Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States and to the national language of the United States and to promote the patriotic integration of prospective U.S. citizens.

Recognition of the Acting Majority Leader

The PRESIDENT pro tempore. The acting Republican leader is recognized.

Mr. SPECTER. Mr. President, we are on the immigration bill. We have a lineup of amendments which we are anxious to take up. We have a considerable number of amendments pending on both sides of the aisle. Our lead amendment is the one to be offered by Senator KENNEDY. The amendment has now been reviewed, and I think it may be necessary to have a little extra time, which ought not to pose a problem since the vote will not occur until 10 o’clock. But Senator CORNYN would like 10 minutes of time, and Senator KYL may want a little time, so my suggestion would be that, if the Senator from Massachusetts wants to start the debate, that would be agreeable. It is his amendment, obviously. We would then turn to Senator CORNYN for 10 minutes.

I would like to put other Senators on notice that we want to proceed with the other amendments. Senator INHOFE is next in line, then Senator AKAKA, Senator ENNSIGN, Senator NELSON, Senator VITTER, Senator DURBin, Senator KYL, and Senator CHAMBLISS. It would be appreciated if those Senators would come here at least 15 minutes ahead of the anticipated time their amendment will come up so that we could move right along and not lose floor time. I yield to my distinguished colleague from Massachusetts.

Mr. KENNEDY. Mr. President, we look forward to this. What was, then, the time allocation requested? Is it 25, 10, 10, 5? Is that what the Senator suggested?

Mr. SPECTER. Ten for Senator CORNYN, ten for Senator KYL, and I would like five.

Mr. KENNEDY. So that is 25. Mr. SPECTER. Yes.

Mr. KENNEDY. Then I think we would get 15.

Mr. REID. Mr. President, we just received word that Senator DORGAN wants 10 or 15 minutes.

Mr. KENNEDY. Have we added all that?

Mr. SPECTER. Suppose we divide the time equally.

The PRESIDENT pro tempore. Under the agreement, it is 20 minutes, equally divided.

Mr. REID. Mr. President, it is my understanding the two managers want that modified. Rather than 20 minutes on this amendment, it will be 55 minutes, the time evenly divided between now and 10. I ask unanimous consent for that modification.

The PRESIDENT pro tempore. Is there objection?

Mr. SPECTER. That is acceptable.

Mr. REID. No second-degree amendments would be in order?

Mr. SPECTER. Agreed.

The PRESIDENT pro tempore. Without objection, it is so ordered. Time is equally divided between now and 10 a.m., and there will be no second-degree amendments.

Who yields time?

Mr. SPECTER. Mr. President, if Senator CORNYN would like to begin the debate, I yield 10 minutes to him.

Mr. KENNEDY. Mr. President, less than 24 hours after the Senate voted to protect American workers and to put them first when it comes to competition for jobs in this country, the Senator from Texas is recognized.

Mr. SPECTER. Ten for Senator CORNYN, ten for Senator KYL, and I would like five.

Mr. KENNEDY. So that is 25. Mr. SPECTER. Yes.

Mr. KENNEDY. Then I think we would get 15.
to come to the United States and to self-petition without having an employer sponsor their petition, and it would not require proof that an American citizen is unavailable to perform that type of job.

Yesterday the Senator—wisely, in my view—changed the underlying bill to require that American workers be put first before a guest worker could be provided a job and that, under the provisions of this bill, No. 1, they had to identify a job so they would not be here unneeded. No. 2, that job offer is offered to qualified American workers. Then, in that event no American workers were found available to perform that job, of course the guest worker provisions of the bill would kick in.

To make matters worse, the Kennedy amendment would allow an alien who has worked a total of less than 40 days in the United States—yes, that is about 6 days a year—to obtain a green card. That employment, 1 day out of every 60, is not enough. For some, that track record of employment should be sufficient evidence that the worker is invaluable to the American economy. What that means is that up to 200,000 unskilled workers a year would be admitted as a guest worker irrespective of economic conditions, irrespective of whether that worker has actually been employed for the preceding 4 years and, most importantly, irrespective of whether there are unemployed U.S. workers available to fill those jobs.

Senator KENNEDY had suggested that, by requiring an employer to determine that a qualified worker is not available, that would somehow subject foreign workers to exploitation. For some, that record of employment should be sufficient evidence that the worker is invaluable to the American economy. What that means is that up to 200,000 unskilled workers a year would be admitted as a guest worker irrespective of economic conditions, irrespective of whether that worker has actually been employed for the preceding 4 years and, most importantly, irrespective of whether there are unemployed U.S. workers available to fill those jobs.

With that, I will reserve the remainder of my time and yield the floor.

The PRESIDENT pro tempore. The President from Pennsylvania.

Mr. SPECTER. Mr. President, I yield myself 3 minutes.

Mr. President, I opposed the amendment from the distinguished Senator from Texas yesterday because I believe there ought to be an opportunity for the immigrant himself or herself to file the petition. The amendment now pending by Senator KENNEDY would leave employers, leave the alternative: to be filed by the employer or to be filed by the immigrant. The vote yesterday was 50 to 48, and I was tempted to move to reconsider—I would have to change my vote to do that—but decided in the alternative that we would discuss today under a different amendment.

The amendment is not providing the immigrant subject to the control of the employer is an important one, to see to it that the immigrant is treated fairly. When the Senator from Texas seeks to be sure the immigrant has a job so that the employer has to make the application and the job will be not taken from some other American, I can understand his point; I think there is a higher value in not having the immigrant subject to the control of the employer, where there may be coercion and pressure as to the amount of compensation or as to working conditions, notwithstanding law. There is ample protection that citizenship will not be granted, or the process will not move forward, because the Kennedy amendment simply gives the immigrant the right to file a petition. After the petition and the efforts are made to get into the citizenship line, it will be evaluated by the appropriate authorities. I think the concerns Senator CORNYN has in mind will be met.

I notice Senator DORGAN has come to the floor—Senator DORGAN is reserved for Senator DORGAN—ten minutes. I yield to him at this time.

The PRESIDENT pro tempore. The President from North Dakota is recognized.

Mr. DORGAN. Mr. President, the discussion this morning is once again on a subject called guest workers. I don’t happen to think we ought to have a guest worker provision in this legislation. The discussion now is, if it exists in the legislation, who are the conditions under which guest workers can petition for citizenship, and so on and so forth. I hope we are not done with the question of whether there should be so-called guest workers or, as some call it, future flow, the soft-sounding words. They could call it tourism for all that matters.

What this is about is grafting onto this bill to deal with the question of illegal immigrants coming into this country, the issue of guest workers, and those who come in illegally are a pretty serious problem, the 11 million or 12 million people we think are here illegally—if it is, this is grafting onto this bill that deals with illegal immigration a proposal that people who live outside this country and have not come to this country before now are to come into this country as so-called guest workers or future flow. What are those people going to do? They are going to come into this country to do low-wage work. It is as if the 11 million or 12 million are not enough, we need more.

The original proposition by the President was an unlimited number. The original proposition in the bill brought to the floor of the Senate was 400,000 a year, plus a 20 percent escalator. I tried to knock that out, and my amendment got clobbered, so I was unsuccessful. My colleague from New Mexico took the 400,000 down to 200,000. Actually, the substitute bill took it down to 100,000.

However you calculate it, we are talking about millions of people who do not live in this country, who live outside of this country, who will come into this country for the purpose of taking jobs.

Here is the strategy. The strategy in the country these days, and it is a strategy embraced on the floor of this Chamber, is to export good jobs and import cheap labor. There is any discussion on the floor of this Senate about American workers—none. You can go to the newspapers and see a discussion. You can see the headlines about American workers who are losing their jobs because their employers are moving the jobs to China, Bangladesh or Indonesia or Sri Lanka; and yes, some of those Americans are finding other jobs, and the headlines also tell us those jobs pay less than the jobs we used to have. We lost 3 million to 4 million jobs in just the last 4 or 5 years.

Alan Blinder, a very respectable mainstream economist, former Vice Chairman of the Federal Reserve Board, has just written a piece and said there is no issue of American jobs even as there is this urge to import cheap labor—he said this about exporting American jobs—he said there are 42 to 54 million American jobs subject to offshoring. 42 to 54 million American jobs are subject to being moved out of this country in search of cheaper labor—at 33 cents an hour in China, perhaps Indonesia, Sri Lanka, wherever they would move to. He said that not all of those 42 to 54 million jobs will leave this country by employers, not all will be moved out of this country by employers, but even those who stay are subject to the competition of lower wages abroad. Therefore, there will be lower wages, less health care, less benefits, and less retirement benefits.

