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115TH CONGRESS
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S. 2199

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.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2017

Mr. FLAKE introduced the following bill; which was read the first time

DECEMBER 7, 2017

Read the second time and placed on the calendar

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Border Security and
3 Deferred Action Recipient Relief Act”.

4 **SEC. 2. DEFINITION OF SECRETARY.**

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

7 **SEC. 3. BORDER INFRASTRUCTURE CONSTRUCTION.**

8 (a) BORDER SECURITY TRUST FUND.—

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

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

21 (3) REPAYMENT OF COSTS.—

22 (A) IN GENERAL.—The Secretary of the
23 Treasury shall use any Federal tax liability col-
24 lected by the Secretary of the Treasury under
25 section 244A(d)(6) of the Immigration and Na-

tionality Act to recover the amount described in paragraph (2).

(B) SURCHARGE AUTHORIZED.—The Secretary may impose on any conditional permanent resident (as defined in section 244A(a) of the Immigration and Nationality Act) a surcharge in an amount determined by the Secretary to be the minimum proportional amount necessary to recover the amount equal to the difference between—

(i) the amount described in paragraph (2); and

(ii) the amount collected under subparagraph (A).

(b) BORDER SECURITY EXPENDITURES.—Amounts in the Trust Fund shall be available without further appropriation for procurement, construction, and improvements as follows:

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

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

1 (3) \$251,000,000 for 14 miles of secondary
2 fencing in San Diego, California.

3 (4) \$38,239,000 for planning activities relating
4 to border wall construction.

5 **SEC. 4. CANCELLATION OF REMOVAL OF CERTAIN LONG-**
6 **TERM RESIDENTS WHO ENTERED THE**
7 **UNITED STATES AS CHILDREN.**

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

11 **“SEC. 244A. CANCELLATION OF REMOVAL OF CERTAIN**
12 **LONG-TERM RESIDENTS WHO ENTERED THE**
13 **UNITED STATES AS CHILDREN.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) ACTIVE DUTY.—The term ‘active duty’ has
16 the meaning given the term in section 101 of title
17 10, United States Code.

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

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

24 “(4) ALIEN ENLISTEE.—The term ‘alien en-
25 listee’ means a conditional permanent resident who

1 seeks to maintain or extend conditional permanent
2 resident status by means of satisfaction of the re-
3 quirements of this section relating to enlistment and
4 service in the Armed Forces.

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

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

16 “(7) CONDITIONAL PERMANENT RESIDENT.—
17 The term ‘conditional permanent resident’ means an
18 alien who is granted conditional permanent resident
19 status under subsection (b)(1)(A).

20 “(8) CONVICTION.—

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

24 “(B) EXCLUSIONS.—The term ‘conviction’
25 does not include—

1 “(i) an adjudication or judgment of
 2 guilt that has been dismissed, expunged,
 3 deferred, annulled, invalidated, withheld, or
 4 vacated;

5 “(ii) an order of probation without
 6 entry of judgment; or

7 “(iii) any similar disposition.

8 “(9) INSTITUTION OF HIGHER EDUCATION.—

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

13 “(B) EXCLUSION.—The term ‘institution
 14 of higher education’ does not include an institu-
 15 tion of higher education outside the United
 16 States.

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

19 “(b) CANCELLATION OF REMOVAL OF CERTAIN
 20 LONG-TERM RESIDENTS WHO ENTERED THE UNITED
 21 STATES AS CHILDREN.—

22 “(1) SPECIAL RULE FOR CERTAIN LONG-TERM
 23 RESIDENTS WHO ENTERED THE UNITED STATES AS
 24 CHILDREN.—

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

6 “(i) meets the qualifications described
7 in subparagraph (B); and

8 “(ii)(I) is inadmissible under section
9 212(a) or deportable under section 237(a);
10 or

11 “(II) is the child of an alien who is
12 lawfully present in the United States pur-
13 suant to the status described in section
14 101(a)(15)(E)(ii).

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

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

1 “(ii) on the date on which the alien
2 initially entered the United States, the
3 alien was under 16 years of age;

4 “(iii) in the case of an alien who is 18
5 years of age or older on the date on which
6 the alien submits an application under this
7 subsection, the alien has—

8 “(I) earned—

9 “(aa) a high school diploma;
10 or

11 “(bb) a commensurate alter-
12 native award from a public or
13 private high school or secondary
14 school;

15 “(II) obtained—

16 “(aa) a general education
17 development certificate recog-
18 nized under State law; or

19 “(bb) a high school equiva-
20 lency diploma in the United
21 States;

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

24 “(IV) valid employment author-
25 ization;

1 “(iv) the alien has been a person of
2 good moral character since the date on
3 which the alien initially entered the United
4 States;

5 “(v) subject to subparagraph (C)—

6 “(I) the alien is not inadmissible
7 under paragraph (1), (2), (3), (4),
8 (6)(E), (8), (10)(A), (10)(C), or
9 (10)(D) of section 212(a);

10 “(II) the alien is not deportable
11 under paragraph (1)(E), (1)(G), (2),
12 (4), (5), or (6) of section 237(a);

13 “(III) the alien has not ordered,
14 incited, assisted, or otherwise partici-
15 pated in the persecution of any person
16 on account of race, religion, nation-
17 ality, membership in a particular so-
18 cial group, or political opinion; and

19 “(IV) other than an offense
20 under State or local law for which an
21 essential element is the immigration
22 status of the alien, a minor traffic of-
23 fense, or a violation of this section,
24 the alien has not been convicted of—

1 “(aa) any offense under
2 Federal or State law punishable
3 by a maximum term of imprison-
4 ment of more than 1 year; or

5 “(bb) any combination of of-
6 fenses under Federal or State
7 law, for which the alien was sen-
8 tenced to imprisonment for a
9 total of more than 1 year; and

10 “(vi) the alien has never been subject
11 to a final administrative or judicial order
12 of exclusion, deportation, or removal, ex-
13 cept if the alien—

14 “(I) has remained in the United
15 States under color of law after the
16 date on which the order was issued; or

17 “(II) received the order before
18 the date on which the alien attained
19 the age of 18 years.

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

25 “(i) subparagraph (B)(v)(IV);

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

4 “(iii) the grounds of deportability
5 under paragraph (1) of section 237(a).

