

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6094

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2006

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To restore the Secretary of Homeland Security's authority to detain dangerous aliens, to ensure the removal of deportable criminal aliens, and combat alien gang crime.

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 “Community Protection  
3 Act of 2006”.

4 **TITLE I—DANGEROUS ALIEN**  
5 **DETENTION ACT OF 2006**

6 **SEC. 101. DETENTION OF DANGEROUS ALIENS.**

7 Section 241(a) of the Immigration and Nationality  
8 Act (8 U.S.C. 1231(a)) is amended—

9 (1) by striking “Attorney General” each place  
10 it appears, except for the first reference in para-  
11 graph (4)(B)(i), and inserting “Secretary of Home-  
12 land Security”;

13 (2) in paragraph (1), by adding at the end of  
14 subparagraph (B) the following:

15 “If, at that time, the alien is not in the custody  
16 of the Secretary of Homeland Security (under  
17 the authority of this Act), the Secretary shall  
18 take the alien into custody for removal, and the  
19 removal period shall not begin until the alien is  
20 taken into such custody. If the Secretary trans-  
21 fers custody of the alien during the removal pe-  
22 riod pursuant to law to another Federal agency  
23 or a State or local government agency in con-  
24 nection with the official duties of such agency,  
25 the removal period shall be tolled, and shall  
26 begin anew on the date of the alien’s return to

1 the custody of the Secretary, subject to clause  
2 (ii).”;

3 (3) by amending clause (ii) of paragraph (1)(B)  
4 to read as follows:

5 “(ii) If a court, the Board of Immi-  
6 gration Appeals, or an immigration judge  
7 orders a stay of the removal of the alien,  
8 the date the stay of removal is no longer  
9 in effect.”;

10 (4) by amending paragraph (1)(C) to read as  
11 follows:

12 “(C) SUSPENSION OF PERIOD.—The re-  
13 moval period shall be extended beyond a period  
14 of 90 days and the alien may remain in deten-  
15 tion during such extended period if the alien  
16 fails or refuses to make all reasonable efforts to  
17 comply with the removal order, or to fully co-  
18 operate with the Secretary of Homeland Secu-  
19 rity’s efforts to establish the alien’s identity and  
20 carry out the removal order, including making  
21 timely application in good faith for travel or  
22 other documents necessary to the alien’s depar-  
23 ture, or conspires or acts to prevent the alien’s  
24 removal subject to an order of removal.”;

1 (5) in paragraph (2), by adding at the end the  
2 following: “If a court, the Board of Immigration Ap-  
3 peals, or an immigration judge orders a stay of re-  
4 moval of an alien who is subject to an administra-  
5 tively final order of removal, the Secretary, in the  
6 exercise of the Secretary’s discretion, may detain the  
7 alien during the pendency of such stay of removal.”;

8 (6) by amending paragraph (3)(D) to read as  
9 follows:

10 “(D) to obey reasonable restrictions on the  
11 alien’s conduct or activities, or perform affirma-  
12 tive acts, that the Secretary of Homeland Secu-  
13 rity prescribes for the alien, in order to prevent  
14 the alien from absconding, or for the protection  
15 of the community, or for other purposes related  
16 to the enforcement of the immigration laws.”;

17 (7) in paragraph (6), by striking “removal pe-  
18 riod and, if released,” and inserting “removal period,  
19 in the discretion of the Secretary of Homeland Secu-  
20 rity, without any limitations other than those speci-  
21 fied in this section, until the alien is removed. If an  
22 alien is released, the alien”;

23 (8) by redesignating paragraph (7) as para-  
24 graph (10) and inserting after paragraph (6) the fol-  
25 lowing:

1           “(7) PAROLE.—If an alien detained pursuant to  
2 paragraph (6) is an applicant for admission, the  
3 Secretary of Homeland Security, in the Secretary’s  
4 discretion, may parole the alien under section  
5 212(d)(5) and may provide, notwithstanding such  
6 section, that the alien shall not be returned to cus-  
7 tody unless either the alien violates the conditions of  
8 the alien’s parole or the alien’s removal becomes rea-  
9 sonably foreseeable, but in no circumstance shall  
10 such alien be considered admitted.

