

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

# H. R. 6090

To reform immigration litigation procedures and combat alien gang crime.

---

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2006

Mr. SENSENBRENNER introduced the following bill; which was referred to the  
Committee on the Judiciary

---

## A BILL

To reform immigration litigation procedures 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Effective Immigration  
5 Enforcement and Community Protection Act of 2006”.

6 **TITLE I—ENDING CATCH AND**  
7 **RELEASE ACT OF 2006**

8 **SEC. 101. APPROPRIATE REMEDIES FOR IMMIGRATION**  
9 **LEGISLATION.**

10 (a) REQUIREMENTS FOR AN ORDER GRANTING PRO-  
11 SPECTIVE RELIEF AGAINST THE GOVERNMENT.—

1           (1) IN GENERAL.—If a court determines that  
2 prospective relief should be ordered against the Gov-  
3 ernment in any civil action pertaining to the admin-  
4 istration or enforcement of the immigration laws of  
5 the United States, the court shall—

6           (A) limit the relief to the minimum nec-  
7 essary to correct the violation of law;

8           (B) adopt the least intrusive means to cor-  
9 rect the violation of law;

10          (C) minimize, to the greatest extent prac-  
11 ticable, the adverse impact on national security,  
12 border security, immigration administration and  
13 enforcement, and public safety; and

14          (D) provide for the expiration of the relief  
15 on a specific date, which is not later than the  
16 earliest date necessary for the Government to  
17 remedy the violation.

18          (2) WRITTEN EXPLANATION.—The require-  
19 ments described in subparagraph (A) shall be dis-  
20 cussed and explained in writing in the order grant-  
21 ing prospective relief and must be sufficiently de-  
22 tailed to allow review by another court.

23          (3) EXPIRATION OF PRELIMINARY INJUNCTIVE  
24 RELIEF.—Preliminary injunctive relief shall auto-  
25 matically expire on the date that is 90 days after the

1 date on which such relief is entered, unless the  
2 court—

3 (A) makes the findings required under  
4 paragraph (1) for the entry of permanent pro-  
5 spective relief; and

6 (B) makes the order final before expiration  
7 of such 90-day period.

8 (4) REQUIREMENTS FOR ORDER DENYING MO-  
9 TION.—This subsection shall apply to any order de-  
10 denying the Government’s motion to vacate, modify,  
11 dissolve or otherwise terminate an order granting  
12 prospective relief in any civil action pertaining to the  
13 administration or enforcement of the immigration  
14 laws of the United States.

15 (b) PROCEDURE FOR MOTION AFFECTING ORDER  
16 GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERN-  
17 MENT.—

18 (1) IN GENERAL.—A court shall promptly rule  
19 on the Government’s motion to vacate, modify, dis-  
20 solve or otherwise terminate an order granting pro-  
21 spective relief in any civil action pertaining to the  
22 administration or enforcement of the immigration  
23 laws of the United States.

24 (2) AUTOMATIC STAYS.—

1           (A) IN GENERAL.—The Government’s mo-  
2           tion to vacate, modify, dissolve, or otherwise  
3           terminate an order granting prospective relief  
4           made in any civil action pertaining to the ad-  
5           ministration or enforcement of the immigration  
6           laws of the United States shall automatically,  
7           and without further order of the court, stay the  
8           order granting prospective relief on the date  
9           that is 15 days after the date on which such  
10          motion is filed unless the court previously has  
11          granted or denied the Government’s motion.

12          (B) DURATION OF AUTOMATIC STAY.—An  
13          automatic stay under subparagraph (A) shall  
14          continue until the court enters an order grant-  
15          ing or denying the Government’s motion.

16          (C) POSTPONEMENT.—The court, for good  
17          cause, may postpone an automatic stay under  
18          subparagraph (A) for not longer than 15 days.

19          (D) ORDERS BLOCKING AUTOMATIC  
20          STAYS.—Any order staying, suspending, delay-  
21          ing, or otherwise barring the effective date of  
22          the automatic stay described in subparagraph  
23          (A), other than an order to postpone the effec-  
24          tive date of the automatic stay for not longer

1 than 15 days under subparagraph (C), shall  
2 be—

3 (i) treated as an order refusing to va-  
4 cate, modify, dissolve or otherwise termi-  
5 nate an injunction; and

6 (ii) immediately appealable under sec-  
7 tion 1292(a)(1) of title 28, United States  
8 Code.