That future for the American worker on one side, and on the other side we have this urge to import cheap labor. What is the purpose of that? Is the purpose of bringing in the back door folks who are willing to assume the bottom-end jobs? The President and others say these are jobs the American people will not take. I don’t think that is the case at all. I don’t think that urge may not come from? My understanding is the price the Chamber of Commerce requires to support this bill is that there be additional guest workers attached to it.

What is the purpose of that? That is the purpose of bringing in the back door folks who are willing to assume the bottom-end jobs.

The President and others say these are jobs the American people will not take. I don’t think that is the case at all. I don’t think that urge may not come from. My colleague from New Mexico took the 400,000 down to 200,000. Actually, the substitute bill took it down to 100,000. However you calculate it, we are talking about millions of people who do not live in this country, who live outside of
who are already here illegally. But more needs to be done. Allowing people who would normally be illegal and stamping them as "legal" is kind of a "let's pretend" approach.

I understand the Senate has already voted on amendment, and that we might as well try pretty handily, as a matter of fact. But I think there is more to do on this. The bill is still open for amendment. For example, we have a so-called guest worker provision which says let's pretend that illegal immigration is legal immigration. Should we have all this vision that lasts forever and is permanent, or should we sunset it after a few years and have a real honest study by people who might evaluate how many Americans are losing their jobs as a result of this back door, cheap labor coming as replacement workers?

How many Americans are losing their jobs? I see very little discussion on the floor of this Senate in this debate about immigration which, after all, is about jobs, among other things. I see very little discussion and Members standing up on the floor of the Senate saying: Let us wonder what this means to American workers. What does it mean to the farmer? What does it mean to the fabricator or how about does it mean to the punch press operator, or how about the steel worker? What does it mean to American workers. It is all about immigration and how many additional people we can bring into this country legally. We have quotas and, second, to enforce the quotas we have other opportunities to offer and, third, to secure our borders and, second, to enforce sanctions against those who hire illegals if you like; pay substandard wages because they are illegal; don't worry, nobody is going to look; nobody is going to fine you; and nobody is going to do anything.

That is why this entire thing has failed. Twenty years later, we have the same language. You can change the names and it is the same language—going to get tough, going to fix this issue.

The fact is, if we don't decide, first, to secure our borders and, second, to have real sanctions against those who want to hire illegal immigrants for substandard wages, this will not work. All we are doing is playing let's pretend. We play that often around here. It is not going to work.

What we ought to do is stare truth in the eye on this issue and decide that we are going to do what is necessary to secure our borders and, second, to enforce the immigration issue is, how to fix it and go about the business of doing it. Instead, there is all this energy to see not only how we deal with the immigration issue but how we add a new guest worker program to it. What we ought to do is bring new people into this country who otherwise would be illegal and how do we bring new people into this country to take the jobs that American workers need. That doesn't make much sense to me, and it is not a proposition that I can support.

I yield the floor.

Mr. DORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the Senate to adjourn be suspended.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I inquire as to the regular order and the time agreement reached on the next few amendments.

The PRESIDENT pro tempore. The time agreement on the next two amendments? The Senator is informed there is no time agreement on the next amendments. The time agreement is on the next amendment, but no further amendments are subject to a time agreement.

Mr. INHOFE. And the vote will take place at 10 o'clock?

The PRESIDENT pro tempore. This vote will take place at 10 o'clock.

Mr. INHOFE. Mr. President, the next amendment coming up will be the amendment we refer to as the English national language amendment. Since there is some time right now, unless someone else wants the floor, I can discuss that it is on the table.

The PRESIDENT pro tempore. The time is equally divided on the current amendment.
Mr. INHOFE. I inquire, is someone requesting time?

Mr. KENNEDY. We have until 10 o’clock, and that time is divided.

Mr. INHOFE. I thank the Senator.

The PRESIDENT pro tempore. There is 12 minutes left for the majority and 17 minutes remaining for the majority.

Mr. KENNEDY. If the Senator wants to speak for a few minutes, we can arrange that. I will withhold.

Mr. INHOFE. As I understand it, on our side there is 17 minutes remaining, is that correct, and I can use a few minutes?

The PRESIDENT pro tempore. That is correct.

Mr. CORNYN. Mr. President, we split the time between 9 and 10 o’clock, but it was on the pending amendment. The Senator from Massachusetts has yet to call up the amendment. The only speakers who have been heard have been in opposition to the amendment, but the amendment has not yet itself been called up.

I want to make sure the balance of the time reserved is still preserved so we do not lose an opportunity to respond to the debate by the Senator from Massachusetts.

The PRESIDENT pro tempore. The current order is the vote will take place at 10 o’clock, but the time between then and now is roughly 16 minutes for the majority and 12 minutes for the minority.

Mr. KENNEDY. Can I ask unanimous consent we defer the vote at 10 o’clock until 10:05?

Mr. INHOFE. I thank the Senator for that generous offer. I will not make any comments at this time and will wait until our amendment is up. We will discuss it then.

Mr. KENNEDY. Fine.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

AMENDMENT NO. 4066

Mr. KENNEDY. Mr. President, we send an amendment to the desk on behalf of myself, Senator MCCAIN, and Senator GRAHAM.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk reads as follows:

The Senator from Massachusetts, [Mr. KENNEDY], for himself, and Mr. McCAIN, and Mr. GRAHAM, proposes an amendment numbered 4066.

Mr. KENNEDY. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. SUNNU). Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To modify the conditions under which an H-2C nonimmigrant may apply for adjustment of status)

On page 296, after line 16 insert the following:

or

“(iv) the alien submits at least 2 documents to establish current employment, as follows:

(I) Records maintained by the Social Security Administration.

(II) Records maintained by the alien’s employer, such as pay stubs, time sheets, or employment work verification.

(III) Records maintained by the Internal Revenue Service.

(IV) Records maintained by any other government agency, such as worker compensation records, disability records, or business licensing records.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The minority controls 11 minutes 45 seconds, and the majority controls 15 minutes 45 seconds.

Mr. KENNEDY. We have 11 minutes?

The PRESIDING OFFICER. Eleven and a half minutes.

Mr. KENNEDY. I yield myself 4 minutes.

Mr. President, as we all know, yesterday the Senate voted to eliminate the H-2C immigrant’s ability to self-petition for green cards after 4 years. I believe that was a mistake because it will have a devastating effect not just for temporary workers but for all workers and, basically, for all Americans.

The amendment we offer today would correct the mistake and take the good language from the Cornyn amendment to improve the underlying bill. This amendment will require that the Labor Department certify that no U.S. worker will be displaced by H-2C workers when the green card status, as the Cornyn amendment requires. This amendment also restores the ability of H-2C workers to obtain a green card without being dependent on the generosity of the employers.

The self-petition feature of our temporary worker program is innovative and essential to workers’ rights. All Americans lose it if it is eliminated from the bill.

The reason temporary worker programs failed in the past, going back to the time of the Bracero Program, is because they did not protect workers’ rights. For this new program to work without harming U.S. workers, H-2C workers must have the full set of rights. That is why our bill includes extensive labor protections for temporary workers.

Effectively, then, at the time after the 4 years, the individual will be able to make a self-petition for green card, and they will also have to have a certification by the Department of Labor that there is no American able and willing to perform that job. There will have to be that kind of a finding. The self-petition gives that worker some rights and respect as an employee instead of being subject to the dangers we have seen in the past of exploitation by an employer that knows that worker can never get a chance to have a petition and can never get on the path for a green card without the employer giving the thumbs-up signal.

When that power relationship between the employer and the employee exists, we have seen exploitation in terms of wages, working conditions, and other unfortunate problems with regard to women.

This seems to be a solid compromise. It takes the framework of the Cornyn amendment, but it will also ensure that these petitioners are going to have to demonstrate there is that gap in terms of the labor market that they are able to fill and that there is not someone out there in the American labor market prepared to take that job. It seems to me to be a very tentatent principle, a very concrete proposal, one I hope we can have accepted this morning.