11           “(8) ADDITIONAL RULES FOR DETENTION OR  
12 RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN  
13 ENTRY.—The following procedures apply only with  
14 respect to an alien who has effected an entry into  
15 the United States. These procedures do not apply to  
16 any other alien detained pursuant to paragraph (6):

17           “(A) ESTABLISHMENT OF A DETENTION  
18 REVIEW PROCESS FOR ALIENS WHO FULLY CO-  
19 OPERATE WITH REMOVAL.—For an alien who  
20 has made all reasonable efforts to comply with  
21 a removal order and to cooperate fully with the  
22 Secretary of Homeland Security’s efforts to es-  
23 tablish the alien’s identity and carry out the re-  
24 moval order, including making timely applica-  
25 tion in good faith for travel or other documents

1 necessary to the alien’s departure, and has not  
2 conspired or acted to prevent removal, the Sec-  
3 retary shall establish an administrative review  
4 process to determine whether the alien should  
5 be detained or released on conditions. The Sec-  
6 retary shall make a determination whether to  
7 release an alien after the removal period in ac-  
8 cordance with subparagraph (B). The deter-  
9 mination shall include consideration of any evi-  
10 dence submitted by the alien, and may include  
11 consideration of any other evidence, including  
12 any information or assistance provided by the  
13 Secretary of State or other Federal official and  
14 any other information available to the Secretary  
15 of Homeland Security pertaining to the ability  
16 to remove the alien.

17 “(B) AUTHORITY TO DETAIN BEYOND THE  
18 REMOVAL PERIOD.—

19 “(i) IN GENERAL.—The Secretary of  
20 Homeland Security, in the exercise of the  
21 Secretary’s discretion, without any limita-  
22 tions other than those specified in this sec-  
23 tion, may continue to detain an alien for  
24 90 days beyond the removal period (includ-

1           ing any extension of the removal period as  
2           provided in paragraph (1)(C)).

3           “(ii) SPECIFIC CIRCUMSTANCES.—The  
4           Secretary of Homeland Security, in the ex-  
5           ercise of the Secretary’s discretion, without  
6           any limitations other than those specified  
7           in this section, may continue to detain an  
8           alien beyond the 90 days authorized in  
9           clause (i)—

10                   “(I) until the alien is removed, if  
11                   the Secretary determines that there is  
12                   a significant likelihood that the  
13                   alien—

14                           “(aa) will be removed in the  
15                           reasonably foreseeable future; or

16                           “(bb) would be removed in  
17                           the reasonably foreseeable future,  
18                           or would have been removed, but  
19                           for the alien’s failure or refusal  
20                           to make all reasonable efforts to  
21                           comply with the removal order,  
22                           or to cooperate fully with the  
23                           Secretary’s efforts to establish  
24                           the aliens’ identity and carry out  
25                           the removal order, including

1 making timely application in  
2 good faith for travel or other doc-  
3 uments necessary to the alien’s  
4 departure, or conspiracies or acts  
5 to prevent removal;

6 “(II) until the alien is removed,  
7 if the Secretary of Homeland Security  
8 certifies in writing—

9 “(aa) in consultation with  
10 the Secretary of Health and  
11 Human Services, that the alien  
12 has a highly contagious disease  
13 that poses a threat to public safe-  
14 ty;

15 “(bb) after receipt of a writ-  
16 ten recommendation from the  
17 Secretary of State, that release  
18 of the alien is likely to have seri-  
19 ous adverse foreign policy con-  
20 sequences for the United States;

21 “(cc) based on information  
22 available to the Secretary of  
23 Homeland Security (including  
24 classified, sensitive, or national  
25 security information, and without



1 regard to the grounds upon  
2 which the alien was ordered re-  
3 moved), that there is reason to  
4 believe that the release of the  
5 alien would threaten the national  
6 security of the United States; or

7 “(dd) that the release of the  
8 alien will threaten the safety of  
9 the community or any person,  
10 conditions of release cannot rea-  
11 sonably be expected to ensure the  
12 safety of the community or any  
13 person, and either (AA) the alien  
14 has been convicted of one or  
15 more aggravated felonies (as de-  
16 fined in section 101(a)(43)(A))  
17 or of one or more crimes identi-  
18 fied by the Secretary of Home-  
19 land Security by regulation, or of  
20 one or more attempts or conspir-  
21 acies to commit any such aggra-  
22 vated felonies or such identified  
23 crimes, if the aggregate term of  
24 imprisonment for such attempts  
25 or conspiracies is at least 5

