

115TH CONGRESS  
1ST SESSION

# S. 1937

To authorize appropriations for border infrastructure construction, to provide conditional resident status to certain aliens, and to amend the Immigration and Nationality Act to include grounds of inadmissibility and deportability for alien members of criminal gangs and cartels, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 5, 2017

Mr. FLAKE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To authorize appropriations for border infrastructure construction, to provide conditional resident status to certain aliens, and to amend the Immigration and Nationality Act to include grounds of inadmissibility and deportability for alien members of criminal gangs and cartels, 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 “Border Security and  
5 Deferred Action Recipient Relief Act”.

1 **SEC. 2. DEFINITION OF SECRETARY.**

2 In this Act, the term “Secretary” means the Sec-  
3 retary of Homeland Security.

4 **SEC. 3. BORDER INFRASTRUCTURE CONSTRUCTION.**

5 (a) **BORDER SECURITY TRUST FUND.—**

6 (1) **ESTABLISHMENT.—**There is established in  
7 the Treasury of the United States a trust fund, to  
8 be known as the “Border Security Trust Fund” (re-  
9 ferred to in this section as the “Trust Fund”), con-  
10 sisting of the amounts transferred from the general  
11 fund of the Treasury under paragraph (2).

12 (2) **DEPOSITS.—**Not later than the date that is  
13 the later of the date of enactment of this Act and  
14 September 30, 2020, the Secretary of the Treasury  
15 shall deposit in the Trust Fund, from the general  
16 fund of the Treasury, \$1,571,239,000, to remain  
17 available until expended.

18 (3) **REPAYMENT OF COSTS.—**

19 (A) **IN GENERAL.—**The Secretary of the  
20 Treasury shall use any Federal tax liability col-  
21 lected by the Secretary of the Treasury under  
22 section 244A(d)(6) of the Immigration and Na-  
23 tionality Act to recover the amount described in  
24 paragraph (2).

25 (B) **SURCHARGE AUTHORIZED.—**The Sec-  
26 retary may impose on any conditional perma-

1           nent resident (as defined in section 244A(a) of  
2           the Immigration and Nationality Act) a sur-  
3           charge in an amount determined by the Sec-  
4           retary to be the minimum proportional amount  
5           necessary to recover the amount equal to the  
6           difference between—

- 7                   (i) the amount described in paragraph  
8                   (2); and  
9                   (ii) the amount collected under sub-  
10                  paragraph (A).

11          (b) BORDER SECURITY EXPENDITURES.—Amounts  
12          in the Trust Fund shall be available without further ap-  
13          propriation for procurement, construction, and improve-  
14          ments as follows:

15               (1) \$784,000,000 for 32 miles of new border  
16               bollard fencing in the Rio Grande Valley in the State  
17               of Texas.

18               (2) \$498,000,000 for 28 miles of new bollard  
19               levee wall in the Rio Grande Valley in the State of  
20               Texas.

21               (3) \$251,000,000 for 14 miles of secondary  
22               fencing in San Diego, California.

23               (4) \$38,239,000 for planning activities relating  
24               to border wall construction.

1 **SEC. 4. CANCELLATION OF REMOVAL OF CERTAIN LONG-**  
 2 **TERM RESIDENTS WHO ENTERED THE**  
 3 **UNITED STATES AS CHILDREN.**

4 (a) IN GENERAL.—Chapter 4 of title II of the Immi-  
 5 gration and Nationality Act (8 U.S.C. 1221 et seq.) is  
 6 amended by adding at the end the following:

7 **“SEC. 244A. CANCELLATION OF REMOVAL OF CERTAIN**  
 8 **LONG-TERM RESIDENTS WHO ENTERED THE**  
 9 **UNITED STATES AS CHILDREN.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) ACTIVE DUTY.—The term ‘active duty’ has  
 12 the meaning given the term in section 101 of title  
 13 10, United States Code.

14 “(2) ACTIVE SERVICE.—The term ‘active serv-  
 15 ice’ has the meaning given the term in section 101  
 16 of title 10, United States Code.

17 “(3) ACTIVE STATUS.—The term ‘active status’  
 18 has the meaning given the term in section 101 of  
 19 title 10, United States Code.

20 “(4) ALIEN ENLISTEE.—The term ‘alien en-  
 21 listee’ means a conditional permanent resident who  
 22 seeks to maintain or extend conditional permanent  
 23 resident status by means of satisfaction of the re-  
 24 quirements of this section relating to enlistment and  
 25 service in the Armed Forces.

1           “(5) ALIEN POSTSECONDARY STUDENT.—The  
2 term ‘alien postsecondary student’ means a condi-  
3 tional permanent resident who seeks to maintain or  
4 extend such conditional permanent resident status  
5 by means of satisfaction of the requirements of this  
6 section relating to enrollment in, and graduation  
7 from, an institution of higher education.

8           “(6) ARMED FORCES.—The term ‘Armed  
9 Forces’ has the meaning given the term ‘armed  
10 forces’ in section 101 of title 10, United States  
11 Code.

12           “(7) CONDITIONAL PERMANENT RESIDENT.—  
13 The term ‘conditional permanent resident’ means an  
14 alien who is granted conditional permanent resident  
15 status under subsection (b)(1)(A).

16           “(8) CONVICTION.—

17           “(A) IN GENERAL.—Subparagraph (B) of  
18 section 101(a)(48) shall not apply to the term  
19 ‘conviction’.

20           “(B) EXCLUSIONS.—The term ‘conviction’  
21 does not include—

22           “(i) an adjudication or judgment of  
23 guilt that has been dismissed, expunged,  
24 deferred, annulled, invalidated, withheld, or  
25 vacated;

1                   “(ii) an order of probation without  
2                   entry of judgment; or

3                   “(iii) any similar disposition.

4                   “(9) INSTITUTION OF HIGHER EDUCATION.—

5                   “(A) IN GENERAL.—The term ‘institution  
6                   of higher education’ has the meaning given the  
7                   term in section 102 of the Higher Education  
8                   Act of 1965 (20 U.S.C. 1002).

9                   “(B) EXCLUSION.—The term ‘institution  
10                  of higher education’ does not include an institu-  
11                  tion of higher education outside the United  
12                  States.

13                  “(10) SECRETARY.—The term ‘Secretary’  
14                  means the Secretary of Homeland Security.

15                  “(b) CANCELLATION OF REMOVAL OF CERTAIN  
16                  LONG-TERM RESIDENTS WHO ENTERED THE UNITED  
17                  STATES AS CHILDREN.—

18                  “(1) SPECIAL RULE FOR CERTAIN LONG-TERM  
19                  RESIDENTS WHO ENTERED THE UNITED STATES AS  
20                  CHILDREN.—

21                  “(A) IN GENERAL.—Notwithstanding any  
22                  other provision of law and except as otherwise  
23                  provided in this section, the Secretary may can-  
24                  cel the removal of, and grant conditional per-  
25                  manent resident status to, an alien who—

1 “(i) meets the qualifications described  
2 in subparagraph (B); and

3 “(ii)(I) is inadmissible under section  
4 212(a) or deportable under section 237(a);  
5 or

6 “(II) is the child of an alien who is  
7 lawfully present in the United States pur-  
8 suant to the status described in section  
9 101(a)(15)(E)(ii).

10 “(B) QUALIFICATIONS.—To qualify for  
11 cancellation of removal or conditional perma-  
12 nent resident status under subparagraph (A),  
13 an alien shall submit an application and sup-  
14 porting documentation that demonstrates by  
15 the preponderance of the evidence that—

16 “(i) the alien has been physically  
17 present in the United States for a contin-  
18 uous period since January 1, 2012;

19 “(ii) on the date on which the alien  
20 initially entered the United States, the  
21 alien was under 16 years of age;

22 “(iii) in the case of an alien who is 18  
23 years of age or older on the date on which  
24 the alien submits an application under this  
25 subsection, the alien has—

1 “(I) earned—

2 “(aa) a high school diploma;

3 or

4 “(bb) a commensurate alter-  
5 native award from a public or  
6 private high school or secondary  
7 school;

8 “(II) obtained—

9 “(aa) a general education  
10 development certificate recog-  
11 nized under State law; or

12 “(bb) a high school equiva-  
13 lency diploma in the United  
14 States;

15 “(III) been admitted to an insti-  
16 tution of higher education; or

17 “(IV) valid employment author-  
18 ization;

19 “(iv) the alien has been a person of  
20 good moral character since the date on  
21 which the alien initially entered the United  
22 States;