I withhold the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CORNYN. Mr. President, the amendment Senator KENNEDY is proposing guts the worker protection amendment agreed to by the Senate yesterday. It would do so by allowing workers to self-petition for legal permanent residency if they produced some documents which indicate that they are currently employed, but they will be necessarily retrospective in nature. In other words, you do not have a document necessarily that shows you are employed today, you will be employed tomorrow. You may have a pay stub from the last week or the last month. So there is no way to determine whether the individuals who are self-petitioning, under this proposal by the Senator from Massachusetts, are actually going to be working.

No. 2, if they are working, there is no protection for American workers—first, that the Secretary of Labor certify that there were no sufficient U.S. workers willing, able, and qualified to perform those jobs.

If the proponents of this bill are serious when they say that certain provisions are needed because immigrants will do work that Americans won’t do, then they should support the amendment agreed to yesterday and vote against the amendment that has been proposed this morning.

President Bush, again, has said the concept of a temporary worker program is to provide additional legal protections for those jobs that there are not enough Americans to perform. Yet this proposed amendment simply sidesteps that requirement entirely.

It further represents a shell game inssofar as it would only require those workers in this country during an initial 4-year period to work about 6 days a year in order to obtain a green card.

This is about truth in advertising. If, in fact, the bill is going to represent something even close to what we have been told the purpose of it is, as represented, we need to make sure the actual language of the bill conforms to that and not pull a fast one on the American people by taking away the
very protection for American workers that the proponents of this bill have said are an important part of their legislation.

I yield the floor and retain the remainder of my time.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. KENNEDY. I will take 3 minutes for the membership, if they have a chance to review the amendment.

On page 1, second paragraph:

The Secretary of Labor determines and certifies that there are not sufficient United States workers who are able, willing, qualified, and available to fill the position in which the alien is, or will be employed. . . .

So the Secretary of Labor has to make the certification that they will not be replacing an American worker.

Then, how are they going to be able to give the assurance they have had the 4 years that are included in the first paragraph, that “the alien has maintained such nonimmigrant status in the United States for a cumulative period of not less than 4 years of employment”?

There are listed and include: records maintained by Social Security, records maintained by the employer, employment work verification, records maintained by the Internal Revenue Service, records maintained by other government agencies.

What we are saying, in the four different categories, those categories are government-held records or the employer-held records, not the employee-held records.

I don’t know how it could be much clearer exactly what this amendment does. It is very clear. It is the certification that there is no American that is able, willing, and qualified. And to be able to prove it, there are government-held records or employer-held records, not the alien’s records, not his stubs, but government-held records.

We have tried to craft this in a way which is going to be fair. We are not interested in people trying to “jimmy” the system. We have had too much of that in the past.

I get back to the final theme. This legislation tries to learn from past experience. In 1986, we had amnesty but there was supposed to be tough employment sanctions. They hired 12 million workers. We had vast industries that produced fake identification cards. The system never functioned. It never worked.

What we have tried to do is avoid that. We have a tamper-proof card. We will have vigorous employment. But, also, to learn the lessons of the Bracero Program, we are not going to have the exploitation of these workers by their employers. That is what we do when we deny the opportunity of an employee to make your petition. You have to meet that requirement.

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. KENNEDY. How much time is left?

The PRESIDING OFFICER. The opposition has 13 minutes remaining, and the Senator from Massachusetts has 4 minutes 45 seconds.

Mr. KENNEDY. I yield that time to the Senator from Arizona.

Mr. MCCAIN. I rise in support of this amendment. It is an important amendment.

I point out that I appreciate very much the efforts of Senator CORNYN and Senator KYL to have a respectful debate on this issue. We have honestly held views, and I am very appreciative of the level of this debate and our discussion not only in the Senate but in the cloakroom as we have worked out a number of differences we have had in a mutual effort to come up with legislation which is appropriate to the future of America.

The language in the amendment is identical to that we passed last night, only this amendment adds an additional paragraph giving the alien more of an opportunity to prove their current work status. If we allow people to gain permanent residency, we want them to be hard-working, upstanding individuals. The amendment allows illegal immigrants to prove, through the use of valid government documents—we would be more than happy to define “valid government documents” more carefully in report language or in additional amendments—they should have, we believe, an opportunity with secure, government-issued documents that they can prove they are eligible.

This is an important right they should be given. It releases them from the possibility of the bondage of an employer who would like to keep them in the status of which they are. That would only apply to a few, but this is a necessary addition.

The original Cornyn-Kyl amendment does not mandate that the employer attest they will employ this individual in the future, only that they employ them currently. This is an important amendment. I urge my colleagues to support this amendment.

I reserve the remainder of my time for the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, may I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. CORNYN. Mr. President, I appreciate the opportunity of the Senator from Massachusetts and the Senator from Arizona have made. This language has been somewhat fluid, and now I have it in front of me. I think I understand it, and I think I understand what the differences are between our two arguments.

Basically, it does retain a certification requirement by the Department of Labor. But the one who decides what the job requirements are and whether the foreign worker actually meets those job requirements is the worker him or herself and not an employer. This is, I believe, insufficient to protect American workers. Essentially, the foreign worker is the judge of his own abilities and also the judge of the job requirement for which the Department of Labor is supposed to certify there are not sufficient American workers available to take it. If not the same, I would say similar defects to the original underlying bill that was amended yesterday to reinsert American worker protection.

Let me speak a minute or two about the nature of what this position is. We are now talking, as Senator DORGAN said, about the so-called future flow, people who are not here yet. This has been the needed and as a program. Senator KYL and I will be offering an alternative to this so-called guest worker program which we describe as a temporary worker program because I believe this guest worker program is an American worker program which we cannot reinsert American worker protection, that is because when you invite guests into your home, you expect at some point they might actually leave.

Under this guest worker program, as designed, that never happens. It invites as many as 200,000 individuals a year, under the Bingaman amendment, who can then come into the United States and work for a period of 4 years, and then under the approach by the Senator from Massachusetts, self-petition for legal permanent residency and then get in line for American citizenship without regard to whether the American economy is in a boom or a bust. In times when we are in boom, it is more likely that American workers are going to be competing with foreign workers admitted under this so-called guest worker program. I do believe calling this a guest worker program, when in fact it is a path to a legal permanent residency and citizenship, is a misnomer. In addition to damaging the prospects of American workers during times when our economy is not doing well and when there are not a lot of jobs available, it also hurts countries such as Mexico and Central American countries that have seen a massive exodus of their hard-working citizens to the United States, never to return.

What we need to do, for the benefit of America as well as the benefit of countries such as Mexico and those in Central America, is to restate this historical status of guest worker; in other words, create a framework where people can come to the United States, qualify to work for a period of time, and then return home with the savings and skills they have acquired working in the United States.

A person who works at even modest pay in the United States under a temporary worker program can, in many...
instances, go back home and live like a king in some of these countries, where their money goes a lot further and where their investment in a home or a small business will thereby create opportunities not just for them but also others in those other countries.

I believe if we are ever going to narrow the gap between opportunities available in countries such as Mexico and those in Central America and South America and other countries—which is the basic reason why people leave home to the United States to find jobs and work, and we all understand why—we need to find some way of reinstating this pattern of circular migration so people do maintain their contacts and ties with their country and their culture and their family because otherwise we will never be able to satisfactorily address this phenomenon of illegal immigration, no matter what kind of caps we put on it, no matter how many folks we put on the board whether we build an actual wall or a virtual wall.

Unless we find some way of reducing the development gap between countries that are the net exporters of human labor and a country such as America, which is a net importer of human labor from all over the world, we are never going to get to the bottom of this problem.

So that is another reason why I believe this amendment should be defeated. We will have further discussion on this later on. Transforming, I hope, the so-called guest worker program to a true temporary worker program and reinstating circular migration in a way that both benefits America and benefits those countries from which those workers come.

Mr. President, I reserve the remainder of our time and yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have tried to point out this will be a judgment decision that will be made by the Secretary of Labor as to whether there is an American fit, willing, and able. And if there is, they cannot petition.

Now, the Senator says: Well, it is all then up to the employee. But the idea of the whole guest worker is the employer. Why is it good for the employer, who is going to go out and petition and say: Look, I need someone to come? They advertise, they advertise for 45 days. Then they find out they have someone from overseas who will do that. So the employer is the one who is petitioning there. Didn't have any problem with that.

Now, we get into the situation after 4 years, they can make the petition on this, if there is a vacancy, according to this proposal, but if there is not a green card available, they do not get it. They might have to wait a year. They might have to indicate 2 years. Then after 4 years, they can make the petition decision that will be made by the Secretary of Labor as to whether there is an American fit, willing, and able. And if there is, they cannot petition.