1 years; or (BB) the alien has com-  
2 mitted one or more crimes of vio-  
3 lence (as defined in section 16 of  
4 title 18, United States Code, but  
5 not including a purely political  
6 offense) and, because of a mental  
7 condition or personality disorder  
8 and behavior associated with that  
9 condition or disorder, the alien is  
10 likely to engage in acts of vio-  
11 lence in the future; or

12 “(ee) that the release of the  
13 alien will threaten the safety of  
14 the community or any person,  
15 conditions of release cannot rea-  
16 sonably be expected to ensure the  
17 safety of the community or any  
18 person, and the alien has been  
19 convicted of at least one aggra-  
20 vated felony (as defined in sec-  
21 tion 101(a)(43)); or

22 “(III) pending a determination  
23 under subclause (II), so long as the  
24 Secretary of Homeland Security has  
25 initiated the administrative review

1 process not later than 30 days after  
2 the expiration of the removal period  
3 (including any extension of the re-  
4 moval period, as provided in sub-  
5 section (a)(1)(C)).

6 “(C) RENEWAL AND DELEGATION OF CER-  
7 TIFICATION.—

8 “(i) RENEWAL.—The Secretary of  
9 Homeland Security may renew a certifi-  
10 cation under subparagraph (B)(ii)(II)  
11 every 6 months without limitation, after  
12 providing an opportunity for the alien to  
13 request reconsideration of the certification  
14 and to submit documents or other evidence  
15 in support of that request. If the Secretary  
16 does not renew a certification, the Sec-  
17 retary may not continue to detain the alien  
18 under subparagraph (B)(ii)(II).

19 “(ii) DELEGATION.—Notwithstanding  
20 section 103, the Secretary of Homeland  
21 Security may not delegate the authority to  
22 make or renew a certification described in  
23 item (bb), (cc), or (ee) of subparagraph  
24 (B)(ii)(II) below the level of the Assistant

1 Secretary for Immigration and Customs  
2 Enforcement.

3 “(iii) HEARING.—The Secretary of  
4 Homeland Security may request that the  
5 Attorney General or the Attorney General’s  
6 designee provide for a hearing to make the  
7 determination described in item (dd)(BB)  
8 of subparagraph (B)(ii)(II).

9 “(D) RELEASE ON CONDITIONS.—If it is  
10 determined that an alien should be released  
11 from detention, the Secretary of Homeland Se-  
12 curity, in the exercise of the Secretary’s discre-  
13 tion, may impose conditions on release as pro-  
14 vided in paragraph (3).

15 “(E) REDETENTION.—The Secretary of  
16 Homeland Security, in the exercise of the Sec-  
17 retary’s discretion, without any limitations  
18 other than those specified in this section, may  
19 again detain any alien subject to a final re-  
20 moval order who is released from custody if the  
21 alien fails to comply with the conditions of re-  
22 lease, or to continue to satisfy the conditions  
23 described in subparagraph (A), or if, upon re-  
24 consideration, the Secretary determines that the  
25 alien can be detained under subparagraph (B).

1 Paragraphs (6) through (8) shall apply to any  
2 alien returned to custody pursuant to this sub-  
3 paragraph, as if the removal period terminated  
4 on the day of the redetention.

5 “(F) CERTAIN ALIENS WHO EFFECTED  
6 ENTRY.—If an alien has effected an entry, but  
7 has neither been lawfully admitted nor has been  
8 physically present in the United States continu-  
9 ously for the 2-year period immediately prior to  
10 the commencement of removal proceedings  
11 under this Act or deportation proceedings  
12 against the alien, the Secretary of Homeland  
13 Security, in the exercise of the Secretary’s dis-  
14 cretion, may decide not to apply paragraph (8)  
15 and detain the alien without any limitations ex-  
16 cept those which the Secretary shall adopt by  
17 regulation.