23 “(v) subject to subparagraph (C)—

24 “(I) the alien is not inadmissible  
25 under paragraph (1), (2), (3), (4),



1 (6)(E), (8), (10)(A), (10)(C), or  
2 (10)(D) of section 212(a);

3 “(II) the alien is not deportable  
4 under paragraph (1)(E), (1)(G), (2),  
5 (4), (5), or (6) of section 237(a);

6 “(III) the alien has not ordered,  
7 incited, assisted, or otherwise partici-  
8 pated in the persecution of any person  
9 on account of race, religion, nation-  
10 ality, membership in a particular so-  
11 cial group, or political opinion; and

12 “(IV) other than an offense  
13 under State or local law for which an  
14 essential element is the immigration  
15 status of the alien, a minor traffic of-  
16 fense, or a violation of this section,  
17 the alien has not been convicted of—

18 “(aa) any offense under  
19 Federal or State law punishable  
20 by a maximum term of imprison-  
21 ment of more than 1 year; or

22 “(bb) any combination of of-  
23 fenses under Federal or State  
24 law, for which the alien was sen-

1                   tenced to imprisonment for a  
2                   total of more than 1 year; and

3                   “(vi) the alien has never been subject  
4                   to a final administrative or judicial order  
5                   of exclusion, deportation, or removal, ex-  
6                   cept if the alien—

7                   “(I) has remained in the United  
8                   States under color of law after the  
9                   date on which the order was issued; or

10                   “(II) received the order before  
11                   the date on which the alien attained  
12                   the age of 18 years.

13                   “(C) WAIVER.—With respect to any ben-  
14                   efit under this section, for humanitarian pur-  
15                   poses, family unity, or for any other purpose for  
16                   which a waiver would otherwise be in the public  
17                   interest, the Secretary may waive—

18                   “(i) subparagraph (B)(v)(IV);

19                   “(ii) the grounds of inadmissibility  
20                   under paragraphs (1), (4), and (6) of sec-  
21                   tion 212(a); and

22                   “(iii) the grounds of deportability  
23                   under paragraph (1) of section 237(a).

24                   “(D) PROCEDURES.—The Secretary shall  
25                   provide, by regulation, a procedure that allows

1 eligible individuals to apply affirmatively for  
2 conditional permanent resident status under  
3 this paragraph without being placed in removal  
4 proceedings.

5 “(E) SUBMISSION OF BIOMETRIC AND BIO-  
6 GRAPHICAL DATA.—

7 “(i) IN GENERAL.—The Secretary  
8 may not cancel the removal of an alien or  
9 grant conditional permanent resident sta-  
10 tus to an alien under this paragraph unless  
11 the alien submits to the Secretary biomet-  
12 ric and biographical data, in accordance  
13 with procedures established by the Sec-  
14 retary.

15 “(ii) ALTERNATIVE PROCEDURE.—  
16 The Secretary shall provide an alternative  
17 procedure for the submission of biometric  
18 and biographical data for any applicant for  
19 conditional permanent resident status who  
20 is unable to provide biometric or biographi-  
21 cal data due to a physical impairment.

22 “(F) BACKGROUND CHECKS.—

23 “(i) REQUIREMENT FOR BACKGROUND  
24 CHECKS.—The Secretary shall use biomet-  
25 ric, biographical, and other data deter-

1           mined by the Secretary to be appro-  
2           priate—

3                   “(I) to conduct security and law  
4                   enforcement background checks of  
5                   any alien seeking cancellation of re-  
6                   moval or conditional permanent resi-  
7                   dent status under this paragraph; and

8                   “(II) to determine whether there  
9                   is any criminal, national security, or  
10                  other factor that would render the  
11                  alien ineligible for cancellation of re-  
12                  moval or conditional permanent resi-  
13                  dent status.

14                  “(ii) COMPLETION OF BACKGROUND  
15                  CHECKS.—The security and law enforce-  
16                  ment background checks under clause (i)  
17                  shall be completed, to the satisfaction of  
18                  the Secretary, before the date on which the  
19                  Secretary cancels the removal of, or grants  
20                  conditional resident status to, the alien  
21                  under this paragraph.

22                  “(G) MEDICAL EXAMINATION RE-  
23                  QUIRED.—

24                   “(i) IN GENERAL.—An alien who ap-  
25                   plies for cancellation of removal or condi-

1            tional permanent resident status under this  
2            paragraph shall undergo a medical obser-  
3            vation and examination in accordance with  
4            the policies and procedures prescribed  
5            under clause (ii).

6            “(ii) PROCEDURES.—The Secretary,  
7            with the concurrence of the Secretary of  
8            Health and Human Services, shall pre-  
9            scribe policies and procedures for the na-  
10           ture and timing of medical observations  
11           and examinations for aliens applying for  
12           cancellation of removal or conditional per-  
13           manent resident status under this para-  
14           graph.

15           “(H) MILITARY SELECTIVE SERVICE.—An  
16           alien subject to registration under the Military  
17           Selective Service Act (50 U.S.C. App. 451 et  
18           seq.) who applies for cancellation of removal or  
19           conditional permanent resident status under  
20           this paragraph shall provide to the Secretary  
21           evidence that the alien has registered that Act.

22           “(2) TERMINATION OF CONTINUOUS PERIOD.—  
23           For purposes of this subsection, any period of con-  
24           tinuous residence or continuous physical presence in  
25           the United States of an alien who applies for can-

1 cellation of removal or conditional permanent resi-  
2 dent status under paragraph (1) shall not terminate  
3 on the date on which the alien is served a notice to  
4 appear under section 239(a).

5 “(3) TREATMENT OF CERTAIN BREAKS IN  
6 PRESENCE.—

7 “(A) IN GENERAL.—For purposes of para-  
8 graph (1)(B)(i), an alien shall be considered to  
9 have failed to maintain continuous physical  
10 presence in the United States if the alien has  
11 remained outside the United States—

12 “(i) for any period of more than 90  
13 days; or

14 “(ii) for 2 or more periods the total of  
15 which is more than 180 days.

16 “(B) EXTENSION FOR EXCEPTIONAL CIR-  
17 CUMSTANCES.—The Secretary may extend a  
18 time period described in clause (i) or (ii) of sub-  
19 paragraph (A) by not more than 90 days if an  
20 alien demonstrates that the failure of the alien  
21 to timely return to the United States was due  
22 to exceptional circumstances, which shall be no  
23 less compelling than—

24 “(i) the serious illness of the alien; or

1           “(ii) the death or serious illness of a  
2           parent, grandparent, sibling, or child of  
3           the alien.

4           “(4) REGULATIONS.—

5           “(A) INITIAL PUBLICATION.—Not later  
6           than 180 days after the date of enactment of  
7           this section, the Secretary shall publish in the  
8           Federal Register interim regulations to imple-  
9           ment this subsection.

10          “(B) INTERIM REGULATIONS.—Notwith-  
11          standing section 553 of title 5, United States  
12          Code, the interim regulations published under  
13          subparagraph (A)—

14                 “(i) shall be effective, on an interim  
15                 basis, immediately on the date on which  
16                 the regulations are published; but

17                 “(ii) may be subject to change and re-  
18                 vision after public notice and a period of  
19                 public comment.

20          “(C) FINAL REGULATIONS.—Within a rea-  
21          sonable period after the publication of the in-  
22          terim regulations under subparagraph (A), the  
23          Secretary shall publish final regulations to im-  
24          plement this subsection.

1           “(5) REMOVAL OF ALIEN.—The Secretary may  
2 not remove any alien who—

3           “(A) has a pending application for condi-  
4 tional permanent resident status under this  
5 subsection; or

6           “(B)(i) establishes prima facie eligibility  
7 for cancellation of removal or conditional per-  
8 manent resident status under paragraph (1);  
9 and

10           “(ii) is provided a reasonable opportunity  
11 to submit an application under that paragraph.

12           “(c) CONDITIONAL PERMANENT RESIDENT STA-  
13 TUS.—

14           “(1) LENGTH OF STATUS.—Conditional perma-  
15 nent resident status granted under subsection (b)(1)  
16 shall be valid for an initial period of 5 years, subject  
17 to termination under paragraph (4).

18           “(2) DESCRIPTION OF STATUS.—A conditional  
19 permanent resident—

20           “(A) shall not be considered to be an alien  
21 who is unlawfully present in the United States  
22 for purposes of the immigration laws, including  
23 section 505 of the Illegal Immigration Reform  
24 and Immigrant Responsibility Act of 1996 (8  
25 U.S.C. 1623);



1           “(B) shall be considered to be an alien  
2 lawfully admitted for permanent residence in  
3 the United States on a conditional basis;

4           “(C) shall be considered to have the intent  
5 to permanently reside in the United States;

6           “(D) shall not be required to have a for-  
7 eign residence that the alien has no intention of  
8 abandoning; and

9           “(E) shall be considered to have been in-  
10 spected and admitted for the purposes of sec-  
11 tion 245(a).

