



H.R. 3697 – Criminal Alien Gang Member Removal Act (Rep. Comstock, R-VA)

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FLOOR SCHEDULE:

Expected to be considered on September 14, 2017, under a closed [rule](#).

TOPLINE SUMMARY:

[H.R. 3697](#) would amend the Immigration and Nationality Act to prevent alien gang members from entering the United States, require detention and removal of those members already in the United States, and ensure that alien gang members are not eligible for immigration benefits.

COST:

The Congressional Budget Office (CBO) estimate is not yet available.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 3697 would make any alien (any person who is not a citizen or national of the United States) who is or has been a member of a criminal gang, or has participated in criminal gang activities, inadmissible to the United States. This legislation would also make any aliens that are or have been members of criminal gangs or have participated in criminal gang activities deportable.

This legislation would allow for the detention of those individuals found to be a part of a criminal gang and would require a report to Congress on the number of individuals detained.

This legislation would ensure that members of criminal gangs would not be eligible to receive immigration benefits, including asylum claims, temporary protected status, special immigrant juvenile visas, or parole.

This legislation would define the term “criminal gang,” as any ongoing group, organization, or association of five or more individuals that: has been designated as a criminal gang per the Secretary of Homeland Security in consultation with the Attorney General, or that partakes or has partaken in in the past five years, certain criminal activities, including: a felony drug offense, offenses pertaining to bringing in, assisting, or harboring aliens, crimes of violence, crimes involving obstruction of justice, crimes pertaining to fraud, slavery, trafficking of persons, or money laundering, interfering in interstate commerce,

racketeering, offenses pertaining to interstate transportation of stolen vehicles, or a conspiracy to commit any of the included crimes. H.R. 3697 includes a manager's amendment considered as adopted to clarify the burden of proof required to show an alien is deportable as a criminal gang member.

This legislation would permit, and details the process for, the Secretary of Homeland Security, in consultation with the Attorney General, to designate a group, association, club, or organization with five or more persons as a criminal gang if they engage in the above conduct. Designations would be reviewed by the Secretary if the group in question petitions for a revocation. This legislation would govern the petition process, and would require the secretary to make a determination within 180 days after receiving a revocation petition. The Secretary's determination would be published in the Federal Register.

If, within a 5-year period, no review of a criminal gang designation has taken place, the Secretary would review the designation and whether it should continue or be revoked. The Secretary would publish any determinations in the Federal Register.

Congress would be permitted to revoke a criminal gang designation through an Act of Congress.

The Secretary would be permitted to revoke a designation at any time or following a review, if the Secretary finds the criminal gang no longer meets the requirements of the definition, or if it is in the interest of national security or law enforcement to do so. Revocation would have no effect on any proceedings based on conduct prior to a revocation date.

Aliens subject to removal proceedings would not be able to raise questions to the validity of the designation if a designation has already become effective.

The Secretary would be permitted to amend a designation in the event a criminal gang has changed their name, adopted a new alias, reconstituted itself, or merged with another group. Amendments would be then published in the federal register and amended in the administrative record.

Within 30 days following publication in the Federal Register, a designated group may seek judicial review in the U.S. Court of Appeals for the District of Columbia. Review would be based on the administrative record. It could also include classified information submitted by the government for ex parte and in camera review.

This legislation would enumerate circumstances, including designations found to be arbitrary or capricious, lacking support, contrary to constitutional rights, or not in accord with procedures required by law, under which a court could find a designation unlawful and therefore set it aside.

Transnational gang activity has been on the rise in the United States, with many groups comprised of aliens. These gang members are unable to be deported until they are convicted of independent crimes. MS-13, started by Central American immigrants in the 1980s, is particularly on the rise in the D.C. metro region, with murders attributed to the gang having occurred in both Maryland and Virginia this year. The Department of Justice estimates that MS-13 has about 10,000 members in the United States and 400,000 members worldwide. The gang largely perpetrates offenses including drug-running and sex trafficking and [mainly](#) recruits middle and high school students in predominantly immigrant communities. MS-13 [was sanctioned](#) in 2012 by the U.S. Department of Treasury as a transnational criminal organization.

A one-pager provided by the Judiciary Committee can be found [here](#).

COMMITTEE ACTION:

H.R. 3697 was introduced on September 7, 2017, and was referred the House Committee on the Judiciary.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found [here](#). According to the Statement of Administration Policy, "If H.R. 3697 were presented to the President in its current form, his advisors would recommend that he sign the bill into law."

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Clause 4 of Section 8 of Article I of the Constitution-- The Congress shall have Power to establish a uniform Rule of Naturalization, and uniform Laws on the subject Bankruptcies throughout the United States.

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