18 “(9) JUDICIAL REVIEW.—Without regard to the  
19 place of confinement, judicial review of any action or  
20 decision pursuant to paragraphs (6), (7), or (8) shall  
21 be available exclusively in habeas corpus proceedings  
22 instituted in the United States District Court for the  
23 District of Columbia, and only if the alien has ex-  
24 hausted all administrative remedies (statutory and  
25 regulatory) available to the alien as of right.”.

1 **SEC. 102. DETENTION OF ALIENS DURING REMOVAL PRO-**  
2 **CEEDINGS.**

3 (a) **DETENTION AUTHORITY.**—Section 235 of the  
4 Immigration and Nationality Act (8 U.S.C. 1225) is  
5 amended by adding at the end the following:

6 “(e) **LENGTH OF DETENTION.**—

7 “(1) **IN GENERAL.**—With regard to length of  
8 detention, an alien may be detained under this sec-  
9 tion, without limitation, until the alien is subject to  
10 an administratively final order of removal.

11 “(2) **CONSTRUCTION.**—The length of detention  
12 under this section shall not affect the validity of any  
13 detention under section 241.

14 “(f) **JUDICIAL REVIEW.**—Without regard to the place  
15 of confinement, judicial review of any action or decision  
16 made pursuant to subsection (e) shall be available exclu-  
17 sively in a habeas corpus proceeding instituted in the  
18 United States District Court for the District of Columbia  
19 and only if the alien has exhausted all administrative rem-  
20 edies (statutory and nonstatutory) available to the alien  
21 as of right.”.

22 (b) **JUDICIAL REVIEW.**—Section 236(e) of such Act  
23 (8 U.S.C. 1226(e)) is amended by adding at the end the  
24 following: “Without regard to the place of confinement,  
25 judicial review of any action or decision made pursuant  
26 to subsection (f) shall be available exclusively in a habeas

1 corpus proceeding instituted in the United States District  
2 Court for the District of Columbia and only if the alien  
3 has exhausted all administrative remedies (statutory and  
4 nonstatutory) available to the alien as of right.”.

5 (c) LENGTH OF DETENTION.—Section 236 of such  
6 Act (8 U.S.C. 1226) is amended by adding at the end the  
7 following:

8 “(f) LENGTH OF DETENTION.—

9 “(1) IN GENERAL.—With regard to length of  
10 detention, an alien may be detained under this sec-  
11 tion, without limitation, until the alien is subject to  
12 an administratively final order of removal.

13 “(2) CONSTRUCTION.—The length of detention  
14 under this section shall not affect the validity of any  
15 detention under section 241 of this Act.”.

16 **SEC. 103. SEVERABILITY.**

17 If any provision of this title, or any amendment made  
18 by this title, or the application of any such provision to  
19 any person or circumstance, is held to be invalid for any  
20 reason, the remainder of this title, and of the amendments  
21 made by this title, and the application of the provisions  
22 and of the amendments made by this title to any other  
23 person or circumstance, shall not be affected by such hold-  
24 ing.

1 **SEC. 104. EFFECTIVE DATES.**

2 (a) SECTION 101.—The amendments made by section  
3 101 shall take effect on the date of the enactment of this  
4 Act, and section 241 of the Immigration and Nationality  
5 Act, as amended, shall apply to—

6 (1) all aliens subject to a final administrative  
7 removal, deportation, or exclusion order that was  
8 issued before, on, or after the date of the enactment  
9 of this Act; and

10 (2) acts and conditions occurring or existing be-  
11 fore, on, or after the date of the enactment of this  
12 Act.

13 (b) SECTION 102.—The amendments made by sec-  
14 tion 102 shall take effect upon the date of the enactment  
15 of this Act, and sections 235 and 236 of the Immigration  
16 and Nationality Act, as amended, shall apply to any alien  
17 in detention under provisions of such sections on or after  
18 the date of the enactment of this Act.