6 “(D) PROCEDURES.—The Secretary shall
7 provide, by regulation, a procedure that allows
8 eligible individuals to apply affirmatively for
9 conditional permanent resident status under
10 this paragraph without being placed in removal
11 proceedings.

12 “(E) SUBMISSION OF BIOMETRIC AND BIO-
13 GRAPHICAL DATA.—

14 “(i) IN GENERAL.—The Secretary
15 may not cancel the removal of an alien or
16 grant conditional permanent resident sta-
17 tus to an alien under this paragraph unless
18 the alien submits to the Secretary biomet-
19 ric and biographical data, in accordance
20 with procedures established by the Sec-
21 retary.

22 “(ii) ALTERNATIVE PROCEDURE.—
23 The Secretary shall provide an alternative
24 procedure for the submission of biometric
25 and biographical data for any applicant for

1 conditional permanent resident status who
2 is unable to provide biometric or biographi-
3 cal data due to a physical impairment.

4 “(F) BACKGROUND CHECKS.—

5 “(i) REQUIREMENT FOR BACKGROUND
6 CHECKS.—The Secretary shall use biomet-
7 ric, biographical, and other data deter-
8 mined by the Secretary to be appro-
9 priate—

10 “(I) to conduct security and law
11 enforcement background checks of
12 any alien seeking cancellation of re-
13 moval or conditional permanent resi-
14 dent status under this paragraph; and

15 “(II) to determine whether there
16 is any criminal, national security, or
17 other factor that would render the
18 alien ineligible for cancellation of re-
19 moval or conditional permanent resi-
20 dent status.

21 “(ii) COMPLETION OF BACKGROUND
22 CHECKS.—The security and law enforce-
23 ment background checks under clause (i)
24 shall be completed, to the satisfaction of
25 the Secretary, before the date on which the

1 Secretary cancels the removal of, or grants
2 conditional resident status to, the alien
3 under this paragraph.

4 “(G) MEDICAL EXAMINATION RE-
5 QUIRED.—

6 “(i) IN GENERAL.—An alien who ap-
7 plies for cancellation of removal or condi-
8 tional permanent resident status under this
9 paragraph shall undergo a medical obser-
10 vation and examination in accordance with
11 the policies and procedures prescribed
12 under clause (ii).

13 “(ii) PROCEDURES.—The Secretary,
14 with the concurrence of the Secretary of
15 Health and Human Services, shall pre-
16 scribe policies and procedures for the na-
17 ture and timing of medical observations
18 and examinations for aliens applying for
19 cancellation of removal or conditional per-
20 manent resident status under this para-
21 graph.

22 “(H) MILITARY SELECTIVE SERVICE.—An
23 alien subject to registration under the Military
24 Selective Service Act (50 U.S.C. App. 451 et
25 seq.) who applies for cancellation of removal or

1 conditional permanent resident status under
2 this paragraph shall provide to the Secretary
3 evidence that the alien has registered that Act.

4 “(2) TERMINATION OF CONTINUOUS PERIOD.—

5 For purposes of this subsection, any period of con-
6 tinuous residence or continuous physical presence in
7 the United States of an alien who applies for can-
8 cellation of removal or conditional permanent resi-
9 dent status under paragraph (1) shall not terminate
10 on the date on which the alien is served a notice to
11 appear under section 239(a).

12 “(3) TREATMENT OF CERTAIN BREAKS IN
13 PRESENCE.—

14 “(A) IN GENERAL.—For purposes of para-
15 graph (1)(B)(i), an alien shall be considered to
16 have failed to maintain continuous physical
17 presence in the United States if the alien has
18 remained outside the United States—

19 “(i) for any period of more than 90
20 days; or

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

23 “(B) EXTENSION FOR EXCEPTIONAL CIR-
24 CUMSTANCES.—The Secretary may extend a
25 time period described in clause (i) or (ii) of sub-

1 paragraph (A) by not more than 90 days if an
2 alien demonstrates that the failure of the alien
3 to timely return to the United States was due
4 to exceptional circumstances, which shall be no
5 less compelling than—

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

7 “(ii) the death or serious illness of a
8 parent, grandparent, sibling, or child of
9 the alien.

10 “(4) REGULATIONS.—

11 “(A) INITIAL PUBLICATION.—Not later
12 than 180 days after the date of enactment of
13 this section, the Secretary shall publish in the
14 Federal Register interim regulations to imple-
15 ment this subsection.

16 “(B) INTERIM REGULATIONS.—Notwith-
17 standing section 553 of title 5, United States
18 Code, the interim regulations published under
19 subparagraph (A)—

20 “(i) shall be effective, on an interim
21 basis, immediately on the date on which
22 the regulations are published; but

23 “(ii) may be subject to change and re-
24 vision after public notice and a period of
25 public comment.

1 “(C) FINAL REGULATIONS.—Within a rea-
 2 sonable period after the publication of the in-
 3 terim regulations under subparagraph (A), the
 4 Secretary shall publish final regulations to im-
 5 plement this subsection.

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

8 “(A) has a pending application for condi-
 9 tional permanent resident status under this
 10 subsection; or

11 “(B)(i) establishes prima facie eligibility
 12 for cancellation of removal or conditional per-
 13 manent resident status under paragraph (1);
 14 and

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

17 “(c) CONDITIONAL PERMANENT RESIDENT STA-
 18 TUS.—

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

23 “(2) DESCRIPTION OF STATUS.—A conditional
 24 permanent resident—

1 “(A) shall not be considered to be an alien
 2 who is unlawfully present in the United States
 3 for purposes of the immigration laws, including
 4 section 505 of the Illegal Immigration Reform
 5 and Immigrant Responsibility Act of 1996 (8
 6 U.S.C. 1623);

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

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

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

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

18 “(3) TERMS OF CONDITIONAL PERMANENT
 19 RESIDENT STATUS.—

20 “(A) EMPLOYMENT.—A conditional perma-
 21 nent resident shall be authorized—

22 “(i) to be employed in the United
 23 States incident to conditional permanent
 24 resident status; and

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

4 “(B) TRAVEL.—A conditional permanent
5 resident may—

6 “(i) travel outside the United States;
7 and

8 “(ii) if otherwise admissible, be admit-
9 ted on return to the United States without
10 obtaining a visa if—

11 “(I) the conditional permanent
12 resident is the bearer of valid, unex-
13 pired documentary evidence of condi-
14 tional permanent resident status; and

15 “(II)(aa) the absence of the con-
16 ditional permanent resident from the
17 United States was for a period of not
18 more than 180 days; or

19 “(bb) the conditional permanent
20 resident was outside the United States
21 due to active service in the Armed
22 Forces.