The concept of temporary workers is just that, that job may have existed for somebody in the past or even exists today, that job may not be available forever. The concept of temporary workers is just that, that individual has a job today. So that is a fatal flaw in the Kennedy amendment. I do not know whether it is deliberately intended. I suspect the point is to undercut the effect of the amendment we adopted yesterday, which is a worker protection amendment.

The bottom line that Senator CORNYN is trying to assure is that if an American has a job, that job is not undercut by somebody coming here today who would be able to stay here forever and, therefore, compete with the American for the job.

So I think we should stick with the worker protection amendment we adopted yesterday and not agree to the Kennedy amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, is it correct we have 4 minutes remaining?

The PRESIDING OFFICER. The Senator is correct.

Mr. CORNYN. Mr. President, where we have come from since yesterday afternoon is, we had a basic bill that provided no protection for American workers because it allowed foreign workers to self-petition without a job, without any type of certification there were no Americans available to fill the job, and we then adopted an amendment that would install some worker protections up against those things: that, No. 1, there is a job available; and, No. 2, there are not sufficient Americans to fill that type of job.
Now, under the amendment of the Senator from Massachusetts, we have gone from no worker protection to what I would call illusory worker protection—illusory worker protection—because this puts the decision to define the job requirements in the hands of the foreign worker. It also puts in the hands of the foreign worker—the self-interested individual, by the way, who is going to be staying or leaving depending on whether they meet these requirements—it puts in the foreign worker’s hands the total and unilateral determination of what the job requirements are and, No. 2, whether that same foreign worker meets those job requirements; whereas, for everyone else in America, it is the employer who determines whether the prospective employee meets the job requirements.

The last thing I would say is, for every other category of visa, worker visa in America, under our naturalization and immigration system, there has to be some form of employer sponsorship. And this deviates from that pattern which I believe is important, and this represents an unprecedented break with that in a way that I think damages the prospects of American workers.

So I urge my colleagues to vote against the amendment.

I yield the floor and yield the remainder of my time.

The PRESIDING OFFICER. All time has expired on the amendment. Mr. SPECTER. Mr. President, following this vote, the next scheduled amendment is by the Senator from Oklahoma, Mr. INHOFE. There are negotiations in trying to work it out. They are supposedly very close. So we are not sure whether we will have Senator INHOFE’s amendment and a side-by-side side-by-side vote. We will try to determine that while the vote is on.

If they are table to work it out—or immediately following that, we will go to the amendment by Senator AKAKA. We are going to try to work out time agreements so we can move the bill along on all of them.

Let me remind my colleagues, we are going to enforce the rules strictly to 15 minutes and 5 so we can move the bill along.

Let me also remind my colleagues on the Judiciary Committee that we are going to have our executive meeting in the President’s Room. We had planned to have an executive meeting at 9 o’clock this morning, but then when the hearing on General Hayden was moved by the Intelligence Committee from 10 to 9:30, we could not have that meeting, so we are going to have it in the President’s Room immediately following this vote.

I thank the Chair and yield the floor. Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays are requested.

Is there a sufficient second? There appears to be a sufficient second.

All time having expired on debate, the question is on agreeing to the amendment.

The clerk will call the roll.

The amendment (No. 4066) was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote, and I move to lay that motion on the table. The PRESIDING OFFICER. The Senator from West Virginia is to be recognized.

Mr. KENNEDY. Madam President, we are trying to move along. I see my colleague and friend behind me, the Senator from West Virginia, Mr. BYRD, who has been here patiently waiting to address the Senate on this issue generally. That might work, as we are just trying to reach agreement on this Inhoke amendment.

Mr. SPECTER. Madam President, may I ask the Senator from West Virginia how long he would like?

Mr. BYRD. Presumably 20 minutes.

Mr. SPECTER. Madam President, that is entirely acceptable. I announce that following Senator BYRD we will be going to the Inhoke amendment. I understand they are very close on an agreement. If that agreement is reached, then I would like to move—although I am not asking consent for that now—to a 20-minute time agreement, if an agreement is reached, equally divided. If it is not reached, we will have side-by-side amendments. I alert Members as to what the schedule will be.

Following that, Senator AKAKA is next in line, and we are considering a time agreement there also.

I have been asked when the next vote will occur. I think we can move the bill most expeditiously if we continue to take up the amendments one at a time, but after the first votes bring all the Senators in to stack the votes, we will have a better idea as to when we will stack the votes when we have a better idea as to how many votes we will have.

Meanwhile, the Judiciary Committee is meeting in executive session in the President’s Room, so I ask Judiciary Committee members to go to that meeting.

I thank the Chair and yield the floor to Senator BYRD.

Mr. KENNEDY. Madam President, the Inhoke amendment is enormously important. It is complicated. Members on both sides, including the author of the amendment, are working in good faith to try to work this out. To my knowledge, it has not been worked out. Hopefully, after 25 minutes we will be able to tell the Senate whether it is worked out, whether we will have to have side-by-side amendments. But at this time, we will not enter into a short time agreement.

Hopefully, as we have been making progress in other areas, we will have a chance to do that in this area as well.

The PRESIDING OFFICER. The Senator from West Virginia has the floor. Mr. KENNEDY. Madam President, today the Senate finds itself considering yet another amnesty for illegal aliens. After the defeat of a similar amnesty proposal last month, I had hoped that the Senate had seen the last of these efforts. I had hoped that the Senate, when given the time to consider the overwhelming opposition of the American people to amnesty, would pass a clean border security bill like the House did without amnesty, with a guest worker program, and without an increase in the annual allotment of permanent immigrant visas.

Sadly, the Senate is embarking on a path that contradicts everything we know—everything we know—about the position of the American people on this issue. It is an unpopular approach. It is the wrong approach.

The other night in his address to the Nation, the President endorsed the Senate amnesty plan to award U.S. citizenship to illegal aliens, and he announced the deployment of up to 6,000 guardsmen to the U.S. border with Mexico. The deployment of U.S. troops is intended to suggest an urgency about gaining control of the border that has been missing for many years, even since the September 11 attacks. Nevertheless, I have my doubts and concerns.

Guardsmen have been sent overseas two times, even three times—no, even
four times—and have come home fatigued and stressed out. They have been forced to sell businesses and endure financial hardships because of their long absences.

Just a few months ago, the White House proposed to cut the National Guard by nearly 18,000 soldiers. The administration—general of many States are reporting that they were not involved in discussions about the deployment of the Guard to our borders. So what assurances are there that sending troops to the border won’t hamper our ability to respond to the floods in New England, another Hurricane Katrina, or another natural disaster? The National Guard might be able to lend support to our border security, but that role must not be at the expense of the thousands of communities around the country that also depend on our Guard should disasters strike those towns or counties.

Press reports indicate that the Guard men and women will not be empowered to arrest aliens who attempt to cross our borders. I cannot help but wonder if this move to detail guardsmen to our borders is a political stunt to look tough to the crowds of the border—citizen-soldiers who serve in the Guard. The President would not have to call out the National Guard to secure the borders if he had supported even some—of the nine—nine amendments that I have offered since September 11 to hire and train more Border Patrol agents. If these amendments had been adopted—I say, if they had been adopted—the law enforcement agents would be in place right now helping to secure the borders.

Instead, the administration has consistently opposed these efforts as unnecessary and extraneous spending, saying that those funds would expand the size of Government. When I included $400 million in the fiscal year 2002 Supplemental Appropriations Act for border security, the President refused to spend it saying:

I made my opposition clear . . . We’ll spend none of it.

That is what he said. That is what the President said. He said:

I made my opposition clear . . . We’ll spend none of it.

As recently as last September, on a party-line vote, the majority defeated an amendment I offered, which increased our spending on border security in the fiscal year 2006 Homeland Security appropriations bill to add $100 million for border security. The administration opposed—yes, you heard me correctly—the administration opposed the Byrd-Craig amendment to the fiscal year 2005 supplemental appropriations bill to add $389 million for, what? For border security—border security. Fortunately, the amendment was approved and subsequently, despite administration opposition, approved $274 million. And as a result, there are now 500 more Border Patrol agents, 218 more immigration agents and investigators, and 1,950 more detention beds in place helping to secure our borders.