9 (c) SETTLEMENTS.—

10 (1) CONSENT DECREES.—In any civil action  
11 pertaining to the administration or enforcement of  
12 the immigration laws of the United States, the court  
13 may not enter, approve, or continue a consent decree  
14 that does not comply with subsection (a).

15 (2) PRIVATE SETTLEMENT AGREEMENTS.—  
16 Nothing in this section shall preclude parties from  
17 entering into a private settlement agreement that  
18 does not comply with subsection (a) if the terms of  
19 that agreement are not subject to court enforcement  
20 other than reinstatement of the civil proceedings  
21 that the agreement settled.

22 (d) EXPEDITED PROCEEDINGS.—It shall be the duty  
23 of every court to advance on the docket and to expedite  
24 the disposition of any civil action or motion considered  
25 under this section.

1 (e) DEFINITIONS.—In this section:

2 (1) CONSENT DECREE.—The term “consent de-  
3 cree”—

4 (A) means any relief entered by the court  
5 that is based in whole or in part on the consent  
6 or acquiescence of the parties; and

7 (B) does not include private settlements.

8 (2) GOOD CAUSE.—The term “good cause”  
9 does not include discovery or congestion of the  
10 court’s calendar.

11 (3) GOVERNMENT.—The term “Government”  
12 means the United States, any Federal department or  
13 agency, or any Federal agent or official acting with-  
14 in the scope of official duties.

15 (4) PERMANENT RELIEF.—The term “perma-  
16 nent relief” means relief issued in connection with a  
17 final decision of a court.

18 (5) PRIVATE SETTLEMENT AGREEMENT.—The  
19 term “private settlement agreement” means an  
20 agreement entered into among the parties that is not  
21 subject to judicial enforcement other than the rein-  
22 statement of the civil action that the agreement set-  
23 tled.

24 (6) PROSPECTIVE RELIEF.—The term “pro-  
25 spective relief” means temporary, preliminary, or

1 permanent relief other than compensatory monetary  
2 damages.

3 **SEC. 102. EFFECTIVE DATE.**

4 (a) IN GENERAL.—This title shall apply with respect  
5 to all orders granting prospective relief in any civil action  
6 pertaining to the administration or enforcement of the im-  
7 migration laws of the United States, whether such relief  
8 was ordered before, on, or after the date of the enactment  
9 of this Act.

10 (b) PENDING MOTIONS.—Every motion to vacate,  
11 modify, dissolve or otherwise terminate an order granting  
12 prospective relief in any such action, which motion is  
13 pending on the date of the enactment of this Act, shall  
14 be treated as if it had been filed on such date of enact-  
15 ment.

16 (c) AUTOMATIC STAY FOR PENDING MOTIONS.—

17 (1) IN GENERAL.—An automatic stay with re-  
18 spect to the prospective relief that is the subject of  
19 a motion described in subsection (b) shall take effect  
20 without further order of the court on the date which  
21 is 10 days after the date of the enactment of this  
22 Act if the motion—

23 (A) was pending for 45 days as of the date  
24 of the enactment of this Act; and

1 (B) is still pending on the date which is 10  
2 days after such date of enactment.

3 (2) DURATION OF AUTOMATIC STAY.—An auto-  
4 matic stay that takes effect under paragraph (1)  
5 shall continue until the court enters an order grant-  
6 ing or denying the Government’s motion under sec-  
7 tion 101(b). There shall be no further postponement  
8 of the automatic stay with respect to any such pend-  
9 ing motion under section 101(b)(2). Any order, stay-  
10 ing, suspending, delaying or otherwise barring the  
11 effective date of this automatic stay with respect to  
12 pending motions described in subsection (b) shall be  
13 an order blocking an automatic stay subject to im-  
14 mediate appeal under section 101(b)(2)(D).