12           “(3) TERMS OF CONDITIONAL PERMANENT  
13 RESIDENT STATUS.—

14           “(A) EMPLOYMENT.—A conditional perma-  
15 nent resident shall be authorized—

16           “(i) to be employed in the United  
17 States incident to conditional permanent  
18 resident status; and

19           “(ii) to enlist in the Armed Forces  
20 under section 504(b)(1)(D) of title 10,  
21 United States Code.

22           “(B) TRAVEL.—A conditional permanent  
23 resident may—

24           “(i) travel outside the United States;  
25 and

1           “(ii) if otherwise admissible, be admit-  
2           ted on return to the United States without  
3           obtaining a visa if—

4                   “(I) the conditional permanent  
5                   resident is the bearer of valid, unex-  
6                   pired documentary evidence of condi-  
7                   tional permanent resident status; and

8                   “(II)(aa) the absence of the con-  
9                   ditional permanent resident from the  
10                  United States was for a period of not  
11                  more than 180 days; or

12                  “(bb) the conditional permanent  
13                  resident was outside the United States  
14                  due to active service in the Armed  
15                  Forces.

16           “(4) TERMINATION OF STATUS.—

17                   “(A) IN GENERAL.—The Secretary shall  
18                   terminate the conditional permanent resident  
19                   status of an alien if the Secretary determines  
20                   that—

21                           “(i) the alien is 18 years of age or  
22                           older; and

23                           “(ii)(I) in the case of—

24                                   “(aa) an alien postsecondary stu-  
25                                   dent, the alien has failed—

1           “(AA) to enroll in an ac-  
2           credited institution of higher edu-  
3           cation within 1 year after the  
4           date on which the alien was  
5           granted conditional permanent  
6           resident status; or

7           “(BB) to remain enrolled in  
8           an accredited institution of high-  
9           er education as of the date that  
10          is 1 year after the date on which  
11          the alien was granted conditional  
12          permanent resident status;

13          “(bb) an alien described in sub-  
14          section (b)(1)(B)(iii), during the 5-  
15          year period beginning on the date on  
16          which the alien was granted condi-  
17          tional permanent resident status, the  
18          alien has not been employed for a  
19          total period of not less than 4 years;  
20          or

21          “(cc) an alien enlistee, the  
22          alien—

23                 “(AA) failed to enlist, and  
24                 be accepted for enlistment, in the  
25                 Armed Forces within 270 days

1 after the date on which the alien  
2 was granted conditional perma-  
3 nent resident status; or

4 “(BB) has received a dis-  
5 honorable or other than honor-  
6 able discharge from the Armed  
7 Forces;

8 “(II) the alien ceases to meet the re-  
9 quirements of clause (iv) or (v) of sub-  
10 section (b)(1)(B); or

11 “(III) the alien has become a public  
12 charge.

13 “(B) RETURN TO PREVIOUS IMMIGRATION  
14 STATUS.—An alien whose conditional perma-  
15 nent resident status is terminated under sub-  
16 paragraph (A) shall return to the immigration  
17 status of the alien on the day before the date  
18 on which the alien was granted conditional per-  
19 manent resident status.

20 “(5) EXTENSION OF STATUS.—

21 “(A) IN GENERAL.—With respect to an  
22 alien granted conditional permanent resident  
23 status under subsection (b)(1), the Secretary  
24 shall extend the period of conditional perma-  
25 nent resident status of the alien for an addi-

1           tional period of 5 years if the alien meets each  
2           of the applicable requirements described in sub-  
3           paragraph (B).

4           “(B) REQUIREMENTS.—

5           “(i) GOOD MORAL CHARACTER.—The  
6           alien has demonstrated good moral char-  
7           acter for the entire period during which  
8           the alien has been a conditional permanent  
9           resident.

10          “(ii) COMPLIANCE.—The alien meets  
11          the qualification described in subsection  
12          (b)(1)(B)(v).

13          “(iii) NO ABANDONMENT OF RESI-  
14          DENCE.—

15          “(I) IN GENERAL.—The alien has  
16          not abandoned the residence of the  
17          alien in the United States.

18          “(II) PRESUMPTION.—

19          “(aa) IN GENERAL.—For  
20          purposes of this clause, except as  
21          provided in item (bb), the Sec-  
22          retary shall presume that an  
23          alien has abandoned the resi-  
24          dence of the alien in the United  
25          States if, during the period of

1 conditional permanent resident  
2 status of the alien, the alien is  
3 absent from the United States  
4 for more than 365 days in the  
5 aggregate.

6 “(bb) EXCEPTION.—Not-  
7 withstanding an absence from the  
8 United States of more than 365  
9 days in the aggregate during the  
10 period of conditional permanent  
11 resident status of an alien, the  
12 presumption described in item  
13 (aa) shall not apply if the alien  
14 demonstrates, to the satisfaction  
15 of the Secretary, that the alien  
16 has not abandoned the residence  
17 of the alien in the United States.

18 “(iv) GRADUATION.—In the case of an  
19 alien postsecondary student, the alien—

20 “(I) is 18 years of age or older;

21 and

22 “(II) has graduated from an ac-  
23 credited institution of higher edu-  
24 cation.

1           “(v) EMPLOYMENT.—In the case of  
2           an alien described in subsection  
3           (b)(1)(B)(iii), during the 5-year period be-  
4           ginning on the date on which the alien was  
5           granted conditional permanent resident  
6           status, the alien has been employed for a  
7           total period of not less than 4 years.

8           “(vi) ENLISTMENT.—In the case of an  
9           alien enlistee—

10                   “(I) the alien has served as a  
11                   member of a regular or reserve com-  
12                   ponent of the Armed Forces in an ac-  
13                   tive duty status for not less than 3  
14                   years; and

15                   “(II) if the alien has been dis-  
16                   charged, the alien received an honor-  
17                   able discharge.

18           “(d) REMOVAL OF CONDITIONAL BASIS FOR PERMA-  
19           NENT RESIDENCE.—

20                   “(1) APPLICATION TO REMOVE CONDITIONS.—

21                   “(A) IN GENERAL.—A conditional perma-  
22                   nent resident may submit to the Secretary, in  
23                   accordance with paragraph (3), an applica-  
24                   tion—

1                   “(i) to remove the conditional basis of  
2                   permanent residency; and

3                   “(ii) to have the status of the alien  
4                   adjusted to that of an alien lawfully admit-  
5                   ted for permanent residence.

6                   “(B) CONTENTS.—With respect to any ap-  
7                   plication submitted under subparagraph (A), an  
8                   alien shall include, under penalty of perjury, the  
9                   facts and information necessary for the Sec-  
10                  retary to make the determination described in  
11                  paragraph (2)(A).

12                  “(2) ADJUDICATION OF APPLICATION FOR AD-  
13                  JUSTMENT OF STATUS.—

14                  “(A) IN GENERAL.—With respect to an ap-  
15                  plication submitted under paragraph (1) for an  
16                  alien, the Secretary shall make a determination  
17                  as to whether the alien meets the requirements  
18                  described in paragraph (4).

19                  “(B) ADJUSTMENT OF STATUS IF FAVOR-  
20                  ABLE DETERMINATION.—Notwithstanding any  
21                  other provision of law, including paragraphs  
22                  (2), (3), (4), and (8) of section 245(c), if the  
23                  Secretary determines that an alien meets the  
24                  requirements described in paragraph (4)(B),  
25                  the Secretary shall—



1                   “(i) approve the application;

2                   “(ii) notify the alien of the determina-  
3                   tion; and

4                   “(iii) adjust the status of the alien to  
5                   the status of an alien lawfully admitted for  
6                   permanent residence, which shall be effec-  
7                   tive as of the date of approval of the appli-  
8                   cation.

9                   “(C) TERMINATION IF ADVERSE DETER-  
10                  MINATION.—If the Secretary determines that  
11                  the alien does not meet the requirements de-  
12                  scribed in paragraph (4)(B), the Secretary  
13                  shall—

14                   “(i) deny the application;

15                   “(ii) notify the alien of the determina-  
16                   tion; and

17                   “(iii) terminate the conditional perma-  
18                   nent resident status of the alien as of the  
19                   date of the determination.