I will support any realistic effort to secure our borders, but I have to question the sincerity behind sham attempts that accomplish a token presence, yet impose further hardship on our National Guard and may put communities at risk from natural disasters.

The sense of urgency that comes with deploying the National Guard is belied by the administration’s preoccupation with the sense of urgency which only impose further hardship on our National Guard and may put communities at risk from natural disasters. The President has threatened to veto the supplemental bill. It is difficult to believe that the President would oppose fully funded 9/11 initiatives sufficiently to do the job they were created to do, but that is the situation.

Immigration enforcement in our country remains a decidedly half-hearted effort. The administration claims to strengthen border security in one area, and then completely undermines it in another with amnesty proposals. That dangerous inconsistency is at the root of my opposition to the misguided amnesty proposal before the Senate.

I oppose this amnesty bill. I oppose it absolutely. I oppose it unequivocally. I oppose this effort to waive the rules for lawbreakers and to legalize the unlawful actions of undocumented workers and the businesses that illegally employ them.

Amnesties are the dark underbelly of our immigration process. They tarnish the magnanimous promise enshrined on the base of the Statue of Liberty. As my friends undermine that great egalitarian and American principle that the law should apply equally and should apply fairly to everyone. Amnesties perniciously decree that the law shall apply to some but not to all.

This bill would create a separate set of immigration laws for those who choose not to follow the regular process that everybody else had to go through. It is a slap in the face to every immigrant who had to wait abate to come to American shores and to every immigrant who had to struggle and work to become a U.S. citizen.

It is a false promise to the many tens of millions of immigrants who would be authorized to settle in the United States under this bill with the infrastructure of our Nation—our schools, our health care system, our transportation and energy networks—increasingly unable to absorb this untenable surge in the population. Many employers are more than willing to take the advantage of the cheap labor that this bill would provide, but the responsibility would fall on the Nation as a whole to make the public investments necessary to ensure that these workers do not fall into a state of poverty once they have arrived. We have our own problems to address without having to assume this additional burden to help American businesses find cheaper labor.

Amnesties beget more illegal immigration—hurtful, destructive illegal immigration. They encourage other undocumented aliens to circumvent our immigration process with the hope that they, too, can achieve temporary worker status. Amnesties sanction the exploitation of illegal foreign labor by U.S. businesses and encourage other businesses to hire cheap and illegal labor in order to compete.

President Reagan signed his amnesty proposal into law in 1986. At the time, I supported amnesty based on the same promises that we hear today; namely, that legalizing undocumented workers and increasing enforcement would stem the flow of illegal immigration. It didn’t work then; it won’t work today. The 1986 amnesty failed miserably. After 1986, the illegal immigrant population more than quadrupled from 2.7 million aliens to 4 million aliens in 1990, to 8 million aliens 2000, to an estimated 12 million illegal aliens today.

In that time, the Congress continued to enact amnesty after amnesty, waiving the Immigration Act for lawbreakers. It is the same: For every group of illegal aliens granted amnesty, a bigger group enters the country hoping to be similarly rewarded. This bill encourages individuals on both sides of the border to flout the law. It is a congressional pardon for lawbreakers—both for illegal aliens and the unscrupulous employers who hire them.

What is backward about the pending bill is that it would actually expand business to illegal aliens rather than curtail them. It authorizes illegal aliens to work in the country. It grants illegal aliens a path to citizenship. It pardons employers who illegally employ unauthorized workers. It even repeals provisions in current law designed to deny cheaper, in-State tuition rates to illegal aliens.

The pending bill is an invitation to immigrants and employers alike to violate our immigration laws and to reward with amnesty proposals to exploitation checks. By allowing illegal aliens to adjust their status in the country, we allow them to bypass State Department checks normally done overseas through the visa and consular process. One need only look to the 1993 World Trade Center bombing, where one of the terrorist leaders had legalized his status through an amnesty, to know the dangers of these kinds of proposals.

Our immigration system is already plagued with funding and staffing problems. It is overwhelmed on the borders,
in the interior, and in its processing of immigration applications. It only took 19 temporary visa holders to slip through the system to unleash the horror of the September 11 attacks, and the pending proposal would shove many tens of millions of legal and illegal aliens whom have never gone through a background check—through our border security system over the next decade, in effect, flooding a bureaucracy that is already drowning.

It is a recipe for disaster, and 6,000 National Guardsmen without the power to enforce our immigration laws and arrest illegal aliens are not going to make the difference between success and failure. Our Nation’s experience shows that amnesties do not—do not—work. They encourage illegal immigration. They open our borders to terrorists. Our experience shows that we cannot play games with our border security or American lives could be lost.

I will support this amnesty bill, and I urge my colleagues to do likewise.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I ask for the regular order.

The PRESIDING OFFICER. The Senator’s amendment is pending.

Amendment No. 4061, as modified

Mr. INHOFE. I ask unanimous consent that the amendment be modified with the changes that are at the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 4061), as modified, is as follows:

On page 572, line 22, strike “the alien—” and all that follows through page 596, line 5, and insert “the alien meets the requirements of section 312.”

On page 572, line 3, strike “either—” and all that follows through line 15, and insert “meets the requirements of section 312(a) (relating to English proficiency and understanding of United States history and Government).”

On page 614, after line 5, insert the following:

SEC. 76. REQUIREMENTS FOR NATURALIZATION.

(a) FINDINGS.—The Senate makes the following findings:

(1) KEY DOCUMENTS.—The term “key documents” means the documents that established or explained the foundational principles of democracy in the United States, including the United States Constitution and the amendments to the Constitution (particularly the Bill of Rights), the Declaration of Independence, the Federalist Papers, and the Emancipation Proclamation.

(2) KEY EVENTS.—The term “key events” means the critical turning points in the history of the United States (including the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life.

(3) KEY IDEAS.—The term “key ideas” means the ideas that shaped the democratic institutions of the United States, including the notion of equal justice under the law, freedom, individualism, human rights, and a belief in progress.

(4) KEY PERSONS.—The term “key persons” means the men and women who led the United States as founding fathers, elected officials, scientists, inventors, pioneers, advocates of equal rights, entrepreneurs, and artists.

(c) GOALS FOR CITIZENSHIP TEST REDIRECTION.—The Department of Homeland Security shall establish as goals of the testing process designed to comply with provisions of section 312(a) that prospective citizens:

(a) demonstrate a sufficient understanding of the English language for usage in everyday life;

(b) demonstrate an understanding of American common values and traditions, including the principles of the Constitution of the United States, the Bill of Rights, the Federalist Papers, and the Emancipation Proclamation, and the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life;

(c) demonstrate an understanding of the history of the United States, including the key events, key persons, key ideas, and key documents that shaped the institutions and democratic heritage of the United States;

d. demonstrate an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States; and

(e) demonstrate an understanding of the rights and responsibilities of citizenship in the United States.

(d) IMPLEMENTATION.—The Secretary of Homeland Security shall implement changes to the testing process designed to ensure compliance with section 312(a) by not later than January 1, 2008.

Mr. INHOFE. Madam President, I ask unanimous consent to add as cosponsors several Senators, including the distinguished senior Senator from West Virginia, Senator BYRD, and Senators ALEXANDER and KYL.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Madam President, this is, I believe, a very significant amendment. We have had an opportunity to talk to people who had problems. In addition to making English the national language, we also unify some of the applications in terms of legalized immigration.

I have had the honor of speaking at naturalization ceremonies. It is a very warm thing to know that these people come in and do it the legal way, the right way; wherein they have to, and they do, learn the language. We have some language in here that Senator ALEXANDER had suggested that I think makes this a better bill, and I think Senator KYL and Senator SESSIONS also have this language. So it goes beyond that.

Basically, what it does is it recognizes the practical reality of the role of English as our national language. It states explicitly that English is our national language, providing English a status in law that it has not had before. It clarifies entitlement to receive Federal documents and services in languages other than English. It declares that any rights of a person and services or materials in languages other than English must be authorized or provided by law. It recognizes the decades of unbroken court opinions that civil rights laws protecting against national origin and discrimination do not create rights to Government services and materials in languages other than English, and it enhances English as it is designed. This is what I talked about in trying to make those more uniform.

I think Senator ALEXANDER wants to make a few comments. I would only say that this is something that is more significant probably to the American people than it is inside this Chamber. I know there is opposition to this. There are some people who don’t believe that English should be our national language. If you look at some of the recent polling data, such as the Zogby poll for 2006, it found that 76 percent of Americans, including 77 percent of Hispanics, believed that English should be the national language of Government.
operations. A poll of 91 percent of foreign-born Latino immigrants agreed that learning English is essential to succeeding in accordance with the United States, according to the 2002 Kaiser Family Foundation poll. 