15 **TITLE II—ALIEN GANG REMOVAL**  
16 **ACT OF 2006**

17 **SEC. 201. RENDERING INADMISSIBLE AND DEPORTABLE**  
18 **ALIENS PARTICIPATING IN CRIMINAL**  
19 **STREET GANGS.**

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

23 “(J) CRIMINAL STREET GANG PARTICIPA-  
24 TION.—

1 “(i) IN GENERAL.—Any alien is inad-  
2 missible if—

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

5 “(II) the consular officer or the  
6 Secretary of Homeland Security  
7 knows, or has reasonable ground to  
8 believe that the alien—

9 “(aa) is a member of a  
10 criminal street gang and has  
11 committed, conspired, or threat-  
12 ened to commit, or seeks to enter  
13 the United States to engage sole-  
14 ly, principally, or incidentally in,  
15 a gang crime or any other unlaw-  
16 ful activity; or

17 “(bb) is a member of a  
18 criminal street gang designated  
19 under section 219A.

20 “(ii) DEFINITIONS.—For purposes of  
21 this subparagraph:

22 “(I) CRIMINAL STREET GANG.—  
23 The term ‘criminal street gang’ means  
24 a formal or informal group or associa-  
25 tion of 3 or more individuals, who

1           commit 2 or more gang crimes (one of  
2           which is a crime of violence, as de-  
3           fined in section 16 of title 18, United  
4           States Code) in 2 or more separate  
5           criminal episodes in relation to the  
6           group or association.

7           “(II) GANG CRIME.—The term  
8           ‘gang crime’ means conduct consti-  
9           tuting any Federal or State crime,  
10          punishable by imprisonment for one  
11          year or more, in any of the following  
12          categories:

13                  “(aa) A crime of violence (as  
14                  defined in section 16 of title 18,  
15                  United States Code) .

16                  “(bb) A crime involving ob-  
17                  struction of justice, tampering  
18                  with or retaliating against a wit-  
19                  ness, victim, or informant, or  
20                  burglary.

21                  “(cc) A crime involving the  
22                  manufacturing, importing, dis-  
23                  tributing, possessing with intent  
24                  to distribute, or otherwise dealing  
25                  in a controlled substance or listed

1 chemical (as those terms are de-  
2 fined in section 102 of the Con-  
3 trolled Substances Act (21  
4 U.S.C. 802)).

5 “(dd) Any conduct punish-  
6 able under section 844 of title  
7 18, United States Code (relating  
8 to explosive materials), sub-  
9 section (d), (g)(1) (where the un-  
10 derlying conviction is a violent  
11 felony (as defined in section  
12 924(e)(2)(B) of such title) or is a  
13 serious drug offense (as defined  
14 in section 924(e)(2)(A)), (i), (j),  
15 (k), (o), (p), (q), (u), or (x) of  
16 section 922 of such title (relating  
17 to unlawful acts), or subsection  
18 (b), (c), (g), (h), (k), (l), (m), or  
19 (n) of section 924 of such title  
20 (relating to penalties), section  
21 930 of such title (relating to pos-  
22 session of firearms and dan-  
23 gerous weapons in Federal facili-  
24 ties), section 931 of such title  
25 (relating to purchase, ownership,

1 or possession of body armor by  
2 violent felons), sections 1028 and  
3 1029 of such title (relating to  
4 fraud and related activity in con-  
5 nection with identification docu-  
6 ments or access devices), section  
7 1952 of such title (relating to  
8 interstate and foreign travel or  
9 transportation in aid of racket-  
10 eering enterprises), section 1956  
11 of such title (relating to the laun-  
12 dering of monetary instruments),  
13 section 1957 of such title (relat-  
14 ing to engaging in monetary  
15 transactions in property derived  
16 from specified unlawful activity),  
17 or sections 2312 through 2315 of  
18 such title (relating to interstate  
19 transportation of stolen motor ve-  
20 hicles or stolen property).

21 “(ee) Any conduct punish-  
22 able under section 274 (relating  
23 to bringing in and harboring cer-  
24 tain aliens), section 277 (relating  
25 to aiding or assisting certain

1 aliens to enter the United  
2 States), or section 278 (relating  
3 to importation of alien for im-  
4 moral purpose) of this Act.”.

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

8 “(F) CRIMINAL STREET GANG PARTICIPA-  
9 TION.—

10 “(i) IN GENERAL.—Any alien is de-  
11 portable who—

12 “(I) is a member of a criminal  
13 street gang and is convicted of com-  
14 mitting, or conspiring, threatening, or  
15 attempting to commit, a gang crime;  
16 or

17 “(II) is determined by the Sec-  
18 retary of Homeland Security to be a  
19 member of a criminal street gang des-  
20 ignated under section 219A.