20                  “(3) TIME TO FILE APPLICATION.—

21                   “(A) IN GENERAL.—An alien shall submit  
22                   an application for adjustment of status during  
23                   the period beginning on the date on which the  
24                   alien obtains an extension of status under sub-  
25                   section (c)(5) and ending on—

1           “(i) the date that is 10 years after the  
2           date on which the Secretary initially grant-  
3           ed conditional permanent resident status to  
4           the alien; or

5           “(ii) the date on which the conditional  
6           permanent resident status of the alien, as  
7           extended by the Secretary under subsection  
8           (c)(5), expires.

9           “(B) STATUS DURING PENDENCY.—Dur-  
10          ing any period in which the application of an  
11          alien for adjustment of status under this sub-  
12          section is pending, an alien shall be considered  
13          to be in conditional permanent resident status.

14          “(4) CONTENTS OF APPLICATION.—

15          “(A) IN GENERAL.—An application to re-  
16          move conditions and adjust status under para-  
17          graph (1) shall contain information necessary  
18          for the Secretary to determine whether the alien  
19          meets each of the requirements described in  
20          subparagraph (B).

21          “(B) REQUIREMENTS.—

22          “(i) GOOD MORAL CHARACTER.—The  
23          alien has demonstrated good moral char-  
24          acter for the entire period during which

1 the alien has been a conditional permanent  
2 resident.

3 “(ii) COMPLIANCE.—The alien meets  
4 the requirements of subsection  
5 (b)(1)(B)(v).

6 “(iii) NO ABANDONMENT OF RESI-  
7 DENCE.—

8 “(I) IN GENERAL.—The alien has  
9 not abandoned the residence of the  
10 alien in the United States.

11 “(II) PRESUMPTION.—

12 “(aa) IN GENERAL.—For  
13 purposes of this subparagraph,  
14 except as provided in item (bb),  
15 the Secretary shall presume that  
16 an alien has abandoned the resi-  
17 dence of the alien in the United  
18 States if, during the period of  
19 conditional permanent resident  
20 status, the alien is absent from  
21 the United States for more than  
22 730 days in the aggregate.

23 “(bb) EXCEPTION.—Not-  
24 withstanding an absence from the  
25 United States of more than 730

1 days in the aggregate during the  
2 period of conditional permanent  
3 resident status of an alien, the  
4 presumption described in item  
5 (aa) shall not apply if the alien  
6 demonstrates, to the satisfaction  
7 of the Secretary, that the alien  
8 has not abandoned the residence  
9 of the alien in the United States.

10 “(III) ACTIVE SERVICE.—Any  
11 period during which an alien is absent  
12 from the United States due to active  
13 service in the Armed Forces shall not  
14 be counted toward the 730 days re-  
15 ferred to in subclause (II)(aa).

16 “(5) CITIZENSHIP REQUIREMENT.—

17 “(A) IN GENERAL.—Except as provided in  
18 subparagraph (B), a conditional permanent  
19 resident shall not have the conditional basis for  
20 permanent residency removed or be adjusted to  
21 permanent resident status unless the alien dem-  
22 onstrates that the alien meets the requirements  
23 described in paragraphs (1) and (2) of section  
24 312(a).

1           “(B) EXCEPTION.—Subparagraph (A)  
2 shall not apply to an alien who is unable to  
3 meet the requirements referred to in that sub-  
4 paragraph due to—

5                   “(i) a physical or developmental dis-  
6 ability; or

7                   “(ii) a mental impairment.

8           “(6) PAYMENT OF FEDERAL TAXES.—

9                   “(A) DEFINITION OF APPLICABLE FED-  
10 ERAL TAX LIABILITY.—In this paragraph, the  
11 term ‘applicable Federal tax liability’ means li-  
12 ability for Federal taxes imposed under the In-  
13 ternal Revenue Code of 1986, including any  
14 penalties and interest on taxes imposed under  
15 the Internal Revenue Code of 1986.

16                   “(B) PAYMENT REQUIRED.—Not later  
17 than the date on which an alien submits an ap-  
18 plication for adjustment of status under para-  
19 graph (1), the alien shall satisfy any applicable  
20 Federal tax liability due and owing as of that  
21 date of submission.

22           “(7) SUBMISSION OF BIOMETRIC AND BIO-  
23 GRAPHICAL DATA.—

24                   “(A) IN GENERAL.—The Secretary may  
25 not adjust the status of an alien under this sub-

1 section unless the alien submits to the Sec-  
2 retary biometric and biographical data in ac-  
3 cordance with procedures established by the  
4 Secretary.

5 “(B) ALTERNATIVE PROCEDURE.—The  
6 Secretary shall provide an alternative procedure  
7 for the submission of biometric and biographi-  
8 cal data for any applicant for adjustment of  
9 status who is unable to provide biometric or bi-  
10 ographical data due to a physical impairment.

11 “(8) BACKGROUND CHECKS.—

12 “(A) REQUIREMENT FOR BACKGROUND  
13 CHECKS.—The Secretary shall use biometric,  
14 biographical, and other data determined by the  
15 Secretary to be appropriate—

16 “(i) to conduct security and law en-  
17 forcement background checks of any alien  
18 applying for adjustment of status under  
19 this subsection; and

20 “(ii) to determine whether there is  
21 any criminal, national security, or other  
22 factor that would render the alien ineligible  
23 for adjustment of status.

24 “(B) COMPLETION OF BACKGROUND  
25 CHECKS.—The security and law enforcement

1 background checks under subparagraph (A)  
2 shall be completed, to the satisfaction of the  
3 Secretary, before the date on which Secretary  
4 grants adjustment of status.

5 “(9) EXEMPTION FROM NUMERICAL LIMITA-  
6 TIONS.—Nothing in this subsection or in any other  
7 law applies a numerical limitation on the number of  
8 aliens who may be eligible for adjustment of status  
9 under this subsection.

10 “(10) ELIGIBILITY FOR NATURALIZATION.—

11 “(A) IN GENERAL.—An alien whose status  
12 is adjusted under this subsection to that of an  
13 alien lawfully admitted for permanent residence  
14 may be naturalized in accordance with this Act  
15 if the alien meets the applicable requirements of  
16 the immigration laws.

17 “(B) ALIEN ENLISTEES.—For purposes of  
18 section 316(a), an alien enlistee whose status is  
19 adjusted under this subsection—

20 “(i) shall be considered to have satis-  
21 fied the requirements of paragraphs (1)  
22 and (2) of that section; and

23 “(ii) may apply for naturalization.

1       “(e) TREATMENT OF ALIENS MEETING REQUIRE-  
2 MENTS FOR EXTENSION OF CONDITIONAL PERMANENT  
3 RESIDENT STATUS.—

4           “(1) IN GENERAL.—With respect to an alien,  
5 the Secretary may cancel removal and grant condi-  
6 tional permanent resident status under subsection  
7 (b)(1), and may extend conditional permanent resi-  
8 dent status under subsection (c)(5), if, as of the  
9 date of enactment of this section, the alien has satis-  
10 fied each requirement described in subsections  
11 (b)(1)(B) and (c)(5)(B).

12           “(2) ADJUSTMENT OF STATUS.—An alien may  
13 apply for adjustment of status under subsection  
14 (d)(1) if, during the entire period of conditional per-  
15 manent resident status of the alien, the alien has  
16 met the requirements of subsection (c)(5)(B).

17       “(f) EXCLUSIVE JURISDICTION.—

18           “(1) IN GENERAL.—Except as provided in para-  
19 graph (2), the Secretary shall have exclusive juris-  
20 diction to determine eligibility for relief under this  
21 section.

22           “(2) EXCEPTION.—In the case of an alien who  
23 has been placed in deportation, exclusion, or removal  
24 proceedings before or after the date on which the  
25 alien submits an application for cancellation of re-



1        moval and conditional permanent resident status or  
2        adjustment of status under this section, the Attor-  
3        ney General—

4                “(A) shall have exclusive jurisdiction to de-  
5        termine eligibility for relief under this section;  
6        and

7                “(B) shall assume all powers and duties of  
8        the Secretary described in this section until the  
9        date on which—

10                “(i) deportation, exclusion, or removal  
11        proceedings are terminated; or

12                “(ii) a final order of deportation, ex-  
13        clusion, or removal is entered.

14                “(3) EFFECT OF FINAL ORDER.—In the case of  
15        an alien for whom a final order of deportation, ex-  
16        clusion, or removal is entered, the Secretary shall re-  
17        sume all powers and duties delegated to the Sec-  
18        retary under this section.

