

117TH CONGRESS
1ST SESSION

S. 1056

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

MARCH 25, 2021

Mr. KENNEDY 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 following criminal offenses and
5 the members of which engage, or have engaged within the
6 past 5 years, in a continuing series of such offenses, or
7 that has been designated as a criminal gang by the Sec-
8 retary of Homeland Security, in consultation with the At-
9 torney General, as meeting such criteria. The offenses de-
10 scribed, whether in violation of Federal or State law or
11 foreign law and regardless of whether the offenses oc-
12 curred before, on, or after the date of the enactment of
13 this paragraph, are the following:

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 any offense de-
22 scribed in subparagraphs (A) through (E).”.

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

1 “(J) ALIENS ASSOCIATED WITH CRIMINAL
 2 GANGS.—Any alien is inadmissible who a con-
 3 sular officer, the Secretary of Homeland Secu-
 4 rity, or the Attorney General knows or has rea-
 5 son to believe—

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

8 “(ii) to have participated in the activi-
 9 ties of a criminal gang, knowing or having
 10 reason to know that such activities will
 11 promote, 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; or

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

25 (d) DESIGNATION.—

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

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

6 “(a) DESIGNATION.—

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

13 “(2) PROCEDURE.—

14 “(A) NOTIFICATION.—Not later than 7
15 days before making a designation under this
16 subsection, the Secretary shall, by classified
17 communication, notify the Speaker and Minor-
18 ity Leader of the House of Representatives, the
19 President pro tempore, Majority Leader, and
20 Minority Leader of the Senate, and the mem-
21 bers of the relevant committees of the House of
22 Representatives and the Senate, in writing, of
23 the intent to designate a group, club, organiza-
24 tion, or association of 5 or more persons under

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

3 “(B) PUBLICATION IN THE FEDERAL REG-
4 ISTER.—The Secretary shall publish the des-
5 ignation in the Federal Register 7 days after
6 providing the notification under subparagraph
7 (A).

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 shall not be subject to
16 disclosure for such time as it remains classified,
17 except that such information may be disclosed
18 to a court ex parte and in camera for purposes
19 of 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-

1 mination made under clause (iv) on
2 that petition.

3 “(iii) PROCEDURES.—Any group,
4 club, organization, or association of 5 or
5 more persons that submits a petition for
6 revocation under this subparagraph of its
7 designation as a criminal gang must pro-
8 vide evidence in that petition that it is not
9 described in section 101(a)(53).

10 “(iv) DETERMINATION.—

11 “(I) IN GENERAL.—Not later
12 than 180 days after receiving a peti-
13 tion for revocation submitted under
14 this subparagraph, the Secretary shall
15 make a determination as to such rev-
16 ocation.

17 “(II) CLASSIFIED INFORMA-
18 TION.—The Secretary may consider
19 classified information in making a de-
20 termination in response to a petition
21 for revocation. Classified information
22 shall not be subject to disclosure for
23 such time as it remains classified, ex-
24 cept that such information may be
25 disclosed to a court ex parte and in

1 camera for purposes of judicial review
2 under subsection (c).

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

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

11 “(C) OTHER REVIEW OF DESIGNATION.—

12 “(i) IN GENERAL.—If no review has
13 taken place under subparagraph (B) in a
14 5-year period, the Secretary shall review
15 the designation of the criminal gang in
16 order to determine whether such designa-
17 tion should be revoked pursuant to para-
18 graph (6).

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

1 view and the applicable procedures shall
2 not be reviewable in any court.

3 “(iii) PUBLICATION OF RESULTS OF
4 REVIEW.—The Secretary shall publish any
5 determination made pursuant to this sub-
6 paragraph in the Federal Register.

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

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

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

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

22 “(ii) the national security or the law
23 enforcement interests of the United States
24 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 shall not be permitted to raise any
16 question concerning the validity of the issuance of
17 such designation 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 finds that the group, club, organization, or associa-
22 tion of 5 or more persons has changed its name,
23 adopted a new alias, dissolved and then reconsti-
24 tuted 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 in accordance with paragraph (1) shall
5 be effective upon publication in the Federal Register.
6 Paragraphs (2), (4), (5), (6), (7), and (8) of sub-
7 section (a) shall 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 those 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 for such time as it remains classified, except
17 that such information may be disclosed to a court ex
18 parte and in camera for purposes of judicial review
19 under subsection (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.—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—

21 “(A) the Committee on the Judiciary of
22 the Senate; and

23 “(B) the Committee on the Judiciary of
24 the House of Representatives; and

1 “(4) the term ‘Secretary’ means the Secretary
2 of Homeland Security, in consultation with the At-
3 torney General.”.

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

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

8 (e) MANDATORY DETENTION OF CRIMINAL GANG
9 MEMBERS.—

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

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

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

17 (C) 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 each year (beginning 1 year after the date of the
24 enactment of this Act), the Secretary of Homeland
25 Security, after consultation with the appropriate

1 Federal agencies, shall submit a report to the Com-
 2 mittee on the Judiciary of the Senate and the Com-
 3 mittee on the Judiciary of the House of Representa-
 4 tives regarding the number of aliens detained as a
 5 result of the amendments made by paragraph (1).

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

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

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

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

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

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

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

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

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

10 (2) in subsection (c)(2)(B)—

11 (A) in clause (i), by striking “, or” and in-
 12 serting a semicolon;

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

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

16 “(iii) the alien is, or at any time has
 17 been, described in section 212(a)(2)(J) or
 18 237(a)(2)(G).”; and

19 (3) in subsection (d)—

20 (A) by striking paragraph (3);

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

23 (C) in paragraph (3), as redesignated, by
 24 adding at the end the following: “The Secretary
 25 of Homeland Security may detain an alien pro-

1 vided temporary protected status under this
2 section whenever appropriate under any other
3 provision of law.”.

4 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
5 101(a)(27)(J)(iii) of the Immigration and Nationality Act
6 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

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

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

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

12 “(III) no alien who is, or at any
13 time has been, described in section
14 212(a)(2)(J) or 237(a)(2)(G) shall be
15 eligible for any immigration benefit
16 under this subparagraph;”.

17 (i) PAROLE.—An alien described in section
18 212(a)(2)(J) of the Immigration and Nationality Act, as
19 added by subsection (b), is not eligible for parole under
20 section 212(d)(5)(A) of such Act unless—

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

1 (2) the alien's presence in the United States is
2 required by the Government with respect to such as-
3 sistance.

4 (j) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of the enactment
6 of this Act and shall apply to acts that occur before, on,
7 or after the date of the enactment of this Act.

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