23 “(4) TERMINATION OF STATUS.—

24 “(A) IN GENERAL.—The Secretary shall
25 terminate the conditional permanent resident

1 status of an alien if the Secretary determines
2 that—

3 “(i) the alien is 18 years of age or
4 older; and

5 “(ii)(I) in the case of—

6 “(aa) an alien postsecondary stu-
7 dent, the alien has failed—

8 “(AA) to enroll in an ac-
9 credited institution of higher edu-
10 cation within 1 year after the
11 date on which the alien was
12 granted conditional permanent
13 resident status; or

14 “(BB) to remain enrolled in
15 an accredited institution of high-
16 er education as of the date that
17 is 1 year after the date on which
18 the alien was granted conditional
19 permanent resident status;

20 “(bb) an alien described in sub-
21 section (b)(1)(B)(iii), during the 5-
22 year period beginning on the date on
23 which the alien was granted condi-
24 tional permanent resident status, the
25 alien has not been employed for a

1 total period of not less than 4 years;

2 or

3 “(cc) an alien enlistee, the

4 alien—

5 “(AA) failed to enlist, and

6 be accepted for enlistment, in the

7 Armed Forces within 270 days

8 after the date on which the alien

9 was granted conditional perma-

10 nent resident status; or

11 “(BB) has received a dis-

12 honorable or other than honor-

13 able discharge from the Armed

14 Forces;

15 “(II) the alien ceases to meet the re-

16 quirements of clause (iv) or (v) of sub-

17 section (b)(1)(B); or

18 “(III) the alien has become a public

19 charge.

20 “(B) RETURN TO PREVIOUS IMMIGRATION

21 STATUS.—An alien whose conditional perma-

22 nent resident status is terminated under sub-

23 paragraph (A) shall return to the immigration

24 status of the alien on the day before the date

1 on which the alien was granted conditional per-
2 manent resident status.

3 “(5) EXTENSION OF STATUS.—

4 “(A) IN GENERAL.—With respect to an
5 alien granted conditional permanent resident
6 status under subsection (b)(1), the Secretary
7 shall extend the period of conditional perma-
8 nent resident status of the alien for an addi-
9 tional period of 5 years if the alien meets each
10 of the applicable requirements described in sub-
11 paragraph (B).

12 “(B) REQUIREMENTS.—

13 “(i) GOOD MORAL CHARACTER.—The
14 alien has demonstrated good moral char-
15 acter for the entire period during which
16 the alien has been a conditional permanent
17 resident.

18 “(ii) COMPLIANCE.—The alien meets
19 the qualification described in subsection
20 (b)(1)(B)(v).

21 “(iii) NO ABANDONMENT OF RESI-
22 DENCE.—

23 “(I) IN GENERAL.—The alien has
24 not abandoned the residence of the
25 alien in the United States.

1 “(II) PRESUMPTION.—

2 “(aa) IN GENERAL.—For
3 purposes of this clause, except as
4 provided in item (bb), the Sec-
5 retary shall presume that an
6 alien has abandoned the resi-
7 dence of the alien in the United
8 States if, during the period of
9 conditional permanent resident
10 status of the alien, the alien is
11 absent from the United States
12 for more than 365 days in the
13 aggregate.

14 “(bb) EXCEPTION.—Not-
15 withstanding an absence from the
16 United States of more than 365
17 days in the aggregate during the
18 period of conditional permanent
19 resident status of an alien, the
20 presumption described in item
21 (aa) shall not apply if the alien
22 demonstrates, to the satisfaction
23 of the Secretary, that the alien
24 has not abandoned the residence
25 of the alien in the United States.

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

3 “(I) is 18 years of age or older;
4 and

5 “(II) has graduated from an ac-
6 credited institution of higher edu-
7 cation.

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

15 “(vi) ENLISTMENT.—In the case of an
16 alien enlistee—

17 “(I) the alien has served as a
18 member of a regular or reserve com-
19 ponent of the Armed Forces in an ac-
20 tive duty status for not less than 3
21 years; and

22 “(II) if the alien has been dis-
23 charged, the alien received an honor-
24 able discharge.

1 “(d) REMOVAL OF CONDITIONAL BASIS FOR PERMA-
2 NENT RESIDENCE.—

3 “(1) APPLICATION TO REMOVE CONDITIONS.—

4 “(A) IN GENERAL.—A conditional perma-
5 nent resident may submit to the Secretary, in
6 accordance with paragraph (3), an applica-
7 tion—

8 “(i) to remove the conditional basis of
9 permanent residency; and

10 “(ii) to have the status of the alien
11 adjusted to that of an alien lawfully admit-
12 ted for permanent residence.

13 “(B) CONTENTS.—With respect to any ap-
14 plication submitted under subparagraph (A), an
15 alien shall include, under penalty of perjury, the
16 facts and information necessary for the Sec-
17 retary to make the determination described in
18 paragraph (2)(A).

19 “(2) ADJUDICATION OF APPLICATION FOR AD-
20 JUSTMENT OF STATUS.—

21 “(A) IN GENERAL.—With respect to an ap-
22 plication submitted under paragraph (1) for an
23 alien, the Secretary shall make a determination
24 as to whether the alien meets the requirements
25 described in paragraph (4).

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

8 “(i) approve the application;

9 “(ii) notify the alien of the determina-
10 tion; and

11 “(iii) adjust the status of the alien to
12 the status of an alien lawfully admitted for
13 permanent residence, which shall be effec-
14 tive as of the date of approval of the appli-
15 cation.

16 “(C) TERMINATION IF ADVERSE DETER-
17 MINATION.—If the Secretary determines that
18 the alien does not meet the requirements de-
19 scribed in paragraph (4)(B), the Secretary
20 shall—

21 “(i) deny the application;

22 “(ii) notify the alien of the determina-
23 tion; and

1 “(iii) terminate the conditional perma-
2 nent resident status of the alien as of the
3 date of the determination.