Also, we heard the other day, when President Bush made his very eloquent statement, he said:

An ability to speak and write the English language, English allows newcomers to go from picking crops to opening grocery stores, from cleaning offices to running offices, from a life of low-paying jobs to a diploma, a career, and a home of their own.

So I believe this is something very significant that we are doing today that people have talked about now for four decades that I know of, and I believe it should be popular.

I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, I wish to compliment the Senator from Oklahoma for his work, for bringing it to the Senate floor, and for doing something I think is very important and that I think unifies us.

What are some of the things that do unify this country? Well, our language unifies us. Senator ALEXANDER, who will speak in a moment, was responsible also for working with Senator INHOFE to include provisions in this amendment that help us to recognize the importance of English in our country and the importance—not just for our new immigrants but for all Americans—of speaking this language that is our national language. So an amendment that recognizes that it is our national language is very positive for both immigrants and nonimmigrants alike.

I would also like to make a point about what this amendment is not. This is not an English-only amendment. That is an important point. We do speak a lot of different languages in this country, but English is our national language, and I think we can all agree on those great principles.

So this expression by the Senate is an important one, and I compliment all of those who helped to work on it, and for bringing it to the Senate floor. I thank Senator INHOFE.

Mr. INHOFE. I appreciate the comments of the Senator from Arizona, who was very instrumental in coming up with some good language that made this a better legislation.

Madam President, I ask unanimous consent that Senator FRIST be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. I thank the Senator from Oklahoma for his good work because we are now a Nation of people of different faiths, different skill sets, different backgrounds, different colors of skin, different nationalities. When we once were apart, now we have become Americans. The thing that makes this country effective is being able to communicate with one another in a common language. I think that is an ideal of America that is important. I think any Nation, historically, that has divisions based on language, begins to have a lot of complications and problems. So I am pleased that Senator ALEXANDER, Senator INHOFE have worked hard on this, that they have come up with language that also includes more extensive training and learning on behalf of new citizens about what it means to be an American. No one has been more articulate over the years on this than Senator ALEXANDER.

I offered an amendment on it and worked with Senator INHOFE and Senator ALEXANDER and others, and we have reached a common accord with an amendment I think everyone can support that will help unify us as a Nation and make sure we are one people, all Americans, adhering to the highest ideals of this great country.

Senator ALEXANDER, who will speak in a moment, thank you for your work and, Senator ALEXANDER, I appreciate your leadership also.

Mr. INHOFE. I thank Senator SESSIONS for the contributions he has made. You and Senator ALEXANDER have both made, and I think it would be appropriate for me to yield some time to Senator ALEXANDER because he can articulate some of the other areas that we are addressing here, other than English as the national language.

Mr. ALEXANDER. Madam President, I see the manager of the bill. I wonder if it would be appropriate for me to go ahead for about 10 minutes on the Inhofe amendment.

Mr. SPECTER. Madam President, the distinguished Senator from Tennessee has been a leader in this field going back to his days as the Secretary of Education and Governor. Ten minutes would be fine. I think that is acceptable to Senator INHOFE.

I would like to remind Senators we are trying to move the bill along. The next Senator in line is Senator AKAKA, and I think we are likely to be ready for Senator AKAKA very briefly. If he could come to the floor, we could move ahead with his amendment. I thank the Chair, and I yield to Senator ALEXANDER.

Mr. ALEXANDER. Madam President, could I be notified when I have 60 seconds left?

The PRESIDING OFFICER. The Senator will be notified.

Mr. ALEXANDER. I think Senator INHOFE, the Senator from Oklahoma, has been looking at the original motto of the United States which is above the Presiding Officer’s chair: e pluribus unum, “one out of many.” In our antecedent language of Latin because he has done a very good job, I think, of helping to say what the body as a whole would like to say, and I hope this is something all Senators can agree on.

Here is what the Inhofe amendment, of which I am proud to be a cosponsor, does. No. 1, it states the obvious: that English is the national language of the United States. But in so stating, it does not prevent those who are today receiving Government services in other languages from continuing to do so. We can have those discussions at another time.

The second thing it does is it adopts an idea that has been suggested by Senator GRASSLEY, the Senator from Iowa, on another occasion during the debate on this bill; that for those immigrants who are here in the country illegally but who may be able to adjust to a legal status under the way this bill is finally written, it establishes a clear English language requirement for them to become lawful permanent residents.

The third thing it does is it establishes clear goals for the tests that immigrants take to become new American citizens, so that they know English, our common language, and that this is an important requirement.

That test is currently being redesigned by the Department of Homeland Security. In doing so, this part of the Inhofe amendment picks up language that had been offered before by Senator RISHI and others, and by Senator KENNECY and Senator DOG, as we worked to create summer academies for outstanding students and teachers of American history.

It would surprise no one that the Senate would pass a resolution stating that our national language is English. I can remember being at an education meeting in Rochester in the late 1990s, when someone asked: What is the rationale for common schools? And Albert Shanker, the late president of the American Federation of Teachers, said the public schools, the common schools of America were created to help largely immigrant children learn reading and writing and English and mathematics with the hope they would go home and teach their parents.

So for a long time, we have tried to help new citizens learn our common language so we can speak to one another, and that has been English. Since 1906, our naturalization laws have required new citizens to know English and be able to pass tests in English.

The Senate, at the beginning of the immigration debate, put a value on the English language by approving an amendment that said that the federal government would offer language training paid for out of visa fees by those who are legally here, who are seeking to become prospective citizens. In other words, we want to help people learn English.

The same amendment said that if you become fluent in English, we will cut a year off the time you have to wait to become a lawful, new citizen from 5 years to 4 years.

I remember when I was Education Secretary for this country 15 years ago, when I went to the Southwest United States and someone told me: Well, you will probably find a lot of people who
object to learning English. But I found just the reverse. I found a lot of men and women in the Southwest United States who were upset with me because they didn’t have enough help to learn English. They wanted to learn the national language, the common language of this country.

The Inhofe amendment is in that spirit. I have always believed that the luckiest children in our country are those who speak more than one language, whether it is Spanish or Chinese—whether, after Spanish, is the next most widely spoken language in our country—but that one of those languages must be English, and children should learn it as quickly as is practical.

The second part of the Inhofe amendment should not surprise anyone because it incorporates language Senator Sessions had offered to try to make certain that the U.S. history test that new immigrants take if they wish to become a citizen. Senator Sessions said that includes the key documents and key events and key ideas of our founding documents. As I mentioned, that has broad support on both sides of the aisle here, with the Democratic leader, as well as the Republican leader, Senator Sessions, Senator Kyl, and others, having been involved in that.

Finally, it should be no surprise that the Senate, in the middle of a debate on a very important subject, finds talking about our common language, our national language, English, an important matter, and talking about U.S. history an important matter. In many ways, there is nothing more important to discuss if we are talking about immigration because the greatest accomplishment of our country is not our diversity, even though that is a magnificent part of our country. It is that we have taken all that diversity and molded it into one nation on something other than the diversity of ancestry.

We have this enormous advantage in the world today, an advantage France and Germany don’t have. People have a hard time thinking of how to become German, how to become French, how to become Italian, how to become Chinese, how to become Japanese. But if you come to this country and you want to become a citizen, you must become an American and you must learn our common language. That is a part of it, and it has been for 200 years.

The goal of this amendment is to say that we have a practical limit on the number of new immigrants who can come to our country is our ability to assimilate them into our culture to help them become Americans.

The Inhofe amendment is a carefully constructed amendment to try to make sure that we are heard properly in this country. We value every language. We value every ancestry. We value every background that is here. It is what makes our country so special. But we need our children to grow up speaking more than one language. But we need to be able to speak with one another, and we need to understand those principles which we debate here in the Senate. Just look at this debate on immigration. We are debating four great principles with which we all agree, but we apply them in different ways. They are the rule of law; they are laissez faire, about our free market opportunity, giving everybody a fair chance at the starting line; and e pluribus unum, the idea that we are one nation from many.