19                “(4) EFFECT OF GRANT OF RELIEF.—In the  
20        case of an alien with respect to whom a final order  
21        of deportation, exclusion, or removal has been en-  
22        tered, if the Secretary grants relief to the alien  
23        under this section, the Attorney General shall re-  
24        scind the final order of deportation, exclusion, or re-  
25        moval.

1 “(g) CONFIDENTIALITY OF INFORMATION.—

2 “(1) PROHIBITION.—Except as provided in  
3 paragraph (2), an officer or employee of the United  
4 States shall not—

5 “(A) use the information furnished by an  
6 individual in an application submitted to the  
7 Secretary under this section to initiate removal  
8 proceedings against any person identified in the  
9 application;

10 “(B) issue any publication in which the in-  
11 formation furnished by any particular individual  
12 in an application under this section may be  
13 identified; or

14 “(C) permit any person (other than the  
15 Secretary, an officer or employee of the Federal  
16 Government, or the alien) to examine an appli-  
17 cation submitted under this section.

18 “(2) REQUIRED DISCLOSURE.—The Attorney  
19 General or the Secretary, as applicable, shall provide  
20 the information furnished by an individual in an ap-  
21 plication under this section, and any other informa-  
22 tion derived from the information, to—

23 “(A) a Federal, State, Tribal, or local law  
24 enforcement agency, intelligence agency, na-  
25 tional security agency, component of the De-

1           partment of Homeland Security, court, or  
2           grand jury in connection with a criminal inves-  
3           tigation or prosecution, a background check  
4           conducted pursuant to the Brady Handgun Vio-  
5           lence Protection Act (Public Law 103–159; 107  
6           Stat. 1536) (or an amendment made by that  
7           Act), or for homeland security or national secu-  
8           rity purposes, if—

9                   “(i) the information is requested by  
10                   the Federal, State, Tribal, or local law en-  
11                   forcement agency, intelligence agency, na-  
12                   tional security agency, component of the  
13                   Department of Homeland Security, court,  
14                   or grand jury; and

15                   “(ii) the provision of the information  
16                   is consistent with an information sharing  
17                   agreement or mechanism; or

18                   “(B) an official coroner for purposes of af-  
19                   firmatively identifying a deceased individual  
20                   (whether or not the deceased individual is de-  
21                   ceased as a result of a crime).

22                   “(3) FRAUD IN APPLICATION PROCESS OR  
23                   CRIMINAL CONDUCT.—Notwithstanding any other  
24                   provision of this subsection, information relating to  
25                   whether an alien seeking cancellation of removal or

1 conditional permanent resident status under this  
2 section has engaged in fraud in an application for  
3 relief or has, at any time, committed a crime may  
4 be used or released for immigration enforcement,  
5 law enforcement, or national security purposes.

6 “(4) PENALTY.—Any person who knowingly  
7 uses or publishes information, or permits informa-  
8 tion to be examined, in violation of this subsection  
9 shall be fined not more than \$10,000.

10 “(h) TREATMENT OF CONDITIONAL PERMANENT  
11 RESIDENTS FOR CERTAIN PURPOSES.—

12 “(1) IN GENERAL.—During the period in which  
13 an alien is in conditional permanent resident status,  
14 the alien shall be considered to be lawfully present  
15 for all purposes.

16 “(2) 5-YEAR ELIGIBILITY WAITING PERIOD  
17 UNDER PRWORA.—An alien who has met the re-  
18 quirements for adjustment of status from conditional  
19 permanent resident to lawful permanent resident  
20 under this section shall be considered to have com-  
21 pleted the 5-year period described in section 403 of  
22 the Personal Responsibility and Work Opportunity  
23 Reconciliation Act of 1996 (8 U.S.C. 1613) as of the  
24 date on which the adjustment of status is granted.

1       “(i) GAO REPORT.—Not later than 7 years after the  
2 date of enactment of this section, the Comptroller General  
3 of the United States shall submit to the Committee on  
4 the Judiciary of the Senate and the Committee on the Ju-  
5 diciary of the House of Representatives a report that in-  
6 cludes the number of aliens—

7               “(1) who were eligible for cancellation of re-  
8 moval or conditional permanent resident status  
9 under subsection (b)(1);

10              “(2) who applied for cancellation of removal or  
11 conditional permanent resident status under that  
12 subsection;

13              “(3) who were granted conditional permanent  
14 resident status under that subsection; and

15              “(4) whose status was adjusted to that of an  
16 alien lawfully admitted for permanent residence  
17 under subsection (d).

18       “(j) NATURALIZATION OF ALIEN ENLISTEES.—For  
19 purposes of sections 328 and 329, an alien enlistee shall  
20 be considered to have been lawfully admitted for perma-  
21 nent residence, without regard to the conditional status  
22 of that admission.”.

23       (b) MILITARY ENLISTMENT.—Section 504(b)(1) of  
24 title 10, United States Code, is amended by adding at the  
25 end the following:

1           “(D) An alien who is a conditional perma-  
2           nent resident (as defined in section 244A(a) of  
3           the Immigration and Nationality Act).”.

4           (c) CONFORMING AMENDMENT.—The table of con-  
5           tents for the Immigration and Nationality Act (8 U.S.C.  
6           1101 note) is amended by inserting after the item relating  
7           to section 244 the following:

          “Sec. 244A. Cancellation of removal of certain long-term residents who entered  
          the United States as children.”.

8           **SEC. 5. GROUNDS OF INADMISSIBILITY AND DEPORT-**  
9                                   **ABILITY FOR ALIEN MEMBERS OF CRIMINAL**  
10                                   **GANGS OR CARTELS.**

11           (a) DEFINITION OF CRIMINAL GANG OR CARTEL.—  
12           Section 101(a) of the Immigration and Nationality Act (8  
13           U.S.C. 1101(a)) is amended—

14                   (1) by striking the subsection designation and  
15                   all that follows through “this Act—” and inserting  
16                   the following:

17                   “(a) IN GENERAL.—In this Act:”; and

18                   (2) by adding at the end the following:

19                   “(53) CRIMINAL GANG OR CARTEL.—The term  
20                   ‘criminal gang or cartel’ means an ongoing group,  
21                   club, organization, or association comprised of 5 or  
22                   more individuals—

1           “(A)(i) that has as a primary purpose the  
2           commission of 1 or more of the criminal of-  
3           fenses described in section 220(b)(2); and

4           “(ii) the members of which engage, or have  
5           engaged during the 5 years immediately pre-  
6           ceding the most recent commission of an of-  
7           fense described in section 220(b)(2), in a con-  
8           tinuing series of offenses described in section  
9           220(b)(2); or

10           “(B) that has been designated as a crimi-  
11           nal gang or cartel under section 220(b)(1).”.

12           (b) INADMISSIBILITY.—Section 212(a)(2) of the Im-  
13           migration and Nationality Act (8 U.S.C. 1182(a)(2)) is  
14           amended by adding at the end the following:

15           “(J) ALIENS ASSOCIATED WITH CRIMINAL  
16           GANGS OR CARTELS.—Any alien is inadmissible  
17           who a consular officer, the Secretary of Home-  
18           land Security, or the Attorney General knows or  
19           has reason to believe—

20           “(i) is or has been a member of a  
21           criminal gang or cartel; or

22           “(ii) has participated in any activity  
23           of a criminal gang or cartel, knowing or  
24           having reason to know that the activity  
25           would promote, further, aid, or support the

1                   illegal activity of the criminal gang or car-  
2                   tel.”.

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

6                   “(G) ALIENS ASSOCIATED WITH CRIMINAL  
7                   GANGS OR CARTELS.—Any alien is deportable  
8                   who—

9                           “(i) is or has been a member of a  
10                           criminal gang or cartel; or

11                           “(ii) has participated in any activity  
12                           of a criminal gang or cartel, knowing or  
13                           having reason to know that the activity  
14                           would promote, further, aid, or support the  
15                           illegal activity of the criminal gang or car-  
16                           tel.”.

17           (d) DESIGNATION OF A CRIMINAL GANG OR CAR-  
18 TEL.—

19                   (1) IN GENERAL.—Chapter 2 of title II of the  
20 Immigration and Nationality Act (8 U.S.C. 1182 et  
21 seq.) is amended by inserting after section 219 the  
22 following:

23 **“SEC. 220. DESIGNATION OF A CRIMINAL GANG OR CARTEL.**

24                   “(a) DEFINITIONS.—In this section:



1           “(1) CLASSIFIED INFORMATION.—The term  
2           ‘classified information’ has the meaning given the  
3           term in section 1(a) of the Classified Information  
4           Procedures Act (18 U.S.C. App.).