21 “(ii) DEFINITIONS.—For purposes of  
22 this subparagraph, the terms ‘criminal  
23 street gang’ and ‘gang crime’ have the  
24 meaning given such terms in section  
25 212(a)(2)(J)(ii).”.

1 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

5 “DESIGNATION OF CRIMINAL STREET GANGS

6 “SEC. 219A. (a) DESIGNATION.—

7 “(1) IN GENERAL.—The Attorney General is  
8 authorized to designate a group or association as a  
9 criminal street gang in accordance with this sub-  
10 section if the Attorney General finds that the group  
11 or association meets the criteria described in section  
12 212(a)(2)(J)(ii)(I).

13 “(2) PROCEDURE.—

14 “(A) NOTICE.—

15 “(i) TO CONGRESSIONAL LEADERS.—

16 Seven days before making a designation  
17 under this subsection, the Attorney Gen-  
18 eral shall, by classified communication, no-  
19 tify the Speaker and Minority Leader of  
20 the House of Representatives, the Presi-  
21 dent pro tempore, Majority Leader, and  
22 Minority Leader of the Senate, and the  
23 members of the relevant committees of the  
24 House of Representatives and the Senate,  
25 in writing, of the intent to designate a  
26 group or association under this subsection,

1 together with the findings made under  
2 paragraph (1) with respect to that group  
3 or association, and the factual basis there-  
4 for.

5 “(ii) PUBLICATION IN FEDERAL REG-  
6 ISTER.—The Attorney shall publish the  
7 designation in the Federal Register seven  
8 days after providing the notification under  
9 clause (i).

10 “(B) EFFECT OF DESIGNATION.—

11 “(i) A designation under this sub-  
12 section shall take effect upon publication  
13 under subparagraph (A)(ii).

14 “(ii) Any designation under this sub-  
15 section shall cease to have effect upon an  
16 Act of Congress disapproving such des-  
17 ignation.

18 “(3) RECORD.—In making a designation under  
19 this subsection, the Attorney General shall create an  
20 administrative record.

21 “(4) PERIOD OF DESIGNATION.—

22 “(A) IN GENERAL.—A designation under  
23 this subsection shall be effective for all purposes  
24 until revoked under paragraph (5) or (6) or set  
25 aside pursuant to subsection (b).

1                   “(B) REVIEW OF DESIGNATION UPON PE-  
2                   TITION.—

3                   “(i) IN GENERAL.—The Attorney  
4                   General shall review the designation of a  
5                   criminal street gang under the procedures  
6                   set forth in clauses (iii) and (iv) if the des-  
7                   ignated gang or association files a petition  
8                   for revocation within the petition period  
9                   described in clause (ii).

10                   “(ii) PETITION PERIOD.—For pur-  
11                   poses of clause (i)—

12                   “(I) if the designated gang or as-  
13                   sociation has not previously filed a pe-  
14                   tition for revocation under this sub-  
15                   paragraph, the petition period begins  
16                   2 years after the date on which the  
17                   designation was made; or

18                   “(II) if the designated gang or  
19                   association has previously filed a peti-  
20                   tion for revocation under this sub-  
21                   paragraph, the petition period begins  
22                   2 years after the date of the deter-  
23                   mination made under clause (iv) on  
24                   that petition.

1           “(iii) PROCEDURES.—Any criminal  
2 street gang that submits a petition for rev-  
3 ocation under this subparagraph must pro-  
4 vide evidence in that petition that the rel-  
5 evant circumstances described in para-  
6 graph (1) are sufficiently different from  
7 the circumstances that were the basis for  
8 the designation such that a revocation with  
9 respect to the gang is warranted.

10           “(iv) DETERMINATION.—

11           “(I) IN GENERAL.—Not later  
12 than 180 days after receiving a peti-  
13 tion for revocation submitted under  
14 this subparagraph, the Attorney Gen-  
15 eral shall make a determination as to  
16 such revocation.

17           “(II) PUBLICATION OF DETER-  
18 MINATION.—A determination made by  
19 the Attorney General under this  
20 clause shall be published in the Fed-  
21 eral Register.

