

117TH CONGRESS
1ST SESSION

H. R. 71

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2021

Mr. BUCHANAN introduced the following bill; which was 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 one 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 these 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 an 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:

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

“(i) to be or to have been a member of a criminal gang (as defined in section 101(a)(53)); or

“(ii) to have participated in the activities of a criminal gang (as defined in section 101(a)(53)), 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 Immigration 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 (as defined in section 101(a)(53)); or

“(ii) has participated in the activities of a criminal gang (as so defined), knowing or having reason to know that such activi-

1 ties will promote, further, aid, or support
2 the illegal activity of the criminal gang.”.

3 (d) DESIGNATION.—

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

8 “DESIGNATION OF CRIMINAL GANG

9 “SEC. 220. (a) DESIGNATION.—

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

15 “(2) PROCEDURE.—

16 “(A) NOTIFICATION.—Seven days before mak-
17 ing a designation under this subsection, the Sec-
18 retary shall, by classified communication, notify the
19 Speaker and Minority Leader of the House of Rep-
20 resentatives, the President pro tempore, Majority
21 Leader, and Minority Leader of the Senate, and the
22 members of the relevant committees of the House of
23 Representatives and the Senate, in writing, of the
24 intent to designate a group, club, organization, or
25 association of 5 or more persons under this sub-
26 section and the factual basis therefor.

1 “(B) PUBLICATION IN THE FEDERAL REG-
2 ISTER.—The Secretary shall publish the designation
3 in the Federal Register seven days after providing
4 the notification under subparagraph (A).

5 “(3) RECORD.—

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

9 “(B) CLASSIFIED INFORMATION.—The Sec-
10 retary may consider classified information in making
11 a designation under this subsection. Classified infor-
12 mation shall not be subject to disclosure for such
13 time as it remains classified, except that such infor-
14 mation may be disclosed to a court ex parte and in
15 camera for purposes of judicial review under sub-
16 section (c).

17 “(4) PERIOD OF DESIGNATION.—

18 “(A) IN GENERAL.—A designation under this
19 subsection shall be effective for all purposes until re-
20 voked under paragraph (5) or (6) or set aside pursu-
21 ant to subsection (c).

22 “(B) REVIEW OF DESIGNATION UPON PETI-
23 TION.—

24 “(i) IN GENERAL.—The Secretary shall re-
25 view the designation of a criminal gang under

1 the procedures set forth in clauses (iii) and (iv)
2 if the designated group, club, organization, or
3 association of 5 or more persons files a petition
4 for revocation within the petition period de-
5 scribed in clause (ii).

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

8 “(I) if the designated group, club, or-
9 ganization, or association of 5 or more per-
10 sons has not previously filed a petition for
11 revocation under this subparagraph, the
12 petition period begins 2 years after the
13 date on which the designation was made;
14 or

15 “(II) if the designated group, club, or-
16 ganization, or association of 5 or more per-
17 sons has previously filed a petition for rev-
18 ocation under this subparagraph, the peti-
19 tion period begins 2 years after the date of
20 the determination made under clause (iv)
21 on that petition.

22 “(iii) PROCEDURES.—Any group, club, or-
23 ganization, or association of 5 or more persons
24 that submits a petition for revocation under
25 this subparagraph of its designation as a crimi-

1 nal gang must provide evidence in that petition
2 that it is not described in section 101(a)(53).

3 “(iv) DETERMINATION.—

4 “(I) IN GENERAL.—Not later than
5 180 days after receiving a petition for rev-
6 ocation submitted under this subpara-
7 graph, the Secretary shall make a deter-
8 mination as to such revocation.

9 “(II) CLASSIFIED INFORMATION.—

10 The Secretary may consider classified in-
11 formation in making a determination in re-
12 sponse to a petition for revocation. Classi-
13 fied information shall not be subject to dis-
14 closure for such time as it remains classi-
15 fied, except that such information may be
16 disclosed to a court ex parte and in camera
17 for purposes of judicial review under sub-
18 section (c).

