (6) through (8) shall apply to any
2 alien returned to custody pursuant to this sub-
3 paragraph, as if the removal period terminated
4 on the day of the redetention.

5 “(F) CERTAIN ALIENS WHO EFFECTED
6 ENTRY.—If an alien has effected an entry, but
7 has neither been lawfully admitted nor has been
8 physically present in the United States continu-
9 ously for the 2-year period immediately prior to
10 the commencement of removal proceedings
11 under this Act or deportation proceedings
12 against the alien, the Secretary of Homeland
13 Security, in the exercise of the Secretary’s dis-
14 cretion, may decide not to apply paragraph (8)
15 and detain the alien without any limitations ex-
16 cept those which the Secretary shall adopt by
17 regulation.

18 “(9) JUDICIAL REVIEW.—Without regard to the
19 place of confinement, judicial review of any action or
20 decision pursuant to paragraphs (6), (7), or (8) shall
21 be available exclusively in habeas corpus proceedings
22 instituted in the United States District Court for the
23 District of Columbia, and only if the alien has ex-
24 hausted all administrative remedies (statutory and
25 regulatory) available to the alien as of right.”.

1 **SEC. 102. DETENTION OF ALIENS DURING REMOVAL PRO-**
2 **CEEDINGS.**

3 (a) **DETENTION AUTHORITY.**—Section 235 of the
4 Immigration and Nationality Act (8 U.S.C. 1225) is
5 amended by adding at the end the following:

6 “(e) **LENGTH OF DETENTION.**—

7 “(1) **IN GENERAL.**—With regard to length of
8 detention, an alien may be detained under this sec-
9 tion, without limitation, until the alien is subject to
10 an administratively final order of removal.

11 “(2) **CONSTRUCTION.**—The length of detention
12 under this section shall not affect the validity of any
13 detention under section 241.

14 “(f) **JUDICIAL REVIEW.**—Without regard to the place
15 of confinement, judicial review of any action or decision
16 made pursuant to subsection (e) shall be available exclu-
17 sively in a habeas corpus proceeding instituted in the
18 United States District Court for the District of Columbia
19 and only if the alien has exhausted all administrative rem-
20 edies (statutory and nonstatutory) available to the alien
21 as of right.”.

22 (b) **JUDICIAL REVIEW.**—Section 236(e) of such Act
23 (8 U.S.C. 1226(e)) is amended by adding at the end the
24 following: “Without regard to the place of confinement,
25 judicial review of any action or decision made pursuant
26 to subsection (f) shall be available exclusively in a habeas

1 corpus proceeding instituted in the United States District
2 Court for the District of Columbia and only if the alien
3 has exhausted all administrative remedies (statutory and
4 nonstatutory) available to the alien as of right.”.

5 (c) LENGTH OF DETENTION.—Section 236 of such
6 Act (8 U.S.C. 1226) is amended by adding at the end the
7 following:

8 “(f) LENGTH OF DETENTION.—

9 “(1) IN GENERAL.—With regard to length of
10 detention, an alien may be detained under this sec-
11 tion, without limitation, until the alien is subject to
12 an administratively final order of removal.

13 “(2) CONSTRUCTION.—The length of detention
14 under this section shall not affect the validity of any
15 detention under section 241 of this Act.”.

16 **SEC. 103. SEVERABILITY.**

17 If any provision of this title, or any amendment made
18 by this title, or the application of any such provision to
19 any person or circumstance, is held to be invalid for any
20 reason, the remainder of this title, and of the amendments
21 made by this title, and the application of the provisions
22 and of the amendments made by this title to any other
23 person or circumstance, shall not be affected by such hold-
24 ing.

1 **SEC. 104. EFFECTIVE DATES.**

2 (a) SECTION 101.—The amendments made by section
3 101 shall take effect on the date of the enactment of this
4 Act, and section 241 of the Immigration and Nationality
5 Act, as amended, shall apply to—

6 (1) all aliens subject to a final administrative
7 removal, deportation, or exclusion order that was
8 issued before, on, or after the date of the enactment
9 of this Act; and

10 (2) acts and conditions occurring or existing be-
11 fore, on, or after the date of the enactment of this
12 Act.

13 (b) SECTION 102.—The amendments made by sec-
14 tion 102 shall take effect upon the date of the enactment
15 of this Act, and sections 235 and 236 of the Immigration
16 and Nationality Act, as amended, shall apply to any alien
17 in detention under provisions of such sections on or after
18 the date of the enactment of this Act.