4 “(3) TIME TO FILE APPLICATION.—

5 “(A) IN GENERAL.—An alien shall submit
6 an application for adjustment of status during
7 the period beginning on the date on which the
8 alien obtains an extension of status under sub-
9 section (c)(5) and ending on—

10 “(i) the date that is 10 years after the
11 date on which the Secretary initially grant-
12 ed conditional permanent resident status to
13 the alien; or

14 “(ii) the date on which the conditional
15 permanent resident status of the alien, as
16 extended by the Secretary under subsection
17 (c)(5), expires.

18 “(B) STATUS DURING PENDENCY.—Dur-
19 ing any period in which the application of an
20 alien for adjustment of status under this sub-
21 section is pending, an alien shall be considered
22 to be in conditional permanent resident status.

23 “(4) CONTENTS OF APPLICATION.—

24 “(A) IN GENERAL.—An application to re-
25 move conditions and adjust status under para-

graph (1) shall contain information necessary for the Secretary to determine whether the alien meets each of the requirements described in subparagraph (B).

“(B) REQUIREMENTS.—

“(i) GOOD MORAL CHARACTER.—The alien has demonstrated good moral character for the entire period during which the alien has been a conditional permanent resident;

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

“(iii) NO ABANDONMENT OF RESIDENCE.—

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

“(II) PRESUMPTION.—

“(aa) IN GENERAL.—For purposes of this subparagraph, except as provided in item (bb), the Secretary shall presume that an alien has abandoned the residence of the alien in the United

1 States if, during the period of
2 conditional permanent resident
3 status, the alien is absent from
4 the United States for more than
5 730 days in the aggregate.

6 “(bb) EXCEPTION.—Not-
7 withstanding an absence from the
8 United States of more than 730
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 “(III) ACTIVE SERVICE.—Any
19 period during which an alien is absent
20 from the United States due to active
21 service in the Armed Forces shall not
22 be counted toward the 730 days re-
23 ferred to in subclause (II)(aa).

24 “(5) CITIZENSHIP REQUIREMENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a conditional permanent resident shall not have the conditional basis for permanent residency removed or be adjusted to permanent resident status unless the alien demonstrates that the alien meets the requirements described in paragraphs (1) and (2) of section 312(a).

“(B) EXCEPTION.—Subparagraph (A) shall not apply to an alien who is unable to meet the requirements referred to in that subparagraph due to—

“(i) a physical or developmental disability; or

“(ii) a mental impairment.

“(6) PAYMENT OF FEDERAL TAXES.—

“(A) DEFINITION OF APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the term ‘applicable Federal tax liability’ means liability for Federal taxes imposed under the Internal Revenue Code of 1986, including any penalties and interest on taxes imposed under the Internal Revenue Code of 1986.

“(B) PAYMENT REQUIRED.—Not later than the date on which an alien submits an ap-

1 plication for adjustment of status under para-
2 graph (1), the alien shall satisfy any applicable
3 Federal tax liability due and owing as of that
4 date of submission.

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

7 “(A) IN GENERAL.—The Secretary may
8 not adjust the status of an alien under this sub-
9 section unless the alien submits to the Sec-
10 retary biometric and biographical data in ac-
11 cordance with procedures established by the
12 Secretary.

13 “(B) ALTERNATIVE PROCEDURE.—The
14 Secretary shall provide an alternative procedure
15 for the submission of biometric and biographi-
16 cal data for any applicant for adjustment of
17 status who is unable to provide biometric or bi-
18 ographical data due to a physical impairment.

19 “(8) BACKGROUND CHECKS.—

20 “(A) REQUIREMENT FOR BACKGROUND
21 CHECKS.—The Secretary shall use biometric,
22 biographical, and other data determined by the
23 Secretary to be appropriate—

24 “(i) to conduct security and law en-
25 forcement background checks of any alien

1 applying for adjustment of status under
2 this subsection; and

3 “(ii) to determine whether there is
4 any criminal, national security, or other
5 factor that would render the alien ineligible
6 for adjustment of status.

7 “(B) COMPLETION OF BACKGROUND
8 CHECKS.—The security and law enforcement
9 background checks under subparagraph (A)
10 shall be completed, to the satisfaction of the
11 Secretary, before the date on which Secretary
12 grants adjustment of status.

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

18 “(10) ELIGIBILITY FOR NATURALIZATION.—

19 “(A) IN GENERAL.—An alien whose status
20 is adjusted under this subsection to that of an
21 alien lawfully admitted for permanent residence
22 may be naturalized in accordance with this Act
23 if the alien meets the applicable requirements of
24 the immigration laws.

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

4 “(i) shall be considered to have satis-
 5 fied the requirements of paragraphs (1)
 6 and (2) of that section; and

7 “(ii) may apply for naturalization.

8 “(e) TREATMENT OF ALIENS MEETING REQUIRE-
 9 MENTS FOR EXTENSION OF CONDITIONAL PERMANENT
 10 RESIDENT STATUS.—

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

19 “(2) ADJUSTMENT OF STATUS.—An alien may
 20 apply for adjustment of status under subsection
 21 (d)(1) if, during the entire period of conditional per-
 22 manent resident status of the alien, the alien has
 23 met the requirements of subsection (c)(5)(B).

24 “(f) EXCLUSIVE JURISDICTION.—

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

5 “(2) EXCEPTION.—In the case of an alien who
6 has been placed in deportation, exclusion, or removal
7 proceedings before or after the date on which the
8 alien submits an application for cancellation of re-
9 moval and conditional permanent resident status or
10 adjustment of status under this section, the Attor-
11 ney General—

12 “(A) shall have exclusive jurisdiction to de-
13 termine eligibility for relief under this section;
14 and

15 “(B) shall assume all powers and duties of
16 the Secretary described in this section until the
17 date on which—

18 “(i) deportation, exclusion, or removal
19 proceedings are terminated; or

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

22 “(3) EFFECT OF FINAL ORDER.—In the case of
23 an alien for whom a final order of deportation, ex-
24 clusion, or removal is entered, the Secretary shall re-

1 sume all powers and duties delegated to the Sec-
2 retary under this section.