22           “(III) PROCEDURES.—Any rev-  
23 ocation by the Attorney General shall  
24 be made in accordance with para-  
25 graph (6).

1 “(C) OTHER REVIEW OF DESIGNATION.—

2 “(i) IN GENERAL.—If in a 5-year pe-  
3 riod no review has taken place under sub-  
4 paragraph (B), the Attorney General shall  
5 review the designation of the criminal  
6 street gang in order to determine whether  
7 such designation should be revoked pursu-  
8 ant to paragraph (6).

9 “(ii) PROCEDURES.—If a review does  
10 not take place pursuant to subparagraph  
11 (B) in response to a petition for revocation  
12 that is filed in accordance with that sub-  
13 paragraph, then the review shall be con-  
14 ducted pursuant to procedures established  
15 by the Attorney General. The results of  
16 such review and the applicable procedures  
17 shall not be reviewable in any court.

18 “(iii) PUBLICATION OF RESULTS OF  
19 REVIEW.—The Attorney General shall pub-  
20 lish any determination made pursuant to  
21 this subparagraph in the Federal Register.

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

1           “(6) REVOCATION BASED ON CHANGE IN CIR-  
2 CUMSTANCES.—

3           “(A) IN GENERAL.—The Attorney General  
4 may revoke a designation made under para-  
5 graph (1) at any time, and shall revoke a des-  
6 ignation upon completion of a review conducted  
7 pursuant to subparagraphs (B) and (C) of  
8 paragraph (4) if the Attorney General finds  
9 that—

10           “(i) the circumstances that were the  
11 basis for the designation have changed in  
12 such a manner as to warrant revocation; or

13           “(ii) the national security of the  
14 United States warrants a revocation.

15           “(B) PROCEDURE.—The procedural re-  
16 quirements of paragraphs (2) and (3) shall  
17 apply to a revocation under this paragraph. Any  
18 revocation shall take effect on the date specified  
19 in the revocation or upon publication in the  
20 Federal Register if no effective date is specified.

21           “(7) EFFECT OF REVOCATION.—The revocation  
22 of a designation under paragraph (5) or (6) shall  
23 not affect any action or proceeding based on conduct  
24 committed prior to the effective date of such revoca-  
25 tion.

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

8           “(b) JUDICIAL REVIEW OF DESIGNATION.—

9           “(1) IN GENERAL.—Not later than 30 days  
10 after publication of the designation in the Federal  
11 Register, an group or association designated as a  
12 criminal street gang may seek judicial review of the  
13 designation in the United States Court of Appeals  
14 for the District of Columbia Circuit.

15           “(2) BASIS OF REVIEW.—Review under this  
16 subsection shall be based solely upon the administra-  
17 tive record.

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

21           “(A) arbitrary, capricious, an abuse of dis-  
22 cretion, or otherwise not in accordance with  
23 law;

24           “(B) contrary to constitutional right,  
25 power, privilege, or immunity;



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

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

5           (b) ANNUAL REPORT.—Not later than March 1 of  
6 each year (beginning 1 year after the date of the enact-  
7 ment of this Act), the Secretary of Homeland Security,  
8 after consultation with the appropriate Federal agencies,  
9 shall submit a report to the Committees on the Judiciary  
10 of the House of Representatives and of the Senate on the  
11 number of aliens detained under the amendments made  
12 by subsection (a).

13 **SEC. 203. INELIGIBILITY FROM PROTECTION FROM RE-**  
14 **MOVAL AND ASYLUM.**

15           (a) INAPPLICABILITY OF RESTRICTION ON REMOVAL  
16 TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the  
17 Immigration and Nationality Act (8 U.S.C.  
18 1251(b)(3)(B)) is amended, in the matter preceding  
19 clause (i), by inserting “who is described in section  
20 212(a)(2)(J)(i) or section 237(a)(2)(F)(i) or who is” after  
21 “to an alien”.

22           (b) INELIGIBILITY FOR ASYLUM.—Section  
23 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is  
24 amended—

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

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

2           and

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

4                       “(vi) the alien is described in section  
5                       212(a)(2)(J)(i) or section 237(a)(2)(F)(i)  
6                       (relating to participation in criminal street  
7                       gangs); or”.

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

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

○