



**AILA recommends VOTE NO on H.R. 3697
Revised to Include Goodlatte Amendment, 9/13/2017
“Criminal Alien Gang Member Removal Act”**

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As the national bar association of over 15,000 immigration lawyers and law professors, AILA recommends that Members of Congress oppose [H.R. 3697](#), the “Criminal Alien Gang Member Removal Act.” The bill is [scheduled](#) to come before the House Rules Committee on September 12th and to the floor in the days immediately thereafter.

While Judiciary Chairman Goodlatte [claims](#) that H.R. 3697 is a “common sense bill to protect our communities,” in fact the bill will do just the opposite: undermine due process and enable the Trump Administration to deport massive numbers of foreign nationals who pose no threat to our communities or national security. The bill is overbroad and provides government officials with new, expansive powers to detain, deport, and block noncitizens from the United States regardless of whether that individual is suspected of, charged with, or convicted of any specific crime, or whether the individual poses any risk to public safety. The bill does not advance its purported public safety goals, and moreover will place the lives of asylum seekers and other vulnerable individuals at greater risk of harm.

At a time when our nation urgently needs Congress to reform our immigration laws, its leadership has chosen instead to scapegoat immigrants and grant far-reaching enforcement powers to the government that will result in abuse and overreach. More than four years have passed since the Senate passed a comprehensive reform bill. During that time, the House has refused, and still refuses, to address the needs of families and businesses waiting in lengthy backlogs for visas and green cards. The House has yet to bring to a vote a bill that provides a solution for Dreamers and other unauthorized persons. American families, businesses and communities need reform that will strengthen America. H.R. 3697 takes our country in the wrong direction and should be rejected.

Below is a list of the most harmful provisions in H.R. 3697.

H.R. 3697 creates a sweeping, overly-broad definition of “criminal gang” in immigration law (Section 2(a)). The bill defines “criminal gang” as a group, club or association of five or more people who, within the last five years, had or has as one of its primary purposes the commission of a wide range of *conduct* including any federally defined felony drug offense, harboring of immigrants (under INA §274), the use of expired identification documents, or obstruction of justice.

The bill’s over-inclusive definition imposes criminal liability on non-criminal associations, creating the illusion of a gang where none in fact exists. Under this bill, many groups could qualify as criminal gangs including a church group which elects to offer “sanctuary” to an undocumented immigrant or a fraternity whose members use expired identification documents to purchase liquor.

This definition of “criminal gang” is broader than the existing federal criminal law sentencing enhancement for “criminal street gang” in 18 U.S.C. §521(a). The gang definition in H.R. 3697 is also far broader than most state law definitions of criminal gangs. Moreover, INA §101(53) permits the Secretary of DHS, in consultation with the Attorney General, to use the above criteria to designate a “criminal gang.”

H.R. 3697 adds inadmissibility and deportability grounds that violate due process (Sections 2(b) and 2(c)). H.R. 3697 enables an immigration official to deny admission to a noncitizen if the official has “reason to believe” the person is or has ever been a member of a “criminal gang” or participated in activities associated with such group.¹ The “reason to believe” standard is a low evidentiary standard and does not require a conviction or even an arrest.

Under this low standard, the bill will heighten the risk that non-dangerous people will be incorrectly and unfairly classified as gang members. These provisions authorize government officials to target people for their mere association with groups considered to be dangerous rather than for the person’s own specific conduct. Authorizing guilt by association has been shown to lead law enforcement to engage in discriminatory enforcement and to depend on unreliable factors as tattoos, style of dress, ethnic background, or neighborhood associations. Under this bill, an immigration official may wrongly label a minor as a gang member for do nothing more than living in a neighborhood with a large number of immigrants and spending time with a suspected gang member or for displaying the flag of his home country.

Goodlatte amendment: The original version of H.R. 3697 submitted to Rules Committee would have allowed this low “reason to believe” standard to apply not only to admissions but also to deportations of any noncitizen, including lawful permanent residents. An amendment offered by Chairman Goodlatte that is now included in the bill removes “the reason to believe” standard with respect to deportation. Even with this change, the bill would authorize immigration officials to deport lawful permanent residents that are associated with a group labeled a “criminal gang,” including a group that is wrongfully designated as a gang. As revised by the Goodlatte Amendment, the bill still applies the “reason to believe” standard to every individual who is seeking admission—which constitutes the vast majority of those who are targeted for enforcement.

H.R. 3697 imposes mandatory detention on anyone, including lawful permanent residents, that an immigration official deems a member of a criminal gang (Sections 2(e) and 2(i)). This provision *requires* ICE to detain a person regardless of whether that person actually poses a danger to the community. Moreover, H.R. 3697 provides no opportunity for the person to appear before a judge to request a custody determination—also known as a bond hearing. In this regard, the bill completely eliminates an immigration judge’s review of the officer’s decision—a critical component of due process that prevents unfair government deprivation of liberty.

Any of the people who could be wrongfully labeled as criminal gang members, innocent youth on the street and church members, will be subject to automatic unreviewable detention under this bill. Ensuring that no one is wrongfully detained by the government is a hallmark of American values and the Constitution. This bill tramples upon those principles.

H.R. 3697 threatens protection for vulnerable populations (Sections 2(f), 2(g), 2(h)). H.R. 3697 not only gives broad power to immigration officials to designate harmless people as gang members, but it also renders people merely *suspected* of gang association ineligible for humanitarian protection such as asylum, Temporary Protected Status, and Special Immigrant Juvenile Status. This bill will prevent *bona fide* refugees from seeking legal protection in the United States, including children fleeing forced gang recruitment and other victims of abuse encountered by gang members in their

¹ H.R. 3697 creates new grounds of deportability and inadmissibility for any noncitizen that the government has a “reason to believe” (1) is in such gang, (2) has ever been a member of such gang, or (3) has participated in the activities of a criminal gang, “knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.”

home country. This bill could be used to deny these children protection and safe haven in the U.S., deporting them back to their persecutors in violation of U.S. and international legal protections.

America has always been a beacon of hope for those fleeing persecution and oppression. H.R. 3697 will extinguish that beacon by granting extensive powers to the government to detain and deport people who seek protection. AILA urges Congress not to pass legislation that undermines due process protections and would further advance mass deportations of immigrants and other foreign nationals.