

115TH CONGRESS
2D SESSION

S. 2380

To amend the Immigration and Nationality Act with respect to aliens associated with criminal gangs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2018

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

A BILL

To amend the Immigration and Nationality Act with respect to aliens associated with criminal gangs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Criminal Alien Gang
5 Member Removal Act”.

6 **SEC. 2. GROUNDS OF INADMISSIBILITY AND DEPORT-**
7 **ABILITY FOR ALIEN GANG MEMBERS.**

8 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
9 of the Immigration and Nationality Act (8 U.S.C.
10 1101(a)) is amended by adding at the end the following:

1 “(53) The term ‘criminal gang’ means an ongoing
2 group, club, organization, or association of 5 or more per-
3 sons that has, as 1 of its primary purposes, the commis-
4 sion of 1 or more of the criminal offenses listed in sub-
5 paragraphs (A) through (F), whether in violation of Fed-
6 eral, State, or foreign law and regardless of whether the
7 offenses occurred before, on, or after the date of the enact-
8 ment of this paragraph, and the members of which engage,
9 or have engaged within the past 5 years, in a continuing
10 series of such offenses, or that has been designated as a
11 criminal gang by the Secretary of Homeland Security, in
12 consultation with the Attorney General, as meeting such
13 criteria.

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

17 “(B) An offense under section 274 (relating to
18 bringing in and harboring certain aliens), section
19 277 (relating to aiding or assisting certain aliens to
20 enter the United States), or section 278 (relating to
21 importation of alien for immoral purpose).

22 “(C) A crime of violence (as defined in section
23 16 of title 18, United States Code).

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

4 “(E) Any conduct punishable under sections
5 1028 and 1029 of title 18, United States Code (re-
6 lating to fraud and related activity in connection
7 with identification documents or access devices), sec-
8 tions 1581 through 1594 of such title (relating to
9 peonage, slavery, and trafficking in persons), section
10 1951 of such title (relating to interference with com-
11 merce by threats or violence), section 1952 of such
12 title (relating to interstate and foreign travel or
13 transportation in aid of racketeering enterprises),
14 section 1956 of such title (relating to the laundering
15 of monetary instruments), section 1957 of such title
16 (relating to engaging in monetary transactions in
17 property derived from specified unlawful activity), or
18 sections 2312 through 2315 of such title (relating to
19 interstate transportation of stolen motor vehicles or
20 stolen property).

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

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

1 “(J) ALIENS ASSOCIATED WITH CRIMINAL
2 GANGS.—Any alien is inadmissible if a consular
3 officer, the Secretary of Homeland Security, or
4 the Attorney General knows or has reason to
5 believe that the alien—

6 “(i) is or has been a member of a
7 criminal gang; or

8 “(ii) has participated in the activities
9 of a criminal gang, knowing or having rea-
10 son to know that such activities will pro-
11 mote, further, aid, or support the illegal
12 activity of the criminal gang.”.

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

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

18 “(i) is or has been a member of a
19 criminal gang (as defined in section
20 101(a)(53)); or

21 “(ii) has participated in the activities
22 of a criminal gang (as so defined), knowing
23 or having reason to know that such activi-
24 ties will promote, further, aid, or support
25 the illegal activity of the criminal gang.”.

1 (d) DESIGNATION.—

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

6 **“SEC. 220. DESIGNATION OF CRIMINAL GANG.**

7 “(a) DESIGNATION.—

8 “(1) IN GENERAL.—The Secretary, in consulta-
9 tion with the Attorney General, may designate a
10 group, club, organization, or association of 5 or
11 more persons as a criminal gang if the Secretary
12 finds that their conduct is described in section
13 101(a)(53).

14 “(2) PROCEDURE.—

15 “(A) NOTIFICATION.—Not later than 7
16 days before making a designation under this
17 subsection, the Secretary, by classified commu-
18 nication, shall submit written notification to the
19 Speaker and Minority Leader of the House of
20 Representatives, the President pro tempore,
21 Majority Leader, and Minority Leader of the
22 Senate, and the members of the relevant com-
23 mittees of the House of Representatives and the
24 Senate of the intent to designate a group, club,
25 organization, or association of 5 or more per-

1 sons under this subsection and the factual basis
2 for such designation.

3 “(B) PUBLICATION IN THE FEDERAL REG-
4 ISTER.—Not later than 7 days after submitting
5 the notification under subparagraph (A), the
6 Secretary shall publish each designation under
7 this subsection in the Federal Register.

8 “(3) RECORD.—

9 “(A) IN GENERAL.—In making a designa-
10 tion under this subsection, the Secretary shall
11 create an administrative record.

