AMENDMENT TO RULES COMMITTEE PRINT

118–10

OFFERED BY MR. BANKS OF INDIANA

Add at the end of subtitle C of title XVIII the following:

SEC. 18. INADMISSIBILITY OF MEMBERS OF SIGNIFICANT TRANSNATIONAL CRIMINAL ORGANIZATIONS.

(a) In General.—Section 212(a)(2)(F) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(F)) is amended to read as follows:

“(F) Membership in a significant transnational criminal organization.—

“(i) In General.—Any alien who—

“(I) is a member of a significant transnational criminal organization; or

“(II) is the spouse or child of an alien described in subclause (I), is inadmissible.

“(ii) Exception.—Clause (i)(II) shall not apply to a spouse or child—

“(I) who did not know, or should not reasonably have known, that his
or her spouse or parent was a member of a significant transnational criminal organization; or

“(II) whom the consular officer or the Attorney General has reasonable grounds to believe has renounced the significant transnational criminal organization to which his or her spouse or parent belongs.”.

(b) Designation of Significant Transnational Criminal Organizations.—

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

“SEC. 219A. DESIGNATION OF SIGNIFICANT TRANSNATIONAL CRIMINAL ORGANIZATIONS.

“(a) Designation.—

“(1) In general.—The Attorney General is authorized to designate an organization as a significant transnational criminal organization in accordance with this subsection if the Attorney General, after consultation with the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security, determines that—
“(A) the organization is a foreign organization;

“(B) the organization—

“(i) engages in criminal activity that involves or affects commerce in the United States; or

“(ii) retains the ability and intent to engage in such criminal activity; and

“(C) the criminal activity of the organization threatens the security of United States nationals or the national security of the United States.

“(2) Procedure.—

“(A) Notice.—

“(i) To congressional leaders.—

Not later than 7 days before making a designation under this subsection, the Attorney General shall, by classified communication, notify the Speaker and minority leader of the House of Representatives, the President pro tempore, majority leader, and minority leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of—
“(I) the intent to designate an organization under this subsection; and

“(II) the findings made under paragraph (1) with respect to that organization, including the factual basis for such determination.

“(ii) Publication in Federal Register.—The Attorney General shall publish the designation in the Federal Register not later than 7 days after providing the notification under clause (i).

“(B) Effect of Designation.—A designation under this subsection—

“(i) shall take effect upon publication under subparagraph (A)(ii), for purposes of section 212(a)(2)(F) of this Act and section 2339B of title 18, United States Code; and

“(ii) shall cease to have effect upon an Act of Congress disapproving such designation.

“(C) Freezing of Assets.—Upon notification under paragraph (2)(A)(i), the Secretary of the Treasury may require United States fi-
nancial institutions possessing or controlling
any assets of any foreign organization included
in the notification to block all financial trans-
actions involving those assets until further di-
rective from the Secretary of the Treasury, an
Act of Congress, or a court order.
“(3) RECORD.—
“(A) IN GENERAL.—In making a designa-
tion under this subsection, the Attorney Gen-
eral shall create an administrative record.
“(B) CLASSIFIED INFORMATION.—The At-
torney General may consider classified informa-
tion in making a designation under this sub-
section. Classified information shall not be sub-
ject to disclosure for such time as it remains
classified, except that such information may be
disclosed to a court ex parte and in camera for
purposes of judicial review under subsection (c).
“(4) PERIOD OF DESIGNATION.—
“(A) IN GENERAL.—A designation under
this subsection shall be effective for all purposes
until revoked under paragraph (5) or (6) or set
aside pursuant to subsection (e).
“(B) REVIEW OF DESIGNATION UPON PE-
tITION.—
“(i) IN GENERAL.—The Attorney General shall review the designation of a significant transnational criminal organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

“(ii) PETITION PERIOD.—For purposes of clause (i)—

“(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

“(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

“(iii) PROCEDURES.—Any significant transnational criminal organization that
submits a petition for revocation under this subparagraph shall provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

“(iv) Determination.—

“(I) In General.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Attorney General shall make a determination regarding such petition.