5           “(2) NATIONAL SECURITY.—The term ‘national  
6           security’ means the national defense, foreign rela-  
7           tions, or economic interests of the United States.

8           “(3) RELEVANT COMMITTEES.—The term ‘rel-  
9           evant committees’ means—

10                   “(A) the Committee on the Judiciary of  
11                   the Senate; and

12                   “(B) the Committee on the Judiciary of  
13                   the House of Representatives.

14           “(4) SECRETARY.—The term ‘Secretary’ means  
15           the Secretary of Homeland Security, in consultation  
16           with the Attorney General.

17           “(b) DESIGNATION.—

18                   “(1) IN GENERAL.—The Secretary may des-  
19                   ignate as a criminal gang or cartel a group, club, or-  
20                   ganization, or association comprised of 5 or more in-  
21                   dividuals if the Secretary makes a determination  
22                   that—

23                           “(A) the group, club, organization, or asso-  
24                           ciation has as a primary purpose the commis-

1 sion of 1 or more criminal offenses described in  
2 paragraph (2); and

3 “(B) the members of the group, club, orga-  
4 nization, or association engage, or, during the 5  
5 years immediately preceding the most recent  
6 commission of an offense described in section  
7 220(b)(2), have engaged in a continuing series  
8 of offenses described in paragraph (2).

9 “(2) OFFENSES.—The criminal offenses de-  
10 scribed in this paragraph, whether committed in vio-  
11 lation of Federal, State, or foreign law and regard-  
12 less of whether an offense occurred before, on, or  
13 after the date of enactment of this section, are the  
14 following:

15 “(A) FELONY DRUG OFFENSE.—A felony  
16 drug offense (as defined in section 102 of the  
17 Controlled Substances Act (21 U.S.C. 802)).

18 “(B) BRINGING IN AND HARBORING  
19 ALIENS.—An offense described in section 274  
20 (relating to bringing in and harboring certain  
21 aliens).

22 “(C) AIDING OR ASSISTING ENTRY.—An  
23 offense described in section 277 (relating to  
24 aiding or assisting certain aliens to enter the  
25 United States).

1           “(D) IMPORTATION FOR AN IMMORAL PUR-  
2           POSE.—An offense described in section 278 (re-  
3           lating to importation of an alien for an immoral  
4           purpose).

5           “(E) CRIME OF VIOLENCE.—A crime of vi-  
6           olence (as defined in section 16 of title 18,  
7           United States Code).

8           “(F) CRIME INVOLVING OBSTRUCTION,  
9           TAMPERING, RETALIATION, OR BURGLARY.—A  
10          crime involving—

11                   “(i) obstruction of justice;

12                   “(ii) tampering with, or retaliating  
13                   against, a witness, victim, or informant; or

14                   “(iii) burglary.

15          “(G) OTHER CRIMES.—Any conduct pun-  
16          ishable under—

17                   “(i) section 1028 or 1029 of title 18,  
18                   United States Code (relating to fraud and  
19                   related activity in connection with identi-  
20                   fication documents or access devices);

21                   “(ii) sections 1581 through 1594 of  
22                   that title (relating to peonage, slavery, and  
23                   trafficking in persons);

1           “(iii) section 1951 of that title (relat-  
2           ing to interference with commerce by  
3           threats or violence);

4           “(iv) section 1952 of that title (relat-  
5           ing to interstate and foreign travel or  
6           transportation in aid of racketeering enter-  
7           prises);

8           “(v) section 1956 of that title (relat-  
9           ing to the laundering of monetary instru-  
10          ments);

11          “(vi) section 1957 of that title (relat-  
12          ing to engaging in monetary transactions  
13          in property derived from specified unlawful  
14          activity); or

15          “(vii) section 2312, 2313, 2314, or  
16          2315 of that title (relating to interstate  
17          transportation of stolen motor vehicles or  
18          stolen property).

19          “(H) CONSPIRACY.—A conspiracy to com-  
20          mit an offense described in subparagraphs (A)  
21          through (G).

22          “(3) PROCEDURE.—

23                 “(A) NOTIFICATION.—Not later than 7  
24                 days before the date on which the Secretary  
25                 designates a criminal gang or cartel under this

1 subsection, the Secretary shall submit to the  
2 Speaker and minority leader of the House of  
3 Representatives, the President pro tempore,  
4 majority leader, and minority leader of the Sen-  
5 ate, and the members of the relevant commit-  
6 tees, by classified communication, a notice of  
7 intent to designate the criminal gang or cartel  
8 that describes the factual basis for the designa-  
9 tion.

10 “(B) PUBLICATION IN THE FEDERAL REG-  
11 ISTER.—Not later than 7 days after the date  
12 described in subparagraph (A), the Secretary  
13 shall publish notice of the designation in the  
14 Federal Register.

15 “(4) RECORD.—

16 “(A) IN GENERAL.—In making a designa-  
17 tion under this subsection, the Secretary shall  
18 develop an administrative record.

19 “(B) CLASSIFIED INFORMATION.—

20 “(i) IN GENERAL.—In making a des-  
21 ignation under this subsection, the Sec-  
22 retary may consider classified information,  
23 which, except as provided in clause (ii),  
24 shall not be subject to disclosure for any

1 period during which the classified informa-  
2 tion remains classified.

3 “(ii) DISCLOSURE FOR JUDICIAL RE-  
4 VIEW.—For purposes of judicial review  
5 under subsection (d), classified information  
6 referred to in clause (i) may be disclosed  
7 to a court ex parte and in camera.

8 “(5) PERIOD OF DESIGNATION.—A designation  
9 under this subsection shall be effective until the date  
10 on which the designation—

11 “(A) is revoked under paragraph (7); or

12 “(B) set aside under subsection (d).

13 “(6) REVIEW OF DESIGNATION.—

14 “(A) PETITION FOR REVIEW.—

15 “(i) IN GENERAL.—The Secretary  
16 shall review the designation of a criminal  
17 gang or cartel under the procedures de-  
18 scribed in clauses (iii) and (iv) if the crimi-  
19 nal gang or cartel submits to the Secretary  
20 a petition for review not later than—

21 “(I) in the case of a designated  
22 criminal gang or cartel that has not  
23 previously submitted a petition for re-  
24 view under this subparagraph, the  
25 date that is 2 years after the date on

1           which the Secretary makes the des-  
2           ignation; and

3           “(II) in the case of a designated  
4           criminal gang or cartel that has pre-  
5           viously submitted a petition for review  
6           under this subparagraph, the date  
7           that is 2 years after the date on which  
8           the Secretary made a determination  
9           under clause (iv) on the most recent  
10          petition for review submitted by the  
11          criminal gang or cartel.

12          “(ii) EVIDENCE.—Any group, club,  
13          organization, or association designated as  
14          criminal gang or cartel that submits a peti-  
15          tion for review under this subparagraph  
16          shall include in the petition evidence that  
17          the group, club, organization, or associa-  
18          tion does not meet the criteria for designa-  
19          tion as a criminal gang or cartel under  
20          paragraph (1).

21          “(iii) DETERMINATION.—

22          “(I) IN GENERAL.—Not later  
23          than 180 days after the date on which  
24          the Secretary receives a petition for  
25          review under this subparagraph, the

1 Secretary shall make a determination  
2 on the petition.

3 “(II) CLASSIFIED INFORMATION.—  
4 TION.—

5 “(aa) IN GENERAL.—In  
6 making a determination on a pe-  
7 tition for review under this sub-  
8 paragraph, the Secretary may  
9 consider classified information,  
10 which, except as provided in item  
11 (bb), shall not be subject to dis-  
12 closure for any period during  
13 which the classified information  
14 remains classified.

15 “(bb) DISCLOSURE FOR JU-  
16 DICIAL REVIEW.—For purposes  
17 of judicial review under sub-  
18 section (d), classified information  
19 referred to in item (aa) may be  
20 disclosed to a court ex parte and  
21 in camera.

22 “(III) PUBLICATION OF DETER-  
23 MINATION.—Not later than 90 days  
24 after the date on which the Secretary  
25 makes a determination on a petition



1 for review under this clause, the Sec-  
2 retary shall publish the determination  
3 in the Federal Register.

4 “(IV) PROCEDURES.—A revoca-  
5 tion of a designation by the Secretary  
6 in accordance with a determination  
7 under this subparagraph shall be  
8 made in accordance with paragraph  
9 (7).

