117TH CONGRESS
1ST SESSION

S.

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

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

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Alien Gang Member Removal Act".

SEC. 2. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

(a) DEFINITION OF GANG MEMBER.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:
“(53) The term ‘criminal gang’ means an ongoing group, club, organization, or association of 5 or more persons that has, as 1 of its primary purposes, the commission of 1 or more of the following criminal offenses and the members of which engage, or have engaged within the past 5 years, in a continuing series of such offenses, or that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the Attorney General, as meeting such criteria. The offenses described, whether in violation of Federal or State law or foreign law and regardless of whether the offenses occurred before, on, or after the date of the enactment of this paragraph, are the following:

“(A) A ‘felony drug offense’ (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

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

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

“(E) Any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery, and trafficking in persons), section 1951 of such title (relating to interference with commerce by threats or violence), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

“(F) A conspiracy to commit any offense described in subparagraphs (A) through (E).”.

(b) INADMISSIBILITY.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:
“(J) ALIENS ASSOCIATED WITH CRIMINAL
GANGS.—Any alien is inadmissible who a con-
sular officer, the Secretary of Homeland Secu-
rity, or the Attorney General knows or has rea-
son to believe—

“(i) to be or to have been a member
of a criminal gang; or

“(ii) to have participated in the activi-
ties of a criminal gang, knowing or having
reason to know that such activities will
promote, further, aid, or support the illegal
activity of the criminal gang.”.

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

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

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

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

(d) DESIGNATION.—
(1) **IN GENERAL.**—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after section 219 the following:

**"SEC. 220. DESIGNATION OF CRIMINAL GANG."**

"(a) **DESIGNATION.**—

"(1) **IN GENERAL.**—The Secretary of Homeland Security, in consultation with the Attorney General, may designate a group, club, organization, or association of 5 or more persons as a criminal gang if the Secretary finds that their conduct is described in section 101(a)(53).

"(2) **PROCEDURE.**—

"(A) **NOTIFICATION.**—Not later than 7 days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group, club, organization, or association of 5 or more persons under
this subsection and the factual basis for such designation.

“(B) PUBLICATION IN THE FEDERAL REGISTER.—The Secretary shall publish the designation in the Federal Register 7 days after providing the notification under subparagraph (A).

“(3) RECORD.—

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

“(B) CLASSIFIED INFORMATION.—The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

“(4) PERIOD OF DESIGNATION.—

“(A) IN GENERAL.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c).
“(B) REVIEW OF DESIGNATION UPON PETITION.—

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

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

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

“(II) if the designated group, club, organization, or association of 5 or more persons has previously filed a petition for revocation under this subparagraph, the petition period begins 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 it 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 as to 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 disclosed to a court ex parte and in
camera for purposes of judicial review under subsection (c).

"(III) Publication of Determination.—A determination made by the Secretary under this clause shall be published in the Federal Register.

"(IV) Procedures.—Any revocation by the Secretary shall be made in accordance with paragraph (6).

"(C) Other Review of Designation.—

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

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

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

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

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

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

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

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

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

“(8) USE OF DESIGNATION IN TRIAL OR HEARING.—If a designation under this subsection has become effective under paragraph (2) an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection.

“(b) AMENDMENTS TO A DESIGNATION.—

“(1) IN GENERAL.—The Secretary may amend a designation under this subsection if the Secretary finds that the group, club, organization, or association of 5 or more persons has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or
merged with another group, club, organization, or association of 5 or more persons.

“(2) **PROCEDURE.**—Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Paragraphs (2), (4), (5), (6), (7), and (8) of subsection (a) shall apply to an amended designation.

“(3) **ADMINISTRATIVE RECORD.**—The administrative record shall be corrected to include the amendments and any additional relevant information that supports those amendments.

“(4) **CLASSIFIED INFORMATION.**—The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

“(c) **JUDICIAL REVIEW OF DESIGNATION.**

“(1) **IN GENERAL.**—Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated group, club, organization, or association of 5
or more persons may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.

"(2) BASIS OF REVIEW.—Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

"(3) SCOPE OF REVIEW.—The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be—

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

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

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

"(D) lacking substantial support in the administrative record taken as a whole or in clas-
sified information submitted to the court under paragraph (2); or

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

"(4) **JUDICIAL REVIEW INVOKED.**—The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

"(d) **DEFINITIONS.**—In this section—

"(1) the term 'classified information' has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

"(2) the term 'national security' means the national defense, foreign relations, or economic interests of the United States;

"(3) the term 'relevant committees' means—

"(A) the Committee on the Judiciary of the Senate; and

"(B) the Committee on the Judiciary of the House of Representatives; and
“(4) the term ‘Secretary’ means the Secretary of Homeland Security, in consultation with the Attorney General.”.

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

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

(e) MANDATORY DETENTION OF CRIMINAL GANG MEMBERS.—

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

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

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

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

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

(2) ANNUAL REPORT.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate
Federal agencies, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives regarding the number of aliens detained as a result of the amendments made by paragraph (1).

(f) **Asylum Claims Based on Gang Affiliation.**—

(1) **Inapplicability of Restriction on Removal to Certain Countries.**—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting “who is described in section 212(a)(2)(J)(i) or section 237(a)(2)(G)(i) or who is” after “to an alien”.

(2) **Ineligibility for Asylum.**—Section 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is amended—

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

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

(C) by inserting after clause (v) the following:
“(vi) the alien is described in section 212(a)(2)(J)(i) or section 237(a)(2)(G)(i); or”.

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

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

(2) in subsection (c)(2)(B)—

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

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

(C) by adding at the end the following:

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

(3) in subsection (d)—

(A) by striking paragraph (3);

(B) by redesignating paragraph (4) as paragraph (3); and

(C) in paragraph (3), as redesignated, by adding at the end the following: “The Secretary of Homeland Security may detain an alien pro-
vided temporary protected status under this section whenever appropriate under any other provision of law.”.

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

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

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

(3) by adding at the end the following:

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

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

(1) the alien is assisting or has assisted the United States Government in a law enforcement matter, including a criminal investigation; and
(2) the alien's presence in the United States is required by the Government with respect to such assistance.

(j) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to acts that occur before, on, or after the date of the enactment of this Act.