“(II) Classified Information.—The Attorney General may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex
parte and in camera for purposes of judicial review under subsection (c).

“(III) Publication of determination.—A determination made by the Attorney General under this clause shall be published in the Federal Register.

“(IV) Procedures.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).

“(C) Other review of designation.—

“(i) In general.—If no review is conducted pursuant to subparagraph (B) during the 5-year period beginning on the date on which a designation under this subsection takes effect, the Attorney General shall review the designation of the significant transnational criminal organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

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

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

“(5) REVOCATION BY ACT OF CONGRESS.—

“(A) IN GENERAL.—Except as provided by
subparagraph (B), Congress, by an Act of Con-
gress, may block or revoke a designation made
under paragraph (1) through the congressional
disapproval procedure set forth in section 802
of title 5, United States Code.

“(B) REFERENCES TO RULE.—In applying
the procedure, references to the term ‘rule’ in
such section 802 shall be deemed to refer to a
designation made under paragraph (1).

“(C) EFFECTIVE DATE.—A joint resolution
to block or revoke a designation made under
paragraph (1) shall not be subject to the proce-
dure set forth in such section 802 unless it is
introduced in either House of Congress during
the 60-day period beginning on the date on
which the Attorney General notifies Congress
pursuant to paragraph (2)(A)(i).

“(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

“(A) IN GENERAL.—The Attorney General—

“(i) may revoke a designation made
under paragraph (1) at any time; and

“(ii) shall revoke a designation upon
completion of a review conducted pursuant
to subparagraphs (B) and (C) of para-
graph (4) if the Attorney General deter-
mines that—

“(I) the circumstances that were
the basis for the designation have
changed in such a manner as to war-
rant revocation; or

“(II) the national security of the
United States warrants a revocation.

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

“(7) Effect of Revocation.—The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed before the effective date of such revocation.

“(8) Use of Designation in Trial or Hearing.—If a designation under this subsection has become effective pursuant to paragraph (2)(B), a defendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

“(b) Amendments to a Designation.—

“(1) In General.—The Attorney General may amend a designation under this subsection if the Attorney General discovers that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

“(2) Procedure.—Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register.
Subparagraphs (B) and (C) of subsection (a)(2) shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) shall apply to an amended designation.

“(3) ADMINISTRATIVE RECORD.—The administrative record shall be corrected to include the amendments and any additional relevant information that supports such amendments.

“(4) CLASSIFIED INFORMATION.—The Attorney General may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

“(c) JUDICIAL REVIEW OF DESIGNATION.—

“(1) IN GENERAL.—Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.
“(2) Basis of review.—Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

“(3) Scope of review.—The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be—

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

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

“(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

“(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2), or

“(E) not in accord with the procedures required by law.
“(4) JUDICIAL REVIEW INVOKED.—The pend-ency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.”.

(2) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 note) is amended by inserting after the item relating to section 219 the following:

“Sec. 219A. Designation of significant transnational criminal organizations.”.

(e) PROVIDING MATERIAL SUPPORT OR RESOURCES TO SIGNIFICANT TRANSLATIONAL CRIMINAL ORGANIZATIONS.—Section 2339B of title 18, United States Code, is amended—

(1) by inserting “or a significant transnational criminal organization” after “foreign terrorist organ-” each place such term appears;

(2) in subsection (a)(1), by amending the sec-ond sentence to read as follows: “A person may not be prosecuted for violating this paragraph unless the person has knowledge that the organization referred to in the previous sentence—

“(A) is a designated terrorist organization;
“(B) is a significant transnational criminal organization;

“(C) has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act); or

“(D) has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).”;

(3) in subsection (g)—

(A) in paragraph (5), by striking “and” at the end;

(B) by redesignating paragraph (6) as paragraph (7); and

(C) by inserting after paragraph (5) the following:

“(6) the term ‘significant transnational criminal organization’ means an organization so designated under section 219A of the Immigration and Nationality Act; and”.

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