19 **TITLE II—CRIMINAL ALIEN**  
20 **REMOVAL ACT**

21 **SEC. 201. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**  
22 **ON CRIMINAL GROUNDS.**

23 (a) IN GENERAL.—Section 238(b) of the Immigra-  
24 tion and Nationality Act (8 U.S.C. 1228(b)) is amended—

25 (1) in paragraph (1)—



1 (A) by striking “Attorney General” and in-  
2 serting “Secretary of Homeland Security in the  
3 exercise of discretion”; and

4 (B) by striking “set forth in this sub-  
5 section or” and inserting “set forth in this sub-  
6 section, in lieu of removal proceedings under”;

7 (2) in paragraph (3), by striking “paragraph  
8 (1) until 14 calendar days” and inserting “para-  
9 graph (1) or (3) until 7 calendar days”;

10 (3) by striking “Attorney General” each place  
11 it appears in paragraphs (3) and (4) and inserting  
12 “Secretary of Homeland Security”;

13 (4) in paragraph (5)—

14 (A) by striking “described in this section”  
15 and inserting “described in paragraph (1) or  
16 (2)”; and

17 (B) by striking “the Attorney General may  
18 grant in the Attorney General’s discretion” and  
19 inserting “the Secretary of Homeland Security  
20 or the Attorney General may grant, in the dis-  
21 cretion of the Secretary or Attorney General, in  
22 any proceeding”;

23 (5) by redesignating paragraphs (3), (4), and  
24 (5) as paragraphs (4), (5), and (6), respectively; and

1           (6) by inserting after paragraph (2) the fol-  
2           lowing new paragraph:

3           “(3) The Secretary of Homeland Security in  
4           the exercise of discretion may determine inadmis-  
5           sibility under section 212(a)(2) (relating to criminal  
6           offenses) and issue an order of removal pursuant to  
7           the procedures set forth in this subsection, in lieu of  
8           removal proceedings under section 240, with respect  
9           to an alien who—

10                   “(A) has not been admitted or paroled;

11                   “(B) has not been found to have a credible  
12           fear of persecution pursuant to the procedures  
13           set forth in section 235(b)(1)(B); and

14                   “(C) is not eligible for a waiver of inadmis-  
15           sibility or relief from removal.”.

16           (b) EFFECTIVE DATE.—The amendments made by  
17           subsection (a) shall take effect on the date of the enact-  
18           ment of this Act but shall not apply to aliens who are  
19           in removal proceedings under section 240 of the Immigra-  
20           tion and Nationality Act as of such date.

1                   **TITLE III—ALIEN GANG**  
2                   **REMOVAL ACT OF 2006**

3 **SEC. 301. RENDERING INADMISSIBLE AND DEPORTABLE**  
4                   **ALIENS PARTICIPATING IN CRIMINAL**  
5                   **STREET GANGS.**

6           (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-  
7 gration and Nationality Act (8 U.S.C. 1182(a)(2)) is  
8 amended by adding at the end the following:

9                   “(J) CRIMINAL STREET GANG PARTICIPA-  
10                   TION.—

11                   “(i) IN GENERAL.—Any alien is inad-  
12                   missible if—

13                   “(I) the alien has been removed  
14                   under section 237(a)(2)(F); or

15                   “(II) the consular officer or the  
16                   Secretary of Homeland Security  
17                   knows, or has reasonable ground to  
18                   believe that the alien—

19                   “(aa) is a member of a  
20                   criminal street gang and has  
21                   committed, conspired, or threat-  
22                   ened to commit, or seeks to enter  
23                   the United States to engage sole-  
24                   ly, principally, or incidentally in,

1 a gang crime or any other unlaw-  
2 ful activity; or

3 “(bb) is a member of a  
4 criminal street gang designated  
5 under section 219A.

6 “(ii) DEFINITIONS.—For purposes of  
7 this subparagraph:

8 “(I) CRIMINAL STREET GANG.—  
9 The term ‘criminal street gang’ means  
10 a formal or informal group or associa-  
11 tion of 3 or more individuals, who  
12 commit 2 or more gang crimes (one of  
13 which is a crime of violence, as de-  
14 fined in section 16 of title 18, United  
15 States Code) in 2 or more separate  
16 criminal episodes in relation to the  
17 group or association.

18 “(II) GANG CRIME.—The term  
19 ‘gang crime’ means conduct consti-  
20 tuting any Federal or State crime,  
21 punishable by imprisonment for one  
22 year or more, in any of the following  
23 categories:

1           “(aa) A crime of violence (as  
2 defined in section 16 of title 18,  
3 United States Code).

4           “(bb) A crime involving ob-  
5 struction of justice, tampering  
6 with or retaliating against a wit-  
7 ness, victim, or informant, or  
8 burglary.

