



September 12, 2017

The Honorable Paul Ryan
The Speaker of the House of Representatives
United States Capitol
Washington, D.C. 20515

RE: *Criminal Alien Gang Member Removal Act, H.R. 3697*

Dear Mr. Speaker:

The undersigned¹ are a group of immigration law professors and scholars with expertise in immigration and constitutional law, and it is our opinion that *Criminal Alien Gang Member Removal Act*, H.R. 3697 is overbroad and unconstitutional. H.R. 3697 would be an unnecessary expansion of existing immigration laws that already punish gang involvement, it would infringe upon constitutional due process protections, and it does not include any exceptions for cooperation with a gang under duress—a common scenario for youths and families who have fled to the United States seeking international protection.

First, the bill creates an exceedingly broad definition of the term “gang” as an ongoing group, club, organization, or association of five or more persons that has as one of its primary purposes the commission of certain offenses that could include felony drug possession, or harboring immigrants. The language of this bill is so broad that the Secretary of the Department of Homeland Security (DHS) could attempt to extend the definition beyond its stated purpose. For example, DHS could impermissibly try to classify a church group that gives sanctuary to an immigrant child, or a group of high school students who smoke marijuana together, as members of a gang.

Second, the bill grants the DHS nearly unfettered authority to designate nearly all types of clubs and groups as a “criminal gang” and provides an unconstitutionally low standard for determining who is a gang member. It would allow DHS to use secret information to designate any group of five people or more a “gang” without any prior notice to the group. Then, if the government knows or has “reason to believe” the person (1) is in such a gang, (2) has ever been in such a gang, or (3) has participated in the activities of such a gang knowing or having reason to know that such activities will promote, further, aid or support the gang’s illegal activities—those individuals can be removable, barred from certain forms of relief, and subjected to mandatory detention. Thus, immigrants could be denied admission, denied a bond hearing, or even deported with little due process based on scant evidence of an alleged gang affiliation.

¹ Institutional affiliations are for identification purposes only.

This standard flies in the face of constitutional due process protections. Neither the process for designation nor the process for associating someone with a group meets a basic constitutional floor. The low standard of proof combined with the extremely diffuse nature of the conduct that can bring a person within the scope of the bar would ensnare individuals that the humanitarian protections built into U.S. law are designed to protect. These fears are not merely speculative, as advocates and juvenile probation offices have already noted that Immigration and Customs Enforcement (ICE) misidentifies unaccompanied children as gang members based on little or no evidence.² This misclassification permits ICE to take into custody unaccompanied children, often sending them thousands of miles from their homes, families, and schools. Moreover, this standard does not permit youths who were once affiliated with gangs, but have since rehabilitated, a second chance.

Third, the bill also fails to create a duress exception for individuals who were forced to affiliate with gangs to survive. H.R. 3697 could bar from asylum and Special Immigrant Juvenile Visa Status many vulnerable individuals, like women and children—the very immigrants Congress has sought to protect. Without a duress exception, H.R. 3697 could ensnare asylum seekers that were forced against their will to provide even minimal assistance to gangs.

The proposed amendment to the INA is unnecessary because the immigration laws already provide significant and comprehensive criminal grounds of removal and bars to immigration protection. The INA's grounds of inadmissibility and deportability, as well as the INA's bars to humanitarian protection, are so broad as to capture nearly all the criminal conduct addressed by HR 3697, and this bill will ensnare people that Congress has indicated its intent to protect.

Sincerely,

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² See Philip Desgranges, *Trump Is Locking Up and Threatening to Deport Children Based on Mere Suspicion of Gang Affiliation*, New York Civil Liberties Union, Aug. 2, 2017; Liz Robbins, *Teenagers' Arrests Are Unconstitutional, A.C.L.U. Lawsuit Says*, N.Y. Times, Aug. 11, 2017; Anita Chabria, *Feds failed to prove undocumented teens sent to jail were gang members, officials say*, Miami Herald, Aug. 26, 2017, <http://www.miamiherald.com/news/nation-world/national/article169559622.html>.

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