3 “(4) EFFECT OF GRANT OF RELIEF.—In the
4 case of an alien with respect to whom a final order
5 of deportation, exclusion, or removal has been en-
6 tered, if the Secretary grants relief to the alien
7 under this section, the Attorney General shall re-
8 scind the final order of deportation, exclusion, or re-
9 moval.

10 “(g) CONFIDENTIALITY OF INFORMATION.—

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

14 “(A) use the information furnished by an
15 individual in an application submitted to the
16 Secretary under this section to initiate removal
17 proceedings against any person identified in the
18 application;

19 “(B) issue any publication in which the in-
20 formation furnished by any particular individual
21 in an application under this section may be
22 identified; or

23 “(C) permit any person (other than the
24 Secretary, an officer or employee of the Federal

1 Government, or the alien) to examine an appli-
2 cation submitted under this section.

3 “(2) REQUIRED DISCLOSURE.—The Attorney
4 General or the Secretary, as applicable, shall provide
5 the information furnished by an individual in an ap-
6 plication under this section, and any other informa-
7 tion derived from the information, to—

8 “(A) a Federal, State, Tribal, or local law
9 enforcement agency, intelligence agency, na-
10 tional security agency, component of the De-
11 partment of Homeland Security, court, or
12 grand jury in connection with a criminal inves-
13 tigation or prosecution, a background check
14 conducted pursuant to the Brady Handgun Vio-
15 lence Protection Act (Public Law 103–159; 107
16 Stat. 1536) (or an amendment made by that
17 Act), or for homeland security or national secu-
18 rity purposes, if—

19 “(i) the information is requested by
20 the Federal, State, Tribal, or local law en-
21 forcement agency, intelligence agency, na-
22 tional security agency, component of the
23 Department of Homeland Security, court,
24 or grand jury; and

1 “(ii) the provision of the information
 2 is consistent with an information sharing
 3 agreement or mechanism; or

4 “(B) an official coroner for purposes of af-
 5 firmatively identifying a deceased individual
 6 (whether or not the deceased individual is de-
 7 ceased as a result of a crime).

8 “(3) FRAUD IN APPLICATION PROCESS OR
 9 CRIMINAL CONDUCT.—Notwithstanding any other
 10 provision of this subsection, information relating to
 11 whether an alien seeking cancellation of removal or
 12 conditional permanent resident status under this
 13 section has engaged in fraud in an application for
 14 relief or has, at any time, committed a crime may
 15 be used or released for immigration enforcement,
 16 law enforcement, or national security purposes.

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

21 “(h) TREATMENT OF CONDITIONAL PERMANENT
 22 RESIDENTS FOR CERTAIN PURPOSES.—

23 “(1) IN GENERAL.—During the period in which
 24 an alien is in conditional permanent resident status,

1 the alien shall be considered to be lawfully present
2 for all purposes.

3 “(2) 5-YEAR ELIGIBILITY WAITING PERIOD
4 UNDER PRWORA.—An alien who has met the re-
5 quirements for adjustment of status from conditional
6 permanent resident to lawful permanent resident
7 under this section shall be considered to have com-
8 pleted the 5-year period described in section 403 of
9 the Personal Responsibility and Work Opportunity
10 Reconciliation Act of 1996 (8 U.S.C. 1613) as of the
11 date on which the adjustment of status is granted.

12 “(i) GAO REPORT.—Not later than 7 years after the
13 date of enactment of this section, the Comptroller General
14 of the United States shall submit to the Committee on
15 the Judiciary of the Senate and the Committee on the Ju-
16 diciary of the House of Representatives a report that in-
17 cludes the number of aliens—

18 “(1) who were eligible for cancellation of re-
19 moval or conditional permanent resident status
20 under subsection (b)(1);

21 “(2) who applied for cancellation of removal or
22 conditional permanent resident status under that
23 subsection;

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

1 “(4) whose status was adjusted to that of an
 2 alien lawfully admitted for permanent residence
 3 under subsection (d).

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

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

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

15 (c) CONFORMING AMENDMENT.—The table of con-
 16 tents for the Immigration and Nationality Act (8 U.S.C.
 17 1101 note) is amended by inserting after the item relating
 18 to section 244 the following:

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

19 **SEC. 5. GROUNDS OF INADMISSIBILITY AND DEPORT-**
 20 **ABILITY FOR ALIEN MEMBERS OF CRIMINAL**
 21 **GANGS OR CARTELS.**

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

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

4 “(a) IN GENERAL.—In this Act:”; and

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

6 “(53) CRIMINAL GANG OR CARTEL.—The term
 7 ‘criminal gang or cartel’ means an ongoing group,
 8 club, organization, or association comprised of 5 or
 9 more individuals—

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

13 “(ii) the members of which engage, or have
 14 engaged during the 5 years immediately pre-
 15 ceding the most recent commission of an of-
 16 fense described in section 220(b)(2), in a con-
 17 tinuing series of offenses described in section
 18 220(b)(2); or

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

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

24 “(J) ALIENS ASSOCIATED WITH CRIMINAL
 25 GANGS OR CARTELS.—Any alien is inadmissible

1 who a consular officer, the Secretary of Home-
 2 land Security, or the Attorney General knows or
 3 has reason to believe—

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

6 “(ii) has participated in any activity
 7 of a criminal gang or cartel, knowing or
 8 having reason to know that the activity
 9 would promote, further, aid, or support the
 10 illegal activity of the criminal gang or car-
 11 tel.”.

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

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

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

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

1 (d) DESIGNATION OF A CRIMINAL GANG OR CAR-
 2 TEL.—

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

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

8 “(a) DEFINITIONS.—In this section:

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

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

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

18 “(A) the Committee on the Judiciary of
 19 the Senate; and

20 “(B) the Committee on the Judiciary of
 21 the House of Representatives; and

22 “(4) SECRETARY.—The term ‘Secretary’ means
 23 the Secretary of Homeland Security, in consultation
 24 with the Attorney General.