10 “(B) OTHER REVIEW OF DESIGNATION.—

11 “(i) IN GENERAL.—Not later than 5  
12 years after the date on which the Secretary  
13 designates a criminal gang or cartel under  
14 paragraph (1), in the case of a criminal  
15 gang or cartel for which a review has not  
16 been carried out under subparagraph (A),  
17 the Secretary shall initiate a review of the  
18 designation to determine whether to revoke  
19 the designation under paragraph (7).

20 “(ii) PROCEDURES.—

21 “(I) IN GENERAL.—A review ini-  
22 tiated by the Secretary under clause  
23 (i) shall be carried out in accordance  
24 with such procedures determined by  
25 the Secretary to be appropriate.

1                   “(II) JUDICIAL REVIEW.—A re-  
2 view under subclause (I) and the pro-  
3 cedures established under that sub-  
4 clause shall not be subject to judicial  
5 review.

6                   “(iii) PUBLICATION OF RESULTS OF  
7 REVIEW.—Not later than 90 days after the  
8 date on which the Secretary makes a de-  
9 termination based on a review under this  
10 subparagraph, the Secretary shall publish  
11 the determination in the Federal Register.

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

14                   “(A) IN GENERAL.—With respect to a des-  
15 ignation under paragraph (1), the Secretary—

16                   “(i) may revoke the designation at  
17 any time; and

18                   “(ii) shall revoke the designation if,  
19 on completion of a review carried out  
20 under paragraph (6), the Secretary deter-  
21 mines that—

22                   “(I) the criminal gang or cartel  
23 does not meet the criteria for designa-  
24 tion as a criminal gang or cartel  
25 under paragraph (1); or

1                   “(II) the national security or the  
2                   law enforcement interests of the  
3                   United States warrants a revocation.

4                   “(B) NOTIFICATION.—Not later than 7  
5                   days before revoking a designation under para-  
6                   graph (A), the Secretary shall submit to the  
7                   Speaker and minority leader of the House of  
8                   Representatives, the President pro tempore,  
9                   majority leader, and minority leader of the Sen-  
10                  ate, and the members of the relevant commit-  
11                  tees, by classified communication, a notice of  
12                  intent to revoke the designation describing the  
13                  basis for the revocation.

14                  “(C) PUBLICATION IN THE FEDERAL REG-  
15                  ISTER.—Not later than 7 days after the date  
16                  described in subparagraph (B), the Secretary  
17                  shall publish a notice of revocation in the Fed-  
18                  eral Register.

19                  “(D) RECORD.—

20                         “(i) IN GENERAL.—In revoking a des-  
21                         ignation under this paragraph, the Sec-  
22                         retary shall develop an administrative  
23                         record.

24                         “(ii) CLASSIFIED INFORMATION.—

1                   “(I) IN GENERAL.—In revoking a  
2                   designation under this paragraph, the  
3                   Secretary may consider classified in-  
4                   formation, which, except as provided  
5                   in subclause (II), shall not be subject  
6                   to disclosure for any period during  
7                   which the classified information re-  
8                   mains classified.

9                   “(II) DISCLOSURE FOR JUDICIAL  
10                  REVIEW.—For purposes of judicial re-  
11                  view under subsection (d), classified  
12                  information referred to in subclause  
13                  (I) may be disclosed to a court ex  
14                  parte and in camera.

15                  “(E) EFFECTIVE DATE.—A revocation  
16                  under this paragraph shall take effect—

17                         “(i) on the date specified in the notice  
18                         of revocation published under subpara-  
19                         graph (C); or

20                         “(ii) if a date is not specified in the  
21                         notice of revocation, on the date on which  
22                         the notice of revocation is published in the  
23                         Federal Register.

24                  “(8) EFFECT OF REVOCATION.—A revocation  
25                  under paragraph (7) shall not affect any action or

1 proceeding based on conduct that occurs before the  
2 effective date of the revocation.

3 “(9) USE OF DESIGNATION IN REMOVAL PRO-  
4 CEEDINGS.—The Attorney General shall not allow  
5 an alien in removal proceedings to raise, as a de-  
6 fense or an objection, a question relating to the va-  
7 lidity of a designation under paragraph (1).

8 “(c) MODIFICATIONS TO A DESIGNATION.—

9 “(1) IN GENERAL.—With respect to a designa-  
10 tion under subsection (b)(1), the Secretary may  
11 modify the designation if the Secretary determines  
12 that the criminal gang or cartel has—

13 “(A) changed name;

14 “(B) adopted a new alias;

15 “(C) dissolved and reestablished under 1  
16 or more different names; or

17 “(D) merged with another criminal gang  
18 or cartel.

19 “(2) PROCEDURE.—

20 “(A) NOTIFICATION.—Not later than 7  
21 days before the date on which the Secretary  
22 modifies the designation of a criminal gang or  
23 cartel under this subsection, the Secretary shall  
24 submit to the Speaker and minority leader of  
25 the House of Representatives, the President pro

1           tempore, majority leader, and minority leader of  
2           the Senate, and the members of the relevant  
3           committees, by classified communication, a no-  
4           tice of intent to modify the designation describ-  
5           ing the factual basis for the modification.

6           “(B) PUBLICATION IN THE FEDERAL REG-  
7           ISTER.—Not later than 7 days after the date  
8           described in subparagraph (A), the Secretary  
9           shall publish notice of the modification in the  
10          Federal Register.

11          “(C) CLASSIFIED INFORMATION.—

12           “(i) IN GENERAL.—In modifying a  
13           designation under this subsection, the Sec-  
14           retary may consider classified information,  
15           which, except as provided in clause (ii),  
16           shall not be subject to disclosure for any  
17           period during which the classified informa-  
18           tion remains classified.

19           “(ii) DISCLOSURE FOR JUDICIAL RE-  
20           VIEW.—For purposes of judicial review  
21           under subsection (d), classified information  
22           referred to in clause (i) may be disclosed  
23           to a court *ex parte* and *in camera*.

24          “(D) EFFECTIVE DATE.—Any modification  
25          under this subsection shall take effect on the

1           date of publication of the modification under  
2           subparagraph (B).

3           “(3) ADMINISTRATIVE RECORD.—The adminis-  
4           trative record developed under subsection (b)(4)  
5           shall be supplemented to include—

6                   “(A) any modification under this sub-  
7                   section; and

8                   “(B) any relevant information that sup-  
9                   ports the modification.

10          “(d) JUDICIAL REVIEW OF DESIGNATION.—

11           “(1) IN GENERAL.—Not later than 30 days  
12           after the date on which a designation under sub-  
13           section (b)(1), a determination under subsection  
14           (b)(6)(A), or a modification under subsection (c) is  
15           published in the Federal Register, a criminal gang  
16           or cartel may seek judicial review of the designation,  
17           determination, or modification, as applicable, in the  
18           United States Court of Appeals for the District of  
19           Columbia Circuit (referred to in this subsection as  
20           the ‘court’).

21           “(2) BASIS OF REVIEW.—

22                   “(A) IN GENERAL.—Except as provided in  
23                   subparagraph (B), judicial review under this  
24                   subsection shall be based only on the adminis-

1           trative record developed under subsection  
2           (b)(4).

3           “(B) EXCEPTION.—The Government may  
4           submit, for ex parte and in camera review, clas-  
5           sified information used as a basis for—

6                   “(i) a designation under subsection  
7                   (b)(1);

8                   “(ii) a determination under subsection  
9                   (b)(6)(A); or

10                   “(iii) a modification under subsection  
11                   (c).

12           “(3) SCOPE OF REVIEW.—The court shall hold  
13           unlawful, and set aside, any designation under sub-  
14           section (b)(1), determination under subsection  
15           (b)(6)(A), or modification under subsection (c) that  
16           is, as determined by the court—

17                   “(A) arbitrary, capricious, an abuse of dis-  
18                   cretion, or otherwise not in accordance with the  
19                   law;

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

22                   “(C) in excess of statutory jurisdiction, au-  
23                   thority, or limitation;

24                   “(D) short of statutory right;

25                   “(E) lacking substantial support—



1                   “(i) in the administrative record,  
2                   taken into consideration as a whole; or

3                   “(ii) in classified information sub-  
4                   mitted to the court under paragraph  
5                   (2)(B); or

6                   “(F) not in accordance with a procedure  
7                   required by law.

8                   “(4) JUDICIAL REVIEW INVOKED.—The pend-  
9                   ency of an action for judicial review under this sub-  
10                  section shall not affect the application of this section  
11                  to a criminal gang or cartel unless the court issues  
12                  a final order setting aside the designation, deter-  
13                  mination, or modification.”.

