To amend the Immigration and Nationality Act to add membership in a significant transnational criminal organization to the list of grounds of inadmissibility and to prohibit the provision of material support or resources to such organizations.

IN THE SENATE OF THE UNITED STATES

Mr. Cotton (for himself, Mrs. Blackburn, Mr. Cornyn, Mr. Cruz, Mr. Graham, Mr. Hawley, Mr. Perdue, Mr. Romney, and Mr. Sasse) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Immigration and Nationality Act to add membership in a significant transnational criminal organization to the list of grounds of inadmissibility and to prohibit the provision of material support or resources to such organizations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Significant Transnational Criminal Organization Designation Act”.

LNB YS L88

(a) IN GENERAL.—Not later than 7 days after the conclusion of the investigation by the Federal Bureau of Investigation into the attack on, and killing of, 9 United States-Mexican dual citizens near Bavispe, Sonora, Mexico on November 4, 2019, the President shall submit a report to Congress that identifies the foreign organization associated with the foreign persons who the President determines are responsible for such attack.

(b) DESIGNATION AS A SIGNIFICANT TRANSNATIONAL CRIMINAL ORGANIZATION.—The report submitted pursuant to subsection (a) shall include an analysis of whether any organization or person that the President determines to be responsible for the attack referenced in subsection (a) should be designated as a significant transnational criminal organizations under section 219A of the Immigration and Nationality Act, as added by section 3(b)(1).
SEC. 3. INADMISSIBILITY OF MEMBERS OF SIGNIFICANT
TRANSNATIONAL CRIMINAL ORGANIZATIONS.

(a) In General.—Section 212(a)(2)(F) of the Im-
migration 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 Attorney General has reasonable
grounds to believe has renounced the
significant transnational criminal or-
ganization 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 na-
tionals 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 des-
ignation 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 des-
ignation.

“(C) FREEZING OF ASSETS.—Upon notifi-
cation 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-
irective from either the Secretary of the Treas-
ury, Act of Congress, or order of court.

“(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 Attorney General may consider classified information in making a designation under 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).

“(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 (c).

“(B) REVIEW OF DESIGNATION UPON PETITION.—

“(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 subparagraph, then the review shall be conducted 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 Congress, 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 procedure 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 paragraph (4) if the Attorney General determines that—

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

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

“(B) Procedure.—The procedural requirements 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).

“(e) 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 pendency 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 des-
ignation, 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.”.

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

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

(2) in subsection (a)(1), by amending the second 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).”; and

(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 Nation-
ality Act; and”.