This amendment is as important as any amendment which is being offered because it helps take our magnificent diversity and make it something even more magnificent. It recognizes that only a few things unite us: our principles, found in our founding documents, and our common language. We are proud of where we have come from, where our ancestors have come from, but to make this land of immigrants truly one country, we must have and honor our national language, our common language, and that language is English.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Oklahoma.

Mr. INHOFE. First of all, I do appreciate as always the very eloquent Senator Sessions, Senator Sessions, Senator Sessions, Senator Kyl, and others, having been involved in that.

Finally, it should be no surprise that the Senate, in the middle of a debate on a very important subject, finds talking about our common language, our national language, English, an important matter, and talking about U.S. history an important matter. In many ways, there is nothing more important to discuss if we are talking about immigration because the greatest accomplishment of our country is not our diversity, even though that is a magnificent part of our country. It is that we have taken all that diversity and molded it into one nation on something other than the diversity of ancestry.

We have this enormous advantage in the world today, an advantage France and Germany don’t have. People have a hard time thinking of how to become German, how to become French, how to become Italian, how to become Chinese, how to become Japanese. But if you come to this country and you want to become a citizen, you must become an American and you must learn our common language. That is a part of it, and it has been for 200 years.

The goal of this amendment is to say that we have a practical limit on the number of new immigrants who can come to our country is our ability to assimilate them into our culture to help them become Americans.

The Inhofe amendment is a carefully constructed amendment to try to make sure that we are heard properly in this country. We value every language. We value every ancestry. We value every background that is here. It is what makes our country so special. But we need our children to grow up speaking more than one language. But we need to be able to speak with one another, and we need to understand those principles which we debate here in the Senate. Just look at this debate on immigration. We are debating four great principles with which we all agree, but we apply them in different ways. They are the rule of law; they are laissez faire, about our free market opportunity, giving everybody a fair chance at the starting line; and e pluribus unum, the idea that we are one nation from many.

This amendment is as important as any amendment which is being offered because it helps take our magnificent diversity and make it something even more magnificent. It recognizes that only a few things unite us: our principles, found in our founding documents, and our common language. We are proud of where we have come from, where our ancestors have come from, but to make this land of immigrants truly one country, we must have and honor our national language, our common language, and that language is English.

President Clinton said in his speech in 1999, in talking about immigrants:

New immigrants have a responsibility to enter the mainstream of American life. That means learning English and learning about our democratic system of government.

We heard just the other day in a speech given by our President that it is necessary in order to unify us and to leave all the obstacles that are out there.

I thank not just the obvious ones who have been speaking already, but Senator McCain and Senator Graham have been a very important part in making changes, along with Senator Alexander and the occupant of the chair, the junior Senator from Florida.

At this time, I would like to hear from Senator Graham. I yield to him whatever time he desires.

Mr. GRAHAM. Mr. President, just to put this debate in perspective for myself and myself alone, I wish I could speak an additional language. It would make me a better person. I think I would enjoy that experience. I know enough German just to be dangerous. I lived 4½ years in Germany, and I picked up a little of the language, but I was always somewhat embarrassed that all my German friends probably spoke better English than I, and I was always hoping our country could learn additional languages because we live in a global economy and a global world, and it would make America a better place.

However, what makes America a special place and what is the key to success in America, from an economic and social perspective, is to master or be competent in the English language. We need to personalize our ability to be able to speak another language—I think it would make me a better person, it would change my life for the better—when it comes to our nation, it is important that we focus as a nation on those things which unify us, and our common language is English. We need to understand that and promote that because if you are coming to America or you are here now, your life will be tremendously enhanced if you are fluent in the English language. Opportunities will exist for you that will not exist otherwise.

I know there are many people in this body from different places in the world, and some have parents or grandparents who live nowhere else but have a command of the English language. Some may have died not speaking a word of English, and their lives were just as valuable as anybody else’s life, but we are trying, as a Government to make a policy statement for our nation, but not change the law at the same time.

The goal of this amendment is to say English is the national language of the United States. That is true. I would encourage every American to learn another language, get your kids enrolled in taking Spanish or some other language because they will be more successful in a global economy. From an individual level, we would be better off if every American could master additional languages other than English. But from a national perspective, to make sure we maintain our national unity and our common sense of being one nation, it is important that we emphasize the need to assimilate into America by mastering the English language. Senator Graham is making a statement that needs to be made. I congratulate him.

What does this amendment do, and what is it intended to do? This amendment says: The Government of the United States shall preserve and enhance the role of English as the national language of the United States of America.

That is a good policy statement. From an individual perspective, we should learn as many languages as possible, but from a national perspective, we need to promote assimilation in our society. The best way to assimilate into our society is not to abandon your native tongue but to also learn English.

Mr. DURBIN. Will the Senator yield for a question?

Mr. GRAHAM. I certainly will.

Mr. DURBIN. Mr. President, I would like to first commend the Senator from South Carolina, and I have spoken in the well here on the floor about this issue. I am trying, as he is, to understand this issue from another’s point of view.
view because I am a lucky person. My mother was an immigrant to this country. When her parents came to this country from Lithuania, they did not speak English. My mother spoke both Lithuanian and English, and as a young girl was an interpreter in court so I was exposed to two languages, that would authorize a service to be provided by the U.S. Government in a language other than English. My goal is to make sure, in trying to bring us together, focusing on English as an essential part of who we are, not to disturb that legal setting.

So if in the example of the Senator someone who is needing translation in court because they are not competent in the language, the English language, and they can't understand the proceedings—if a judge determines that or otherwise makes sure that a person be provided translation, interpreting services, nothing in this amendment would override that.

Mr. DURBIN. May I ask the Senator to yield for a question?

Mr. GRAHAM. Yes.

Mr. DURBIN. Can the Senator point to me in a current situation where a Government service is being offered and explained in a language in addition to English—and that is usually the case.

Mr. GRAHAM. Right.

Mr. DURBIN. There will be English and then another language. And in my state of Illinois, that language might be Polish, incidentally, or the Filipino dialect of Tagalog, for example, that might be the case.

Mr. GRAHAM. Right.

Mr. DURBIN. Can the Senator point to a single circumstance where he thinks there is a right in providing that alternative language instruction, an injustice that requires us to change the law of the United States of America?

Mr. INHOFE. Will the Senator yield so I can answer the question?

Mr. GRAHAM. Go ahead.

Mr. INHOFE. First of all, if you look at the second page of the bill, it provides:

Unless otherwise authorized or provided by law.

So we have that set up for exceptions that are already in law.

Now, the Court Interpreters Act was passed in 1978. They did not, prior to that time—there was a problem that corrected. That act, the Court Interpreters Act, protects already existing constitutional rights such as the 6th amendment, the right to confront witnesses speaking against you, and the 5th amendment and 14th amendment and due process. The United States—I think it was in Negron v. New York. That is a Federal case which is often cited to support the right to an interpreter in Federal and State proceedings. So it is Federal and State proceedings. I believe that exception takes care of that injustice in providing a service not in English, this amendment will not remedy that injustice.

Mr. DURBIN. Can the Senator point to a situation where a Government service is being offered and explained in a language other than English? If so, you are limited in your horizons and you will have language services outside of English for a reason, and I think those reasons are good.

The Senator from Oklahoma gave an example. I believe it is a Federal statute which makes sure that due process rights of people not sufficiently trained in understanding English are preserved. At some point in time—in 1978 or whenever it was—Congress came along and said: There will be services provided in a language other than English. That decision has been made, but it is not the same as a constitutional right. What Senator INHOFE said is absolutely right. The reason I am going to vote for this because I think it tries to unite us without taking off the table exceptions to English or services provided other than English. It doesn't disturb the legal situation in this country by a statute, regulation, court decree or an Executive order conferring rights of people to receive services other than English. If I thought it did, I wouldn't vote for it.

Mr. DURBIN. Mr. President, if I may ask the Senator to yield for a question, I wish there were a way to engage the Senator from Oklahoma because it is his amendment, and I would like to hear his response. I hold in my hand a publication from the Department of Justice which you can find on the Web site. I invite my colleagues to go to the Web site. They can read this official publication from the Department of Justice, and this is what they will learn. It is entitled, "Know Your Rights."

Do you have trouble with English? Are you unable to speak, read, write, or understand English well? If so, you are limited in English proficiency. Federal agencies and organizations which get money from the Federal Government have to take reasonable steps to help people who have trouble with English. Sometimes when a government agency or organization does get money from the Federal Government they violate the law. This is called "national origin discrimination."