25 “(b) DESIGNATION.—

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

6 “(A) the group, club, organization, or asso-
7 ciation has as a primary purpose the commis-
8 sion of 1 or more criminal offenses described in
9 paragraph (2); and

10 “(B) the members of the group, club, orga-
11 nization, or association engage, or, during the 5
12 years immediately preceding the most recent
13 commission of an offense described in section
14 220(b)(2), have engaged in a continuing series
15 of offenses described in paragraph (2).

16 “(2) OFFENSES.—The criminal offenses de-
17 scribed in this paragraph, whether committed in vio-
18 lation of Federal, State, or foreign law and regard-
19 less of whether an offense occurred before, on, or
20 after the date of enactment of this section, are the
21 following:

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

1 “(B) BRINGING IN AND HARBORING
2 ALIENS.—An offense described in section 274
3 (relating to bringing in and harboring certain
4 aliens).

5 “(C) AIDING OR ASSISTING ENTRY.—An
6 offense described in section 277 (relating to
7 aiding or assisting certain aliens to enter the
8 United States).

9 “(D) IMPORTATION FOR AN IMMORAL PUR-
10 POSE.—An offense described in section 278 (re-
11 lating to importation of an alien for an immoral
12 purpose).

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

16 “(F) CRIME INVOLVING OBSTRUCTION,
17 TAMPERING, RETALIATION, OR BURGLARY.—A
18 crime involving—

19 “(i) obstruction of justice;

20 “(ii) tampering with, or retaliating
21 against, a witness, victim, or informant; or

22 “(iii) burglary.

23 “(G) OTHER CRIMES.—Any conduct pun-
24 ishable under—

1 “(i) sections 1028 or 1029 of title 18,
2 United States Code (relating to fraud and
3 related activity in connection with identi-
4 fication documents or access devices);

5 “(ii) sections 1581 through 1594 of
6 that title (relating to peonage, slavery, and
7 trafficking in persons);

8 “(iii) section 1951 of that title (relat-
9 ing to interference with commerce by
10 threats or violence);

11 “(iv) section 1952 of that title (relat-
12 ing to interstate and foreign travel or
13 transportation in aid of racketeering enter-
14 prises);

15 “(v) section 1956 of that title (relat-
16 ing to the laundering of monetary instru-
17 ments);

18 “(vi) section 1957 of that title (relat-
19 ing to engaging in monetary transactions
20 in property derived from specified unlawful
21 activity); or

22 “(vii) sections 2312, 2313, 2314, or
23 2315 of that title (relating to interstate
24 transportation of stolen motor vehicles or
25 stolen property).

1 “(H) CONSPIRACY.—A conspiracy to com-
2 mit an offense described in subparagraphs (A)
3 through (G).

4 “(3) PROCEDURE.—

5 “(A) NOTIFICATION.—Not later than 7
6 days before the date on which the Secretary
7 designates a criminal gang or cartel under this
8 subsection, the Secretary shall submit to the
9 Speaker and minority leader of the House of
10 Representatives, the President pro tempore,
11 majority leader, and minority leader of the Sen-
12 ate, and the members of the relevant commit-
13 tees, by classified communication, a notice of
14 intent to designate the criminal gang or cartel
15 that describes the factual basis for the designa-
16 tion.

17 “(B) PUBLICATION IN THE FEDERAL REG-
18 ISTER.—Not later than 7 days after the date
19 described in subparagraph (A), the Secretary
20 shall publish notice of the designation in the
21 Federal Register.

22 “(4) RECORD.—

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

1 “(B) CLASSIFIED INFORMATION.—

2 “(i) IN GENERAL.—In making a des-
 3 ignation under this subsection, the Sec-
 4 retary may consider classified information,
 5 which, except as provided in clause (ii),
 6 shall not be subject to disclosure for any
 7 period during which the classified informa-
 8 tion remains classified.

9 “(ii) DISCLOSURE FOR JUDICIAL RE-
 10 VIEW.—For purposes of judicial review
 11 under subsection (d), classified information
 12 referred to in clause (i) may be disclosed
 13 to a court ex parte and in camera.

14 “(5) PERIOD OF DESIGNATION.—A designation
 15 under this subsection shall be effective until the date
 16 on which the designation—

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

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

19 “(6) REVIEW OF DESIGNATION.—

20 “(A) PETITION FOR REVIEW.—

21 “(i) IN GENERAL.—The Secretary
 22 shall review the designation of a criminal
 23 gang or cartel under the procedures de-
 24 scribed in clauses (iii) and (iv) if the crimi-

1 nal gang or cartel submits to the Secretary
2 a petition for review not later than—

3 “(I) in the case of a designated
4 criminal gang or cartel that has not
5 previously submitted a petition for re-
6 view under this subparagraph, the
7 date that is 2 years after the date on
8 which the Secretary makes the des-
9 ignation; and

10 “(II) in the case of a designated
11 criminal gang or cartel that has pre-
12 viously submitted a petition for review
13 under this subparagraph, the date
14 that is 2 years after the date on which
15 the Secretary made a determination
16 under clause (iv) on the most recent
17 petition for review submitted by the
18 criminal gang or cartel.

19 “(ii) EVIDENCE.—Any group, club,
20 organization, or association designated as
21 criminal gang or cartel that submits a peti-
22 tion for review under this subparagraph
23 shall include in the petition evidence that
24 the group, club, organization, or associa-
25 tion does not meet the criteria for designa-

tion as a criminal gang or cartel under paragraph (1).

“(iii) DETERMINATION.—

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

“(II) CLASSIFIED INFORMATION.—

“(aa) IN GENERAL.—In making a determination on a petition for review under this subparagraph, the Secretary may consider classified information, which, except as provided in item (bb), shall not be subject to disclosure for any period during which the classified information remains classified.

“(bb) DISCLOSURE FOR JUDICIAL REVIEW.—For purposes of judicial review under subsection (d), classified information

1 referred to in item (aa) may be
2 disclosed to a court ex parte and
3 in camera.

4 “(III) PUBLICATION OF DETER-
5 MINATION.—Not later than 90 days
6 after the date on which the Secretary
7 makes a determination on a petition
8 for review under this clause, the Sec-
9 retary shall publish the determination
10 in the Federal Register.

11 “(IV) PROCEDURES.—A revoca-
12 tion of a designation by the Secretary
13 in accordance with a determination
14 under this subparagraph shall be
15 made in accordance with paragraph
16 (7).