19 **TITLE II—CRIMINAL ALIEN**
20 **REMOVAL ACT**

21 **SEC. 201. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
22 **ON CRIMINAL GROUNDS.**

23 (a) IN GENERAL.—Section 238(b) of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1228(b)) is amended—

25 (1) in paragraph (1)—

1 (A) by striking “Attorney General” and in-
2 serting “Secretary of Homeland Security in the
3 exercise of discretion”; and

4 (B) by striking “set forth in this sub-
5 section or” and inserting “set forth in this sub-
6 section, in lieu of removal proceedings under”;

7 (2) in paragraph (3), by striking “paragraph
8 (1) until 14 calendar days” and inserting “para-
9 graph (1) or (3) until 7 calendar days”;

10 (3) by striking “Attorney General” each place
11 it appears in paragraphs (3) and (4) and inserting
12 “Secretary of Homeland Security”;

13 (4) in paragraph (5)—

14 (A) by striking “described in this section”
15 and inserting “described in paragraph (1) or
16 (2)”; and

17 (B) by striking “the Attorney General may
18 grant in the Attorney General’s discretion” and
19 inserting “the Secretary of Homeland Security
20 or the Attorney General may grant, in the dis-
21 cretion of the Secretary or Attorney General, in
22 any proceeding”;

23 (5) by redesignating paragraphs (3), (4), and
24 (5) as paragraphs (4), (5), and (6), respectively; and

1 (6) by inserting after paragraph (2) the fol-
2 lowing new paragraph:

3 “(3) The Secretary of Homeland Security in
4 the exercise of discretion may determine inadmis-
5 sibility under section 212(a)(2) (relating to criminal
6 offenses) and issue an order of removal pursuant to
7 the procedures set forth in this subsection, in lieu of
8 removal proceedings under section 240, with respect
9 to an alien who—

10 “(A) has not been admitted or paroled;

11 “(B) has not been found to have a credible
12 fear of persecution pursuant to the procedures
13 set forth in section 235(b)(1)(B); and

14 “(C) is not eligible for a waiver of inadmis-
15 sibility or relief from removal.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall take effect on the date of the enact-
18 ment of this Act but shall not apply to aliens who are
19 in removal proceedings under section 240 of the Immigra-
20 tion and Nationality Act as of such date.

1 **TITLE III—ALIEN GANG**
2 **REMOVAL ACT OF 2006**

3 **SEC. 301. RENDERING INADMISSIBLE AND DEPORTABLE**
4 **ALIENS PARTICIPATING IN CRIMINAL**
5 **STREET GANGS.**

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

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

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

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

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

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

1 a gang crime or any other unlaw-
2 ful activity; or

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

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

8 “(I) CRIMINAL STREET GANG.—

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

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

1 “(aa) A crime of violence (as
2 defined in section 16 of title 18,
3 United States Code).

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

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

18 “(dd) Any conduct punish-
19 able under section 844 of title
20 18, United States Code (relating
21 to explosive materials), sub-
22 section (d), (g)(1) (where the un-
23 derlying conviction is a violent
24 felony (as defined in section
25 924(e)(2)(B) of such title) or is a

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

1 section 1957 of such title (relat-
2 ing to engaging in monetary
3 transactions in property derived
4 from specified unlawful activity),
5 or sections 2312 through 2315 of
6 such title (relating to interstate
7 transportation of stolen motor ve-
8 hicles or stolen property).

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

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

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

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

1 “(I) is a member of a criminal
2 street gang and is convicted of com-
3 mitting, or conspiring, threatening, or
4 attempting to commit, a gang crime;
5 or

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

10 “(ii) DEFINITIONS.—For purposes of
11 this subparagraph, the terms ‘criminal
12 street gang’ and ‘gang crime’ have the
13 meaning given such terms in section
14 212(a)(2)(J)(ii).”.

15 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

19 “DESIGNATION OF CRIMINAL STREET GANGS

20 “SEC. 219A. (a) DESIGNATION.—

21 “(1) IN GENERAL.—The Attorney General is
22 authorized to designate a group or association as a
23 criminal street gang in accordance with this sub-
24 section if the Attorney General finds that the group
25 or association meets the criteria described in section
26 212(a)(2)(J)(ii)(I).

1 “(2) PROCEDURE.—

2 “(A) NOTICE.—

3 “(i) TO CONGRESSIONAL LEADERS.—

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

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

24 “(B) EFFECT OF DESIGNATION.—

1 “(i) A designation under this sub-
2 section shall take effect upon publication
3 under subparagraph (A)(ii).

