

hearing to make the determination described in subparagraph (E)(ii)(IV)(bb)(BB).

“(I) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary may, in the Secretary’s discretion, impose conditions on release in accordance with the regulations prescribed pursuant to paragraph (3).

“(J) REDETENTION.—The Secretary, without any limitations other than those specified in this section, may detain any alien subject to a final removal order who has previously been released from custody if—

“(i) the alien fails to comply with the conditions of release;

“(ii) the alien fails to continue to satisfy the conditions described in subparagraph (B); or

“(iii) upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (E).

“(K) APPLICABILITY.—This paragraph and paragraphs (6) and (7) shall apply to any alien returned to custody under subparagraph (I) as if the removal period terminated on the day of the redetention.

“(L) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FAIL TO COOPERATE WITH REMOVAL.—The Secretary shall detain an alien until the alien makes all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary’s efforts, if the alien—

“(i) has effected an entry into the United States; and

“(ii) (I) and the alien faces a significant likelihood that the alien will be removed in the reasonably foreseeable future, or would have been removed if the alien had not—

“(aa) failed or refused to make all reasonable efforts to comply with a removal order;

“(bb) failed or refused to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including the failure to make timely application in good faith for travel or other documents necessary to the alien’s departure; or

“(cc) conspired or acted to prevent removal; or

“(II) the Secretary makes a certification as specified in subparagraph (E), or the renewal of a certification specified in subparagraph (H).

“(M) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE NOT EFFECTED AN ENTRY.—Except as otherwise provided in this subparagraph, the Secretary shall follow the guidelines established in section 241.4 of title 8, Code of Federal Regulations, when detaining aliens who have not effected an entry. The Secretary may decide to apply the review process outlined in this paragraph.

“(9) JUDICIAL REVIEW.—Judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding brought in a United States district court and only if the alien has exhausted all administrative remedies (statutory and nonstatutory) available to the alien as a right.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1)—

(A) shall take effect on the date of the enactment of this Act; and

(B) shall apply to—

(i) any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act, unless (a) that order was issued and the alien was subsequently released or paroled before the enactment of this Act and (b) the alien has complied with and remains in compliance with the terms and conditions of that release or parole; and

(ii) any act or condition occurring or existing before, on, or after the date of the enactment of this Act.

### SEC. 203. AGGRAVATED FELONY.

(a) DEFINITION OF AGGRAVATED FELONY.—Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking “The term ‘aggravated felony’ means—” and inserting “Notwithstanding any other provision of law, the term ‘aggravated felony’ applies to an offense described in this paragraph, whether in violation of Federal or State law, and to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means”;

(2) in subparagraph (A), by striking “murder, rape, or sexual abuse of a minor;” and inserting “murder, rape, or sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;”;

(3) in subparagraph (N), by striking “paragraph (1)(A) or (2) of”;

(4) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by subsection (a) shall—

(A) take effect on the date of the enactment of this Act; and

(B) apply to any conviction that occurred on or after the date of the enactment of this Act.

(2) APPLICATION OF HIRAIRA AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat. 3009-627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

### SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO GANG VIOLENCE AND REMOVAL.

(a) DEFINITION OF CRIMINAL GANG.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by inserting after subparagraph (51) the following:

“(52) The term “criminal gang”

(A) means an ongoing group, club, organization, or association of 5 or more persons—

(i) that has as 1 of its primary purposes the commission of 1 or more of the criminal offenses described in subsection (b); and

(ii) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses described in subsection (b);

(B) offenses described in this section, whether in violation of Federal or State law or in violation of the law of a foreign country, and regardless of whether charged, are:

(i) a “felony drug offense” (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(ii) a felony offense involving firearms or explosives or in violation of section 931 of title 18 (relating to purchase, ownership, or possession of body armor by violent felons);

(iii) an offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to the importation of an alien for immoral purpose) of the Immigration and Nationality Act;

(iv) a felony crime of violence as defined in section 16 of title 18, which is punishable by a sentence of imprisonment of five years or more;

(v) a crime involving obstruction of justice; tampering with or retaliating against a witness, victim, or informant; or burglary;

(vi) Any conduct punishable under sections 1028 and 1029 of title 18 (relating to fraud and

related activity in connection with identification documents or access devices), sections 1581 through 1594 of title 18 (relating to peonage, slavery and trafficking in persons), section 1952 of title 18 (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of title 18 (relating to the laundering of monetary instruments), section 1957 of title 18 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of title 18 (relating to interstate transportation of stolen motor vehicles or stolen property);

(vii) a conspiracy to commit an offense described in subparagraphs (1)–(6).

“Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conduct occurred before, on, or after the date of enactment of this provision.”.

(b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (J); and

(2) by inserting after subparagraph (E) the following:

“(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe has participated in a criminal gang (as defined in section 101(a)(52)), knowing or having reason to know that such participation promoted, furthered, aided, or supported the illegal activity of the criminal gang, is inadmissible.”.

(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:

“(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien, in or admitted to the United States, who at any time has participated in a criminal gang (as defined in section 101(a)(52)), knowing or having reason to know that such participation will promote, further, aid, or support the illegal activity of the criminal gang is deportable. The Secretary of Homeland Security or the Attorney General may in his discretion waive this subparagraph.”.

(d) TEMPORARY PROTECTED STATUS.—Section 244 (8 U.S.C. 1254a) is amended—

(1) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”;

(2) in subparagraph (c)(2)(B), by adding at the end:

“(iii) the alien participates in, or at any time after admission has participated in, the activities of a criminal gang (as defined in section 101(a)(52)), knowing or having reason to know that such participation will promote, further, aid, or support the illegal activity of the criminal gang.”; and

(3) in subsection (d)—

(A) by striking paragraph (3); and

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

(e) PENALTIES RELATED TO REMOVAL.—Section 243 (8 U.S.C. 1253) is amended—

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by inserting “212(a) or” after “section”; and

(B) in the matter following subparagraph (D)—

(i) by striking “or imprisoned not more than four years” and inserting “and imprisoned for not more than 5 years”; and