17 “(B) OTHER REVIEW OF DESIGNATION.—

18 “(i) IN GENERAL.—Not later than 5
19 years after the date on which the Secretary
20 designates a criminal gang or cartel under
21 paragraph (1), in the case of a criminal
22 gang or cartel for which a review has not
23 been carried out under subparagraph (A),
24 the Secretary shall initiate a review of the

1 designation to determine whether to revoke
 2 the designation under paragraph (7).

3 “(ii) PROCEDURES.—

4 “(I) IN GENERAL.—A review ini-
 5 tiated by the Secretary under clause
 6 (i) shall be carried out in accordance
 7 with such procedures determined by
 8 the Secretary to be appropriate.

9 “(II) JUDICIAL REVIEW.—A re-
 10 view under subclause (I) and the pro-
 11 cedures established under that sub-
 12 clause shall not be subject to judicial
 13 review.

14 “(iii) PUBLICATION OF RESULTS OF
 15 REVIEW.—Not later than 90 days after the
 16 date on which the Secretary makes a de-
 17 termination based on a review under this
 18 subparagraph, the Secretary shall publish
 19 the determination in the Federal Register.

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

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

24 “(i) may revoke the designation at
 25 any time; and

1 “(ii) shall revoke the designation if,
2 on completion of a review carried out
3 under paragraph (6), the Secretary deter-
4 mines that—

5 “(I) the criminal gang or cartel
6 does not meet the criteria for designa-
7 tion as a criminal gang or cartel
8 under paragraph (1); or

9 “(II) the national security or the
10 law enforcement interests of the
11 United States warrants a revocation.

12 “(B) NOTIFICATION.—Not later than 7
13 days before revoking a designation under para-
14 graph (A), the Secretary shall submit to the
15 Speaker and minority leader of the House of
16 Representatives, the President pro tempore,
17 majority leader, and minority leader of the Sen-
18 ate, and the members of the relevant commit-
19 tees, by classified communication, a notice of
20 intent to revoke the designation describing the
21 basis for the revocation.

22 “(C) PUBLICATION IN THE FEDERAL REG-
23 ISTER.—Not later than 7 days after the date
24 described in subparagraph (B), the Secretary

1 shall publish a notice of revocation in the Fed-
2 eral Register.

3 “(D) RECORD.—

4 “(i) IN GENERAL.—In revoking a des-
5 ignation under this paragraph, the Sec-
6 retary shall develop an administrative
7 record.

8 “(ii) CLASSIFIED INFORMATION.—

9 “(I) IN GENERAL.—In revoking a
10 designation under this paragraph, the
11 Secretary may consider classified in-
12 formation, which, except as provided
13 in subclause (II), shall not be subject
14 to disclosure for any period during
15 which the classified information re-
16 mains classified.

17 “(II) DISCLOSURE FOR JUDICIAL
18 REVIEW.—For purposes of judicial re-
19 view under subsection (d), classified
20 information referred to in subclause
21 (I) may be disclosed to a court ex
22 parte and in camera.

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

1 “(i) on the date specified in the notice
 2 of revocation published under subpara-
 3 graph (C); or

4 “(ii) if a date is not specified in the
 5 notice of revocation, on the date on which
 6 the notice of revocation is published in the
 7 Federal Register.

8 “(8) EFFECT OF REVOCATION.—A revocation
 9 under paragraph (7) shall not affect any action or
 10 proceeding based on conduct that occurs before the
 11 effective date of the revocation.

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

17 “(c) MODIFICATIONS TO A DESIGNATION.—

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

22 “(A) changed name;

23 “(B) adopted a new alias;

24 “(C) dissolved and reestablished under 1
 25 or more different names; or

1 “(D) merged with another criminal gang
2 or cartel.

3 “(2) PROCEDURE.—

4 “(A) NOTIFICATION.—Not later than 7
5 days before the date on which the Secretary
6 modifies the designation of a criminal gang or
7 cartel under this subsection, the Secretary shall
8 submit to the Speaker and minority leader of
9 the House of Representatives, the President pro
10 tempore, majority leader, and minority leader of
11 the Senate, and the members of the relevant
12 committees, by classified communication, a no-
13 tice of intent to modify the designation describ-
14 ing the factual basis for the modification.

15 “(B) PUBLICATION IN THE FEDERAL REG-
16 ISTER.—Not later than 7 days after the date
17 described in subparagraph (A), the Secretary
18 shall publish notice of the modification in the
19 Federal Register.

20 “(C) CLASSIFIED INFORMATION.—

21 “(i) IN GENERAL.—In modifying a
22 designation under this subsection, the Sec-
23 retary may consider classified information,
24 which, except as provided in clause (ii),
25 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 “(D) EFFECTIVE DATE.—Any modification
 9 under this subsection shall take effect on the
 10 date of publication of the modification under
 11 subparagraph (B).

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

15 “(A) any modification under this sub-
 16 section; and

17 “(B) any relevant information that sup-
 18 ports the modification.

19 “(d) JUDICIAL REVIEW OF DESIGNATION.—

20 “(1) IN GENERAL.—Not later than 30 days
 21 after the date on which a designation under sub-
 22 section (b)(1), a determination under subsection
 23 (b)(6)(A), or a modification under subsection (c) is
 24 published in the Federal Register, a criminal gang
 25 or cartel may seek judicial review of the designation,

determination, or modification, as applicable, in the United States Court of Appeals for the District of Columbia Circuit (referred to in this subsection as the ‘court’).

“(2) BASIS OF REVIEW.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), judicial review under this subsection shall be based only on the administrative record developed under subsection (b)(4).

“(B) EXCEPTION.—The Government may submit, for ex parte and in camera review, classified information used as a basis for—

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

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

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

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

1 “(A) arbitrary, capricious, an abuse of dis-
 2 cretion, or otherwise not in accordance with the
 3 law;

4 “(B) contrary to constitutional right,
 5 power, privilege, or immunity;

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

8 “(D) short of statutory right;

9 “(E) lacking substantial support—

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

12 “(ii) in classified information sub-
 13 mitted to the court under paragraph
 14 (2)(B); or

15 “(F) not in accordance with a procedure
 16 required by law.