12 “(B) CLASSIFIED INFORMATION.—The
13 Secretary may consider classified information in
14 making a designation under this subsection.
15 Classified information may not be subject to
16 disclosure while it remains classified, except
17 that such information may be disclosed to a
18 court ex parte and in camera for purposes of
19 judicial review under subsection (c).

20 “(4) PERIOD OF DESIGNATION.—

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

1 “(B) REVIEW OF DESIGNATION UPON PE-
2 TITION.—

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

11 “(ii) PETITION PERIOD.—For pur-
12 poses of clause (i)—

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

20 “(II) if the designated group,
21 club, organization, or association of 5
22 or more persons has previously filed a
23 petition for revocation under this sub-
24 paragraph, the petition period begins
25 2 years after the date of the deter-

mination made under clause (iv) on that petition.

“(iii) PROCEDURES.—Any group, club, organization, or association of 5 or more persons that submits a petition for revocation under this subparagraph of its designation as a criminal gang must provide evidence in that petition that the group, club, organization, or association is not described in section 101(a)(53).

“(iv) DETERMINATION.—

“(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination regarding such revocation.

“(II) CLASSIFIED INFORMATION.—The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be

1 disclosed to a court ex parte and in
2 camera for purposes of judicial review
3 under subsection (c).

4 “(III) PUBLICATION OF DETER-
5 MINATION.—A determination made by
6 the Secretary under this clause shall
7 be published in the Federal Register.

8 “(IV) PROCEDURES.—Any rev-
9 ocation by the Secretary shall be
10 made in accordance with paragraph
11 (6).

12 “(C) OTHER REVIEW OF DESIGNATION.—

13 “(i) IN GENERAL.—If no review has
14 taken place under subparagraph (B) dur-
15 ing a 5-year period, the Secretary shall re-
16 view the designation of the criminal gang
17 in order to determine whether such des-
18 ignation should be revoked pursuant to
19 paragraph (6).

20 “(ii) PROCEDURES.—If a review does
21 not take place pursuant to subparagraph
22 (B) in response to a petition for revocation
23 that is filed in accordance with that sub-
24 paragraph, a review shall be conducted
25 pursuant to procedures established by the

1 Secretary. The results of such review and
2 the applicable procedures are not review-
3 able by any court.

4 “(iii) PUBLICATION OF RESULTS OF
5 REVIEW.—The Secretary shall publish any
6 determination made under this subpara-
7 graph in the Federal Register.

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

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

13 “(A) IN GENERAL.—The Secretary may re-
14 voke a designation made under paragraph (1)
15 at any time, and shall revoke a designation
16 upon completion of a review conducted under
17 subparagraphs (B) and (C) of paragraph (4) if
18 the Secretary determines that—

19 “(i) the group, club, organization, or
20 association of 5 or more persons that has
21 been designated as a criminal gang is no
22 longer described in section 101(a)(53); or

23 “(ii) the national security or the law
24 enforcement interests of the United States
25 warrants a revocation.

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

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

12 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
13 ING.—If a designation under this subsection has be-
14 come effective under paragraph (2), an alien in a re-
15 moval proceeding may not raise any question con-
16 cerning the validity of the issuance of such designa-
17 tion as a defense or an objection.

18 “(b) AMENDMENTS TO A DESIGNATION.—

19 “(1) IN GENERAL.—The Secretary may amend
20 a designation under this subsection if the Secretary
21 determines that the group, club, organization, or as-
22 sociation of 5 or more persons has changed its
23 name, adopted a new alias, dissolved and then recon-
24 stituted itself under a different name or names, or

1 merged with another group, club, organization, or
2 association of 5 or more persons.

3 “(2) PROCEDURE.—Amendments made to a
4 designation under paragraph (1) shall be effective
5 upon publication in the Federal Register. Para-
6 graphs (2), (4), (5), (6), (7), and (8) of subsection
7 (a) shall also apply to an amended designation.

8 “(3) ADMINISTRATIVE RECORD.—The adminis-
9 trative record shall be corrected to include the
10 amendments and any additional relevant information
11 that supports such amendments.

12 “(4) CLASSIFIED INFORMATION.—The Sec-
13 retary may consider classified information in amend-
14 ing a designation in accordance with this subsection.
15 Classified information shall not be subject to disclo-
16 sure while it remains classified, except that such in-
17 formation may be disclosed to a court ex parte and
18 in camera for purposes of judicial review under sub-
19 section (c).