9           “(cc) A crime involving the  
10 manufacturing, importing, dis-  
11 tributing, possessing with intent  
12 to distribute, or otherwise dealing  
13 in a controlled substance or listed  
14 chemical (as those terms are de-  
15 fined in section 102 of the Con-  
16 trolled Substances Act (21  
17 U.S.C. 802)).

18           “(dd) Any conduct punish-  
19 able under section 844 of title  
20 18, United States Code (relating  
21 to explosive materials), sub-  
22 section (d), (g)(1) (where the un-  
23 derlying conviction is a violent  
24 felony (as defined in section  
25 924(e)(2)(B) of such title) or is a

1 serious drug offense (as defined  
2 in section 924(e)(2)(A)), (i), (j),  
3 (k), (o), (p), (q), (u), or (x) of  
4 section 922 of such title (relating  
5 to unlawful acts), or subsection  
6 (b), (c), (g), (h), (k), (l), (m), or  
7 (n) of section 924 of such title  
8 (relating to penalties), section  
9 930 of such title (relating to pos-  
10 session of firearms and dan-  
11 gerous weapons in Federal facili-  
12 ties), section 931 of such title  
13 (relating to purchase, ownership,  
14 or possession of body armor by  
15 violent felons), sections 1028 and  
16 1029 of such title (relating to  
17 fraud and related activity in con-  
18 nection with identification docu-  
19 ments or access devices), section  
20 1952 of such title (relating to  
21 interstate and foreign travel or  
22 transportation in aid of racket-  
23 teering enterprises), section 1956  
24 of such title (relating to the laun-  
25 dering of monetary instruments),

1 section 1957 of such title (relat-  
2 ing to engaging in monetary  
3 transactions in property derived  
4 from specified unlawful activity),  
5 or sections 2312 through 2315 of  
6 such title (relating to interstate  
7 transportation of stolen motor ve-  
8 hicles or stolen property).

9 “(ee) Any conduct punish-  
10 able under section 274 (relating  
11 to bringing in and harboring cer-  
12 tain aliens), section 277 (relating  
13 to aiding or assisting certain  
14 aliens to enter the United  
15 States), or section 278 (relating  
16 to importation of alien for im-  
17 moral purpose) of this Act.”.

18 (b) DEPORTABLE.—Section 237(a)(2) of the Immi-  
19 gration and Nationality Act (8 U.S.C. 1227(a)(2)) is  
20 amended by adding at the end the following:

21 “(F) CRIMINAL STREET GANG PARTICIPA-  
22 TION.—

23 “(i) IN GENERAL.—Any alien is de-  
24 portable who—

1                   “(I) is a member of a criminal  
2 street gang and is convicted of com-  
3 mitting, or conspiring, threatening, or  
4 attempting to commit, a gang crime;  
5 or

6                   “(II) is determined by the Sec-  
7 retary of Homeland Security to be a  
8 member of a criminal street gang des-  
9 ignated under section 219A.

10                   “(ii) DEFINITIONS.—For purposes of  
11 this subparagraph, the terms ‘criminal  
12 street gang’ and ‘gang crime’ have the  
13 meaning given such terms in section  
14 212(a)(2)(J)(ii).”.

15                   (c) DESIGNATION OF CRIMINAL STREET GANGS.—

16                   (1) IN GENERAL.—Chapter 2 of title II of the  
17 Immigration and Nationality Act (8 U.S.C. 1181 et  
18 seq.) is amended by adding at the end the following:

19                   “DESIGNATION OF CRIMINAL STREET GANGS

20                   “SEC. 219A. (a) DESIGNATION.—

21                   “(1) IN GENERAL.—The Attorney General is  
22 authorized to designate a group or association as a  
23 criminal street gang in accordance with this sub-  
24 section if the Attorney General finds that the group  
25 or association meets the criteria described in section  
26 212(a)(2)(J)(ii)(I).