17 “(4) JUDICIAL REVIEW INVOKED.—The pend-
 18 ency of an action for judicial review under this sub-
 19 section shall not affect the application of this section
 20 to a criminal gang or cartel unless the court issues
 21 a final order setting aside the designation, deter-
 22 mination, or modification.”.

23 (2) CONFORMING AMENDMENT.—The table of
 24 contents for the Immigration and Nationality Act (8

1 U.S.C. 1101 note) is amended by inserting after the
 2 item relating to section 219 the following:

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

3 (e) MANDATORY DETENTION OF ALIEN MEMBERS
 4 OF CRIMINAL GANGS OR CARTELS.—

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

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

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

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

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

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

18 “(E) is inadmissible under section
 19 212(a)(2)(J) or deportable under section
 20 237(a)(2)(G),”.

21 (2) ANNUAL REPORT.—Not later than March 1
 22 of each year (beginning 1 year after the date of en-
 23 actment of this Act), the Secretary, after consulta-
 24 tion with the appropriate Federal agencies, shall
 25 submit a report to the Committee on the Judiciary

of the Senate and the Committee on the Judiciary
of the House of Representatives that includes the
number of aliens detained under subparagraph (E)
of section 236(c)(1) of the Immigration and Nation-
ality Act (8 U.S.C. 1226(c)(1)) during the preceding
calendar year.

(f) RELIEF BASED ON GANG AFFILIATION.—

(1) INAPPLICABILITY OF RESTRICTION ON RE-
MOVAL TO CERTAIN COUNTRIES.—Section
241(b)(3)(B) of the Immigration and Nationality
Act (8 U.S.C. 1231(b)(3)(B)) is amended—

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

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

“(i) to an alien—

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

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

1 “(III) who is deportable under
2 section 237(a)(4)(D); or

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

5 (C) in the undesignated matter following
6 item (dd) (as so redesignated)—

7 (i) in the first sentence, by striking
8 “clause (ii)” and inserting “item (bb)”;
9 and

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

12 (2) INELIGIBILITY FOR ASYLUM.—Section
13 208(b)(2)(A) of the Immigration and Nationality
14 Act (8 U.S.C. 1158(b)(2)(A)) is amended—

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

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

19 (C) by inserting after clause (v) the fol-
20 lowing:

21 “(vi) the alien is described in section
22 212(a)(2)(J)(i) or section 237(a)(2)(G)(i);
23 or”.

24 (g) TEMPORARY PROTECTED STATUS.—

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

4 (A) by striking “Attorney General” each
5 place it appears and inserting “Secretary of
6 Homeland Security”;

7 (B) in subsection (c)(2)(B)—

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

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

12 (iii) by adding at the end the fol-
13 lowing:

14 “(iii) the alien is described in section
15 212(a)(2)(J) or section 237(a)(2)(G).”;
16 and

17 (C) in subsection (d)—

18 (i) in paragraph (2)—

19 (I) in the first sentence, by strik-
20 ing “Subject to paragraph (3), such
21 documentation” and inserting “The
22 documentation referred to in para-
23 graph (1)”; and

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

- 1 (ii) by striking paragraph (3);
- 2 (iii) by redesignating paragraph (4) as
- 3 paragraph (3); and
- 4 (iv) in paragraph (3) (as so redesignated), by striking “An alien provided”
- 5 and inserting the following:

7 “(A) IN GENERAL.—Except as provided in
 8 subparagraph (B), the Secretary of Homeland
 9 Security may detain an alien provided temporary
 10 protected status under this section, as
 11 determined by the Secretary to be appropriate
 12 under the law.

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

14 (2) CONFORMING AMENDMENT.—Section
 15 244(b)(3)(B) of the Immigration and Nationality
 16 Act (8 U.S.C. 1254a(b)(3)(B)) is amended in the
 17 second sentence by striking “is effective in accordance
 18 with subsection (d)(3), but”.

19 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
 20 101(a)(27)(J)(iii) of the Immigration and Nationality Act
 21 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

22 (1) in subclause (I), by striking “; and” and inserting a semicolon;

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

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

2 “(III) no alien described in sec-
3 tion 212(a)(2)(J) or section
4 237(a)(2)(G) shall be eligible for any
5 immigration benefit under this sub-
6 paragraph;”.

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

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

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

15 “(5) PAROLE.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraphs (B) and (C) and in section
18 214(f), the Secretary of Homeland Security
19 may”; and

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

21 “(C) ALIENS ASSOCIATED WITH CRIMINAL
22 GANGS OR CARTELS.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii), the Secretary of Home-
25 land Security shall not parole into the

1 United States an alien described in section
2 212(a)(2)(J).

3 “(ii) EXCEPTION.—The Secretary of
4 Homeland Security may parole into the
5 United States an alien described in section
6 212(a)(2)(J) if—

7 “(I) the alien is assisting or has
8 assisted the Government in a law en-
9 forcement matter, including a criminal
10 investigation; and

11 “(II) the presence of the alien in
12 the United States is required by the
13 Government for purposes of such as-
14 sistance.”.

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

18 **SEC. 6. BORDER ACCESS ROADS.**

19 (a) CONSTRUCTION.—

20 (1) IN GENERAL.—The Secretary shall com-
21 mence and complete the construction of roads along
22 the southern border to facilitate safe and swift ac-
23 cess for U.S. Customs and Border Protection per-
24 sonnel to access the border for purposes of patrol
25 and apprehension.

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

3 (A) access roads;

4 (B) border roads;

5 (C) patrol roads; and

6 (D) Federal, State, local, and privately-
7 owned roads.

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

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

12 (1) develop policies and guidance for docu-
13 menting agreements with landowners relating to the
14 construction of roads under subsection (a), as the
15 Secretary determines to be necessary;

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

19 (3) document and communicate the process and
20 criteria for prioritizing funding for operational roads
21 not owned by the Federal Government; and

22 (4) assess the feasibility of options for address-
23 ing the maintenance of non-Federal public roads, in-
24 cluding any data needs relating to such mainte-
25 nance.

Calendar No. 276

115TH CONGRESS
1ST Session

S. 2199

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.

DECEMBER 7, 2017

Read the second time and placed on the calendar