19 “(III) PUBLICATION OF DETERMINA-
20 TION.—A determination made by the Sec-
21 retary under this clause shall be published
22 in the Federal Register.

23 “(IV) PROCEDURES.—Any revocation
24 by the Secretary shall be made in accord-
25 ance with paragraph (6).

1 “(C) OTHER REVIEW OF DESIGNATION.—

2 “(i) IN GENERAL.—If in a 5-year period no
3 review has taken place under subparagraph (B),
4 the Secretary shall review the designation of the
5 criminal gang in order to determine whether
6 such designation should be revoked pursuant to
7 paragraph (6).

8 “(ii) PROCEDURES.—If a review does not
9 take place pursuant to subparagraph (B) in re-
10 sponse to a petition for revocation that is filed
11 in accordance with that subparagraph, then the
12 review shall be conducted pursuant to proce-
13 dures established by the Secretary. The results
14 of such review and the applicable procedures
15 shall not be reviewable in any court.

16 “(iii) PUBLICATION OF RESULTS OF RE-
17 VIEW.—The Secretary shall publish any deter-
18 mination made pursuant to this subparagraph
19 in the Federal Register.

20 “(5) REVOCATION BY ACT OF CONGRESS.—The Con-
21 gress, by an Act of Congress, may block or revoke a des-
22 ignation made under paragraph (1).

23 “(6) REVOCATION BASED ON CHANGE IN CIR-
24 CUMSTANCES.—

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

7 “(i) the group, club, organization, or asso-
8 ciation of 5 or more persons that has been des-
9 ignated as a criminal gang is no longer de-
10 scribed in section 101(a)(53); or

11 “(ii) the national security or the law en-
12 forcement interests of the United States war-
13 rants a revocation.

14 “(B) PROCEDURE.—The procedural require-
15 ments of paragraphs (2) and (3) shall apply to a
16 revocation under this paragraph. Any revocation
17 shall take effect on the date specified in the revoca-
18 tion or upon publication in the Federal Register if
19 no effective date is specified.

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

24 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
25 ING.—If a designation under this subsection has become

1 effective under paragraph (2) an alien in a removal pro-
2 ceeding shall not be permitted to raise any question con-
3 cerning the validity of the issuance of such designation
4 as a defense or an objection.

5 “(b) AMENDMENTS TO A DESIGNATION.—

6 “(1) IN GENERAL.—The Secretary may amend
7 a designation under this subsection if the Secretary
8 finds that the group, club, organization, or associa-
9 tion of 5 or more persons has changed its name,
10 adopted a new alias, dissolved and then reconsti-
11 tuted itself under a different name or names, or
12 merged with another group, club, organization, or
13 association of 5 or more persons.

14 “(2) PROCEDURE.—Amendments made to a
15 designation in accordance with paragraph (1) shall
16 be effective upon publication in the Federal Register.
17 Paragraphs (2), (4), (5), (6), (7), and (8) of sub-
18 section (a) shall also apply to an amended designa-
19 tion.

20 “(3) ADMINISTRATIVE RECORD.—The adminis-
21 trative record shall be corrected to include the
22 amendments as well as any additional relevant infor-
23 mation that supports those amendments.

24 “(4) CLASSIFIED INFORMATION.—The Sec-
25 retary may consider classified information in amend-

1 ing a designation in accordance with this subsection.
2 Classified information shall not be subject to disclo-
3 sure for such time as it remains classified, except
4 that such information may be disclosed to a court ex
5 parte and in camera for purposes of judicial review
6 under subsection (c) of this section.

7 “(c) JUDICIAL REVIEW OF DESIGNATION.—

8 “(1) IN GENERAL.—Not later than 30 days
9 after publication in the Federal Register of a des-
10 ignation, an amended designation, or a determina-
11 tion in response to a petition for revocation, the des-
12 ignated group, club, organization, or association of 5
13 or more persons may seek judicial review in the
14 United States Court of Appeals for the District of
15 Columbia Circuit.