1           “(2) PROCEDURE.—

2               “(A) NOTICE.—

3                   “(i) TO CONGRESSIONAL LEADERS.—

4           Seven days before making a designation  
5           under this subsection, the Attorney Gen-  
6           eral shall, by classified communication, no-  
7           tify the Speaker and Minority Leader of  
8           the House of Representatives, the Presi-  
9           dent pro tempore, Majority Leader, and  
10          Minority Leader of the Senate, and the  
11          members of the relevant committees of the  
12          House of Representatives and the Senate,  
13          in writing, of the intent to designate a  
14          group or association under this subsection,  
15          together with the findings made under  
16          paragraph (1) with respect to that group  
17          or association, and the factual basis there-  
18          for.

19               “(ii) PUBLICATION IN FEDERAL REG-  
20               ISTER.—The Attorney shall publish the  
21               designation in the Federal Register seven  
22               days after providing the notification under  
23               clause (i).

24               “(B) EFFECT OF DESIGNATION.—

1           “(i) A designation under this sub-  
2           section shall take effect upon publication  
3           under subparagraph (A)(ii).

4           “(ii) Any designation under this sub-  
5           section shall cease to have effect upon an  
6           Act of Congress disapproving such des-  
7           ignation.

8           “(3) RECORD.—In making a designation under  
9           this subsection, the Attorney General shall create an  
10          administrative record.

11          “(4) PERIOD OF DESIGNATION.—

12           “(A) IN GENERAL.—A designation under  
13           this subsection shall be effective for all purposes  
14           until revoked under paragraph (5) or (6) or set  
15           aside pursuant to subsection (b).

16           “(B) REVIEW OF DESIGNATION UPON PE-  
17           TITION.—

18           “(i) IN GENERAL.—The Attorney  
19           General shall review the designation of a  
20           criminal street gang under the procedures  
21           set forth in clauses (iii) and (iv) if the des-  
22           ignated gang or association files a petition  
23           for revocation within the petition period  
24           described in clause (ii).

1           “(ii) PETITION PERIOD.—For pur-  
2 poses of clause (i)—

3           “(I) if the designated gang or as-  
4 sociation has not previously filed a pe-  
5 tition for revocation under this sub-  
6 paragraph, the petition period begins  
7 2 years after the date on which the  
8 designation was made; or

9           “(II) if the designated gang or  
10 association has previously filed a peti-  
11 tion for revocation under this sub-  
12 paragraph, the petition period begins  
13 2 years after the date of the deter-  
14 mination made under clause (iv) on  
15 that petition.

16           “(iii) PROCEDURES.—Any criminal  
17 street gang that submits a petition for rev-  
18 ocation under this subparagraph must pro-  
19 vide evidence in that petition that the rel-  
20 evant circumstances described in para-  
21 graph (1) are sufficiently different from  
22 the circumstances that were the basis for  
23 the designation such that a revocation with  
24 respect to the gang is warranted.

25           “(iv) DETERMINATION.—

1                   “(I) IN GENERAL.—Not later  
2 than 180 days after receiving a peti-  
3 tion for revocation submitted under  
4 this subparagraph, the Attorney Gen-  
5 eral shall make a determination as to  
6 such revocation.

7                   “(II) PUBLICATION OF DETER-  
8 MINATION.—A determination made by  
9 the Attorney General under this  
10 clause shall be published in the Fed-  
11 eral Register.

12                   “(III) PROCEDURES.—Any rev-  
13 ocation by the Attorney General shall  
14 be made in accordance with para-  
15 graph (6).

16                   “(C) OTHER REVIEW OF DESIGNATION.—

17                   “(i) IN GENERAL.—If in a 5-year pe-  
18 riod no review has taken place under sub-  
19 paragraph (B), the Attorney General shall  
20 review the designation of the criminal  
21 street gang in order to determine whether  
22 such designation should be revoked pursu-  
23 ant to paragraph (6).

24                   “(ii) PROCEDURES.—If a review does  
25 not take place pursuant to subparagraph

1 (B) in response to a petition for revocation  
2 that is filed in accordance with that sub-  
3 paragraph, then the review shall be con-  
4 ducted pursuant to procedures established  
5 by the Attorney General. The results of  
6 such review and the applicable procedures  
7 shall not be reviewable in any court.

8 “(iii) PUBLICATION OF RESULTS OF  
9 REVIEW.—The Attorney General shall pub-  
10 lish any determination made pursuant to  
11 this subparagraph in the Federal Register.