20 “(c) JUDICIAL REVIEW OF DESIGNATION.—

21 “(1) IN GENERAL.—Not later than 30 days
22 after publication in the Federal Register of a des-
23 ignation, an amended designation, or a determina-
24 tion in response to a petition for revocation, the des-
25 ignated group, club, organization, or association of 5

1 or more persons may seek judicial review in the
2 United States Court of Appeals for the District of
3 Columbia Circuit.

4 “(2) BASIS OF REVIEW.—Review under this
5 subsection shall be based solely upon the administra-
6 tive record, except that the Government may submit,
7 for ex parte and in camera review, classified infor-
8 mation used in making the designation, amended
9 designation, or determination in response to a peti-
10 tion for revocation.

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

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

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

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

23 “(D) lacking substantial support in the ad-
24 ministrative record taken as a whole or in clas-

1 sified information submitted to the court under
2 paragraph (2); or

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

5 “(4) JUDICIAL REVIEW INVOKED.—The pend-
6 ency of an action for judicial review of a designation,
7 amended designation, or determination in response
8 to a petition for revocation shall not affect the appli-
9 cation of this section, unless the court issues a final
10 order setting aside the designation, amended des-
11 ignation, or determination in response to a petition
12 for revocation.

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

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

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

20 “(3) the term ‘relevant committees’ means the
21 Committees on the Judiciary of the Senate and of
22 the House of Representatives; and

23 “(4) the term ‘Secretary’ means the Secretary
24 of Homeland Security, in consultation with the At-
25 torney General.”.

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

“Sec. 220. Designation of criminal gang.”.

4 (e) MANDATORY DETENTION OF CRIMINAL GANG
 5 MEMBERS.—

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

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

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

13 (C) in subparagraph (C), by striking “, or”
 14 at the end and inserting a semicolon;

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

17 (E) by inserting after subparagraph (D)
 18 the following:

19 “(E) is inadmissible under section
 20 212(a)(2)(J) or deportable under section
 21 217(a)(2)(G),”.

22 (2) ANNUAL REPORT.—Not later than March 1
 23 of the first year beginning after the date of the en-
 24 actment of this Act, and annually thereafter, the
 25 Secretary of Homeland Security, after consultation

1 with the appropriate Federal agencies, shall submit
 2 a report to the Committee on the Judiciary of the
 3 Senate and the Committee on the Judiciary of the
 4 House of Representatives that identifies the number
 5 of aliens detained as a result of the amendment
 6 made by paragraph (1)(E).

7 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-
 8 ATION.—

9 (1) INAPPLICABILITY OF RESTRICTION ON RE-
 10 MOVAL TO CERTAIN COUNTRIES.—Section
 11 241(b)(3)(B) of the Immigration and Nationality
 12 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
 13 matter preceding clause (i), by inserting “who is de-
 14 scribed in section 212(a)(2)(J)(i) or section
 15 237(a)(2)(G)(i) or who is” after “to an alien”.

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

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

21 (B) by redesignating clause (vi) as clause
 22 (vii); and

23 (C) by inserting after clause (v) the fol-
 24 lowing:

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

3 (g) TEMPORARY PROTECTED STATUS.—Section 244
4 of the Immigration and Nationality Act (8 U.S.C. 1254a)
5 is amended—

6 (1) by striking “Attorney General” each place
7 such term appears and inserting “Secretary of
8 Homeland Security”;

9 (2) in subsection (c)(2)(B)—

10 (A) in clause (i), by striking “, or” at the
11 end and inserting a semicolon;

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

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

15 “(iii) the alien is, or at any time has
16 been, described in section 212(a)(2)(J) or
17 237(a)(2)(G).”; and

18 (3) in subsection (d)—

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

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

1 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
 2 101(a)(27)(J)(iii) of the Immigration and Nationality Act
 3 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

4 (1) in subclause (I), by striking “and” at the
 5 end;

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

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

9 “(III) no alien who is, or at any
 10 time has been, described in section
 11 212(a)(2)(J) or 237(a)(2)(G) shall be
 12 eligible for any immigration benefit
 13 under this subparagraph;”.

14 (i) PAROLE.—An alien described in section
 15 212(a)(2)(J) of the Immigration and Nationality Act, as
 16 added by subsection (b), shall not be eligible for parole
 17 under section 212(d)(5)(A) of such Act unless—

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

21 (2) the alien’s presence in the United States is
 22 required by the Government with respect to such as-
 23 sistance.

24 (j) EFFECTIVE DATE.—The amendments made by
 25 this section shall take effect on the date of the enactment

1 of this Act and shall apply to acts that occur before, on,
2 or after the date of the enactment of this Act.

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