16 “(2) BASIS OF REVIEW.—Review under this
17 subsection shall be based solely upon the administra-
18 tive record, except that the Government may submit,
19 for ex parte and in camera review, classified infor-
20 mation used in making the designation, amended
21 designation, or determination in response to a peti-
22 tion for revocation.

23 “(3) SCOPE OF REVIEW.—The Court shall hold
24 unlawful and set aside a designation, amended des-

1 ignation, or determination in response to a petition
2 for revocation the court finds to be—

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

6 “(B) contrary to constitutional right,
7 power, privilege, or immunity;

8 “(C) in excess of statutory jurisdiction, au-
9 thority, or limitation, or short of statutory
10 right;

11 “(D) lacking substantial support in the ad-
12 ministrative record taken as a whole or in clas-
13 sified information submitted to the court under
14 paragraph (2); or

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

17 “(4) JUDICIAL REVIEW INVOKED.—The pend-
18 ency of an action for judicial review of a designation,
19 amended designation, or determination in response
20 to a petition for revocation shall not affect the appli-
21 cation of this section, unless the court issues a final
22 order setting aside the designation, amended des-
23 ignation, or determination in response to a petition
24 for revocation.

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

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

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

7 “(3) the term ‘relevant committees’ means the
 8 Committees on the Judiciary of the Senate and of
 9 the House of Representatives; and

10 “(4) the term ‘Secretary’ means the Secretary
 11 of Homeland Security, in consultation with the At-
 12 torney General.”.

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

“Sec. 220. Designation.”.

16 (e) MANDATORY DETENTION OF CRIMINAL GANG
 17 MEMBERS.—

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

21 (A) in subparagraph (C), by striking “or”
 22 at the end;

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

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

3 “(E) is inadmissible under section
 4 212(a)(2)(J) or deportable under section
 5 217(a)(2)(G),”.

6 (2) ANNUAL REPORT.—Not later than March 1
 7 of each year (beginning 1 year after the date of the
 8 enactment of this Act), the Secretary of Homeland
 9 Security, after consultation with the appropriate
 10 Federal agencies, shall submit a report to the Com-
 11 mittees on the Judiciary of the House of Represent-
 12 atives and of the Senate on the number of aliens de-
 13 tained under the amendments made by paragraph
 14 (1).

15 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-
 16 ATION.—

17 (1) INAPPLICABILITY OF RESTRICTION ON RE-
 18 MOVAL TO CERTAIN COUNTRIES.—Section
 19 241(b)(3)(B) of the Immigration and Nationality
 20 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
 21 matter preceding clause (i), by inserting “who is de-
 22 scribed in section 212(a)(2)(J)(i) or section
 23 237(a)(2)(G)(i) or who is” after “to an alien”.

24 (2) INELIGIBILITY FOR ASYLUM.—Section
 25 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))

1 (as amended by section 201 of this Act) is further
2 amended—

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

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

7 (C) by inserting after clause (v) the fol-
8 lowing:

9 “(vi) the alien is described in section
10 212(a)(2)(J)(i) or section 237(a)(2)(G)(i);
11 or”.

12 (g) TEMPORARY PROTECTED STATUS.—Section 244
13 of such Act (8 U.S.C. 1254a) is amended—

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

17 (2) in subparagraph (c)(2)(B)—

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

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

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

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

1 (3) in subsection (d)—

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

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

8 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
 9 101(a)(27)(J)(iii) of the Immigration and Nationality Act
 10 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

11 (1) in subclause (I), by striking “and”;

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

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

15 “(III) no alien who is, or at any
 16 time has been, described in section
 17 212(a)(2)(J) or section 237(a)(2)(G)
 18 shall be eligible for any immigration
 19 benefit under this subparagraph;”.

20 (i) PAROLE.—An alien described in section
 21 212(a)(2)(J) of the Immigration and Nationality Act, as
 22 added by subsection (b), shall not be eligible for parole
 23 under section 212(d)(5)(A) of such Act unless—

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

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

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

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