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

15 “(6) REVOCATION BASED ON CHANGE IN CIR-  
16 CUMSTANCES.—

17 “(A) IN GENERAL.—The Attorney General  
18 may revoke a designation made under para-  
19 graph (1) at any time, and shall revoke a des-  
20 ignation upon completion of a review conducted  
21 pursuant to subparagraphs (B) and (C) of  
22 paragraph (4) if the Attorney General finds  
23 that—

1                   “(i) the circumstances that were the  
2                   basis for the designation have changed in  
3                   such a manner as to warrant revocation; or

4                   “(ii) the national security of the  
5                   United States warrants a revocation.

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

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

17                  “(8) USE OF DESIGNATION IN HEARING.—If a  
18                  designation under this subsection has become effec-  
19                  tive under paragraph (2)(B) an alien in a removal  
20                  proceeding shall not be permitted to raise any ques-  
21                  tion concerning the validity of the issuance of such  
22                  designation as a defense or an objection at any hear-  
23                  ing.

24                  “(b) JUDICIAL REVIEW OF DESIGNATION.—

1           “(1) IN GENERAL.—Not later than 30 days  
2 after publication of the designation in the Federal  
3 Register, a group or association designated as a  
4 criminal street gang may seek judicial review of the  
5 designation in the United States Court of Appeals  
6 for the District of Columbia Circuit.

7           “(2) BASIS OF REVIEW.—Review under this  
8 subsection shall be based solely upon the administra-  
9 tive record.

10           “(3) SCOPE OF REVIEW.—The Court shall hold  
11 unlawful and set aside a designation the court finds  
12 to be—

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

16                   “(B) contrary to constitutional right,  
17 power, privilege, or immunity;

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

21                   “(D) lacking substantial support in the ad-  
22 ministrative record taken as a whole; or

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

1           “(4) JUDICIAL REVIEW INVOKED.—The pend-  
2           ency of an action for judicial review of a designation  
3           shall not affect the application of this section, unless  
4           the court issues a final order setting aside the des-  
5           ignation.

6           “(c) RELEVANT COMMITTEE DEFINED.—As used in  
7           this section, the term ‘relevant committees’ means the  
8           Committees on the Judiciary of the House of Representa-  
9           tives and of the Senate.”.

10           (2) CLERICAL AMENDMENT.—The table of con-  
11           tents for the Immigration and Nationality Act (8  
12           U.S.C. 1101 et seq.) is amended by inserting after  
13           the item relating to section 219 the following:

“Sec. 219A. Designation of criminal street gangs.”.

14   **SEC. 302. MANDATORY DETENTION OF SUSPECTED CRIMI-**  
15                           **NAL STREET GANG MEMBERS.**

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

19           (1) by inserting “or 212(a)(2)(J)” after  
20           “212(a)(3)(B)”; and

21           (2) by inserting “or 237(a)(2)(F)” before  
22           “237(a)(4)(B)”.

23           (b) ANNUAL REPORT.—Not later than March 1 of  
24           each year (beginning 1 year after the date of the enact-  
25           ment of this Act), the Secretary of Homeland Security,



1 after consultation with the appropriate Federal agencies,  
2 shall submit a report to the Committees on the Judiciary  
3 of the House of Representatives and of the Senate on the  
4 number of aliens detained under the amendments made  
5 by subsection (a).

6 **SEC. 303. INELIGIBILITY FROM PROTECTION FROM RE-**  
7 **MOVAL AND ASYLUM.**

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

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

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

19 (2) by redesignating clause (vi) as clause (vii);

20 and

21 (3) by inserting after clause (v) the following:

22 “(vi) the alien is described in section  
23 212(a)(2)(J)(i) or section 237(a)(2)(F)(i)  
24 (relating to participation in criminal street  
25 gangs); or”.

1           (c) DENIAL OF REVIEW OF DETERMINATION OF IN-  
2 ELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—  
3 Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is  
4 amended by adding at the end the following:

5                   “(C) LIMITATION ON JUDICIAL REVIEW.—  
6           There shall be no judicial review of any finding  
7           under subparagraph (B) that an alien is in de-  
8           scribed in section 208(b)(2)(A)(vi).”.

Passed the House of Representatives September 21,  
2006.

Attest:

KAREN L. HAAS,

*Clerk.*