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

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

11 “(4) PERIOD OF DESIGNATION.—

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

16 “(B) REVIEW OF DESIGNATION UPON PE-
17 TITION.—

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

1 “(ii) PETITION PERIOD.—For pur-
2 poses of clause (i)—

3 “(I) if the designated gang or as-
4 sociation has not previously filed a pe-
5 tition for revocation under this sub-
6 paragraph, the petition period begins
7 2 years after the date on which the
8 designation was made; or

9 “(II) if the designated gang or
10 association has previously filed a peti-
11 tion for revocation under this sub-
12 paragraph, the petition period begins
13 2 years after the date of the deter-
14 mination made under clause (iv) on
15 that petition.

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

25 “(iv) DETERMINATION.—

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

7 “(II) PUBLICATION OF DETER-
8 MINATION.—A determination made by
9 the Attorney General under this
10 clause shall be published in the Fed-
11 eral Register.

12 “(III) PROCEDURES.—Any rev-
13 ocation by the Attorney General shall
14 be made in accordance with para-
15 graph (6).

16 “(C) OTHER REVIEW OF DESIGNATION.—

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

24 “(ii) PROCEDURES.—If a review does
25 not take place pursuant to subparagraph

1 (B) in response to a petition for revocation
2 that is filed in accordance with that sub-
3 paragraph, then the review shall be con-
4 ducted pursuant to procedures established
5 by the Attorney General. The results of
6 such review and the applicable procedures
7 shall not be reviewable in any court.

8 “(iii) PUBLICATION OF RESULTS OF
9 REVIEW.—The Attorney General shall pub-
10 lish any determination made pursuant to
11 this subparagraph in the Federal Register.

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

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

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

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

4 “(ii) the national security of the
5 United States warrants a revocation.

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

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

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

24 “(b) JUDICIAL REVIEW OF DESIGNATION.—

1 “(1) IN GENERAL.—Not later than 30 days
2 after publication of the designation in the Federal
3 Register, a group or association designated as a
4 criminal street gang may seek judicial review of the
5 designation in the United States Court of Appeals
6 for the District of Columbia Circuit.

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

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

13 “(A) arbitrary, capricious, an abuse of dis-
14 cretion, or otherwise not in accordance with
15 law;

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

18 “(C) in excess of statutory jurisdiction, au-
19 thority, or limitation, or short of statutory
20 right;

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

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

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

6 “(c) RELEVANT COMMITTEE DEFINED.—As used in
 7 this section, the term ‘relevant committees’ means the
 8 Committees on the Judiciary of the House of Representa-
 9 tives and of the Senate.”.

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

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

14 **SEC. 302. MANDATORY DETENTION OF SUSPECTED CRIMI-**
 15 **NAL STREET GANG MEMBERS.**

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

19 (1) by inserting “or 212(a)(2)(J)” after
 20 “212(a)(3)(B)”; and

21 (2) by inserting “or 237(a)(2)(F)” before
 22 “237(a)(4)(B)”.

23 (b) ANNUAL REPORT.—Not later than March 1 of
 24 each year (beginning 1 year after the date of the enact-
 25 ment of this Act), the Secretary of Homeland Security,

1 after consultation with the appropriate Federal agencies,
2 shall submit a report to the Committees on the Judiciary
3 of the House of Representatives and of the Senate on the
4 number of aliens detained under the amendments made
5 by subsection (a).

6 **SEC. 303. INELIGIBILITY FROM PROTECTION FROM RE-**
7 **MOVAL AND ASYLUM.**

8 (a) **INAPPLICABILITY OF RESTRICTION ON REMOVAL**
9 **TO CERTAIN COUNTRIES.**—Section 241(b)(3)(B) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1251(b)(3)(B)) is amended, in the matter preceding
12 clause (i), by inserting “who is described in section
13 212(a)(2)(J)(i) or section 237(a)(2)(F)(i) or who is” after
14 “to an alien”.

15 (b) **INELIGIBILITY FOR ASYLUM.**—Section
16 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is
17 amended—

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

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

20 and

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

22 “(vi) the alien is described in section
23 212(a)(2)(J)(i) or section 237(a)(2)(F)(i)
24 (relating to participation in criminal street
25 gangs); or”.

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

5 “(C) LIMITATION ON JUDICIAL REVIEW.—
6 There shall be no judicial review of any finding
7 under subparagraph (B) that an alien is in de-
8 scribed in section 208(b)(2)(A)(vi).”.

Passed the House of Representatives September 21,
2006.

Attest:

KAREN L. HAAS,

Clerk.