14                  (2) CONFORMING AMENDMENT.—The table of  
15                  contents for the Immigration and Nationality Act (8  
16                  U.S.C. 1101 note) is amended by inserting after the  
17                  item relating to section 219 the following:

“Sec. 220. Designation of a criminal gang or cartel.”.

18                  (e) MANDATORY DETENTION OF ALIEN MEMBERS  
19                  OF CRIMINAL GANGS OR CARTELS.—

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

23                         (A) in subparagraph (A), by striking the  
24                         comma at the end and inserting a semicolon;

1 (B) in subparagraph (B), by striking the  
2 comma at the end and inserting a semicolon;

3 (C) in subparagraph (C), by striking “, or”  
4 and inserting a semicolon;

5 (D) in subparagraph (D), by striking the  
6 comma at the end and inserting “; or”; and

7 (E) by inserting after subparagraph (D)  
8 the following:

9 “(E) is inadmissible under section  
10 212(a)(2)(J) or deportable under section  
11 237(a)(2)(G).”

12 (2) ANNUAL REPORT.—Not later than March 1  
13 of each year (beginning 1 year after the date of en-  
14 actment of this Act), the Secretary, after consulta-  
15 tion with the appropriate Federal agencies, shall  
16 submit a report to the Committee on the Judiciary  
17 of the Senate and the Committee on the Judiciary  
18 of the House of Representatives that includes the  
19 number of aliens detained under subparagraph (E)  
20 of section 236(e)(1) of the Immigration and Nation-  
21 ality Act (8 U.S.C. 1226(e)(1)) during the preceding  
22 calendar year.

23 (f) RELIEF BASED ON GANG AFFILIATION.—

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. 1231(b)(3)(B)) is amended—

3               (A) by redesignating clauses (i) through  
4               (iv) as items (aa) through (dd), respectively,  
5               and indenting the items appropriately;

6               (B) in the matter preceding item (aa) (as  
7               so redesignated), by striking “apply to an alien  
8               deportable under section 237(a)(4)(D) or if the  
9               Attorney General decides that—” and inserting  
10              the following: “apply—

11                      “(i) to an alien—

12                              “(I) described in section  
13                              212(a)(2)(J)(i);

14                              “(II) described in section  
15                              237(a)(2)(G)(i); or

16                              “(III) who is deportable under  
17                              section 237(a)(4)(D); or

18                              “(ii) if the Attorney General deter-  
19                              mines that—”; and

20               (C) in the undesignated matter following  
21               item (dd) (as so redesignated)—

22                      (i) in the first sentence, by striking  
23                      “clause (ii)” and inserting “item (bb)”;  
24                      and

1 (ii) in the third sentence, by striking  
2 “clause (iv)” and inserting “item (dd)”.

3 (2) INELIGIBILITY FOR ASYLUM.—Section  
4 208(b)(2)(A) of the Immigration and Nationality  
5 Act (8 U.S.C. 1158(b)(2)(A)) is amended—

6 (A) in clause (v), by striking “; or” and in-  
7 serting a semicolon;

8 (B) by redesignating clause (vi) as clause  
9 (vii); and

10 (C) by inserting after clause (v) the fol-  
11 lowing:

12 “(vi) the alien is described in section  
13 212(a)(2)(J)(i) or section 237(a)(2)(G)(i);  
14 or”.

15 (g) TEMPORARY PROTECTED STATUS.—

16 (1) IN GENERAL.—Section 244 of the Immigra-  
17 tion and Nationality Act (8 U.S.C. 1254a) is amend-  
18 ed—

19 (A) by striking “Attorney General” each  
20 place it appears and inserting “Secretary of  
21 Homeland Security”;

22 (B) in subsection (c)(2)(B)—

23 (i) in clause (i), by striking “, or” and  
24 inserting a semicolon;

1 (ii) in clause (ii), by striking the pe-  
2 riod at the end and inserting “; or”;

3 (iii) by adding at the end the fol-  
4 lowing:

5 “(iii) the alien is described in section  
6 212(a)(2)(J) or section 237(a)(2)(G).”;

7 and

8 (C) in subsection (d)—

9 (i) in paragraph (2)—

10 (I) in the first sentence, by strik-  
11 ing “Subject to paragraph (3), such  
12 documentation” and inserting “The  
13 documentation referred to in para-  
14 graph (1)”;

15 (II) in the second sentence, by  
16 striking “(under paragraph (3))”;

17 (ii) by striking paragraph (3);

18 (iii) by redesignating paragraph (4) as  
19 paragraph (3); and

20 (iv) in paragraph (3) (as so redesign-  
21 ated), by striking “An alien provided”  
22 and inserting the following:

23 “(A) IN GENERAL.—Except as provided in  
24 subparagraph (B), the Secretary of Homeland  
25 Security may detain an alien provided tem-

1           porary protected status under this section, as  
2           determined by the Secretary to be appropriate  
3           under the law.

4                   “(B) EXCEPTION.—An alien provided”.

5           (2)    CONFORMING    AMENDMENT.—Section  
6           244(b)(3)(B) of the Immigration and Nationality  
7           Act (8 U.S.C. 1254a(b)(3)(B)) is amended in the  
8           second sentence by striking “is effective in accord-  
9           ance with subsection (d)(3), but”.

10          (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section  
11   101(a)(27)(J)(iii) of the Immigration and Nationality Act  
12   (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

13           (1) in subclause (I), by striking “; and” and in-  
14           serting a semicolon;

15           (2) in subclause (II), by striking the semicolon  
16           at the end and inserting “; and”; and

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

18                   “(III) no alien described in sec-  
19                   tion    212(a)(2)(J)    or    section  
20                   237(a)(2)(G) shall be eligible for any  
21                   immigration benefit under this sub-  
22                   paragraph;”.

23          (i) PAROLE.—Section 212(d)(5) of the Immigration  
24   and Nationality Act (8 U.S.C. 1182(d)(5)) is amended—

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

4           (2) by striking the paragraph designation and  
5 all that follows through “in his discretion” in sub-  
6 paragraph (A) and inserting the following:

7           “(5) PAROLE.—

8           “(A) IN GENERAL.—Except as provided in  
9 subparagraphs (B) and (C) and in section  
10 214(f), the Secretary of Homeland Security  
11 may”; and

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

13           “(C) ALIENS ASSOCIATED WITH CRIMINAL  
14 GANGS OR CARTELS.—

15           “(i) IN GENERAL.—Except as pro-  
16 vided in clause (ii), the Secretary of Home-  
17 land Security shall not parole into the  
18 United States an alien described in section  
19 212(a)(2)(J).

20           “(ii) EXCEPTION.—The Secretary of  
21 Homeland Security may parole into the  
22 United States an alien described in section  
23 212(a)(2)(J) if—

24           “(I) the alien is assisting or has  
25 assisted the Government in a law en-

1                   forcement matter, including a criminal  
2                   investigation; and

3                   “**(II)** the presence of the alien in  
4                   the United States is required by the  
5                   Government for purposes of such as-  
6                   sistance.”.

7           (j) **APPLICABILITY.**—The amendments made by this  
8 section shall apply to conduct that occurs before, on, or  
9 after the date of enactment of this Act.

10 **SEC. 6. BORDER ACCESS ROADS.**

11           (a) **CONSTRUCTION.**—

12                   (1) **IN GENERAL.**—The Secretary shall com-  
13 mence and complete the construction of roads along  
14 the southern border to facilitate safe and swift ac-  
15 cess for U.S. Customs and Border Protection per-  
16 sonnel to access the border for purposes of patrol  
17 and apprehension.

18                   (2) **TYPES OF ROADS.**—The roads constructed  
19 under paragraph (1) shall include—

20                           (A) access roads;

21                           (B) border roads;

22                           (C) patrol roads; and

23                           (D) Federal, State, local, and privately  
24 owned roads.



1 (b) MAINTENANCE.—The Secretary, in partnership  
2 with local stakeholders, shall maintain roads used for pur-  
3 poses of patrol and apprehension.

4 (c) POLICY GUIDANCE.—The Secretary shall—

5 (1) develop policies and guidance for docu-  
6 menting agreements with landowners relating to the  
7 construction of roads under subsection (a), as the  
8 Secretary determines to be necessary;

9 (2) share the policies and guidance developed  
10 under paragraph (1) with each Border Patrol Sector  
11 of U.S. Customs and Border Protection;

12 (3) document and communicate the process and  
13 criteria for prioritizing funding for operational roads  
14 not owned by the Federal Government; and

15 (4) assess the feasibility of options for address-  
16 ing the maintenance of non-Federal public roads, in-  
17 cluding any data needs relating to such mainte-  
18 nance.

○