The Senator from Georgia:

There is a Federal law that protects your civil rights. The law is called "Title VI of the Civil Rights Act of 1964."
It goes on with examples of possible discrimination. If you come to a hospital and you have limited English proficiency, they are supposed to be able to try to help you understand what your rights are and treat you.

Now that? Will the Inhofe amendment change that? If it doesn’t, why are we enacting this? If this is law which we are comfortable with and will live with—and it is currently law in the United States—why are we trying to change it? If we are eliminating the section which is currently in the law, recognized by the Department of Justice, why are we eliminating it?

That is my question.

Mr. GRAHAM. Mr. President, I will give the Senator my answer and then yield to anyone, I know we need to wrap this up.

In my opinion, the phrase, “unless otherwise authorized or provided by law,” would preserve that service. Simply stated, that language to me is intended to make sure that whatever service is provided in a language other than English, our Federal Government is not disturbed. If you want to disturb it, you would have to come back and do something else.

Mr. DURBIN. If that is not the case, what does this add? What does it change? What does it bring to the law that isn’t currently in the law?

Mr. GRAHAM. I may suggest why I think we need to do this and why I support Senator INHOFE. We have gone through a great debate in this country, which is long overdue. What does it mean to be an American? And what role unites us and what divides us? I think it is time for this body to say two things: We will continue to provide services other than English out of a sense of justice and fairness, and we are not going to disturb that because I think there is a goal for that in our society.

But as we debate how to assimilate 11 million people, we need to make it clear that it is the policy of our Government not to change the law but is the goal of our Government to enhance our common language, English. To me, that is a good thing to say because when the demonstrations are in the streets with Mexican flags, they have the right to fly any flag, but some of us have to respond to that. I am supporting that, but I am not going to sit on the sidelines and watch demonstrations that destroy national unity. I am trying to bring us all together, and I want the individuals who are here and undocumented to be documented and taking civics classes and taking an English proficiency test. Why do we ask them to do that? Why is that part of the pathway to citizenship? We all know if they don’t become proficient in English, they will never achieve their own individual value and will be the country. And we are trying to reinforce that without doing it in a way that would deny services already provided in languages other than English. That is why it is important to me. That is why I will vote for it.

Mr. SPECTER. Mr. President, will the Senator yield?

Mr. GRAHAM. I yield the floor. Mr. President, on scheduling, we have not been able to work out an agreement on the Inhofe amendment.

The Ensign amendment is about to go. We are trying to juggle schedules with one graduation that another Senator going to Florida. And if we can structure our schedules to have 12:30 votes, we can have two votes at 12:30, if the Senator from Nevada would be agreeable to a time limit between now and 12:30; why are we delaying it? We will then be in position to vote on the Kennedy amendment. We will be in a position to vote on the Ensign amendment at 12:30. If we have the consent of Senator INHOFE—I have already discussed it with him informally—to set aside his amendment, the plan is to have a vote on the Inhofe amendment this afternoon. That will give time for others to have a side-by-side. That is how I would like to proceed.

Mr. KENNEDY. Mr. President, I want to cooperate and have cooperated with the Senator. I think it is premature to establish a time on the Ensign amendment. I don’t think it will be an undue period of time. But it would be difficult now to agree to a specific time. I hope we would be able to agree after a while. I welcome the chance to continue this. I think this discussion has been enormously valuable and helpful. We can proceed in whatever way the leader wants to proceed. Right now, we would not be in a position to agree to a 1-hour time limitation on the Ensign amendment, half an hour on each side. But we will still want to try to get a reasonable time. If that is the decision.

Mr. SPECTER. Mr. President, I suggest we proceed with the Ensign amendment. I agree. The discussion with Senator GRAHAM, Senator INHOFE, and Senator, I thought, very productive. Perhaps we could continue the discussion on an informal basis as we try to come to an agreement on language but meanwhile proceed to the Ensign amendment with the prospect of a vote 12:30.

I yield the floor. The PRESIDING OFFICER (Mr. ISAKSON). The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3985

Mr. ENSIGN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk reads as follows: The Senator from Nevada [Mr. ENSIGN], for himself, Mr. SANTORUM, and Mr. INHOFE, proposes an amendment numbered 3985.

Mr. ENSIGN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.
Does this bill punish the people who stole an American citizen’s identity? No, it does not. It rewards them. Does this bill consider the impact that the crime of identity theft had on the victim whose social security number was stolen? No, it does not. This bill gives them the full benefit of citizenship, with respect to social security benefits and rewards criminal conduct without any consideration for the victim.

There have been many media reports recently about illegal immigrants stealing Americans’ social security numbers. To understand the potential scope of this problem, you have to understand that every year employers are advised that nearly 800,000 employees do not have valid, matching social security numbers. In too many cases, the number used belongs to someone else. And so, for a moment, I want the Senate to stop. I want my colleagues to think. And to consider the impact this theft and fraud has on the victims. 

Racing this Senate ever really consider the impact that crime has on the victims. Today should be different. And so I am going to take a few moments to share with my colleagues a few of the stories of the victims of identity theft.

In order to protect their privacy, I will only use the victim’s first name.

Identify theft by illegal aliens has created many problems for Americans. Sometimes those problems involve the Internal Revenue Service. For example, Audra has been a stay-at-home mom since 2000. Over the last 3 years, the IRS has accused her of owing $1 million in back taxes. This is a picture of the first letter she received from the IRS saying she owed back taxes. Since that first letter, she has received many more.

Her story is clear. She has not worked in 6 years. Yet the IRS says she owes taxes for the last three years. But that first letter, the mistake, later became clear. It was a case of identity theft. Her social security number was being used by at least 218 illegal immigrants, mostly in Texas, to obtain jobs.

Audra has obtained copies of the 218 W-2s that were used in 2004 by illegal immigrants using her Social Security number. This is a picture of the stack of those W-2s. In Audra’s own words, she said, “It was so overwhelming I couldn’t believe it. It was just completely beyond that.” She filed a complaint with the Federal Trade Commission. Her file at the Federal Trade Commission is very thick. Here is a picture of many of the documents in her file on this chart.

Identity theft by illegal immigrants has made it hard for some Americans to find a job of their own. When my staff spoke to Audra, she explained to them that she was not able to find a job of her own because of the theft of her Social Security number. This is a photo of the letter Audra received denying her employment because she is actually already employed by that same employer. Obviously, she is not, but someone else with her Social Security number is employed at that place of employment.

Audra is not the only American affected in this way. A few years ago, a local woman interviewed for a job at a children’s retailer, but her job application was turned down. Why? Because her potential employer told her that she was already working for that very same retailer. She, of course, knew better. And so someone else had stolen her identity. Without knowing it, the thief also stole the job she could have been hired to do.

That is not what America should be about. People who want to work should be able to work. Identity theft by illegal immigrants has damaged many Americans’ credit, making it hard for them to buy the basic necessities. In some cases, the victims of identity theft are denied social service benefits. The records show they already have a job even though they are not working. In some cases, government records show they have many jobs all across the country.

I want to tell my colleagues about Caleb Jorgenson. He lives there with his wife and two children. Caleb is actually one of my constituents. This is a picture of Caleb and his daughter at the kitchen table. Caleb works hard as a construction worker. He and his wife are active in the community. In December of 2003, Caleb was unable to find work because of the seasonal difficulties northern Nevada’s construction industry faces. So Caleb applied for unemployment benefits. He was denied unemployment benefits. Why? Because he was told he was already working as a landscaper in Las Vegas. Many of my colleagues are probably not aware of the geography of Nevada. I am pretty confident that Caleb was not living in Las Vegas because that would mean he would have over a 1,000-mile commute every single day. Caleb and his wife contacted the employer of the identity thief. They learned that the person who used his Social Security number had previously given the employer at least 10 different Social Security numbers, and that person’s resident alien card had expired.

In this picture, Caleb has many of the documents, including a copy of the expired resident alien card used by the person who stole his identity. 

Not only does identity theft by illegal immigrants create problems for adults, it also creates problems for children. Children who will likely have to face the consequences of someone stealing their Social Security number well into adulthood.

For example, Kelly’s daughter is quite ambitious. Based on where she lives, and on where she works, she drives 80 miles each day. That is a lot of responsibility, especially for an 8-year-old boy. Another boy from Salt Lake City suppose works for an express air freight company, quite an important job for an 11-year-old. The stories are shocking. It is clear that illegal immigrants are purchasing false papers and using stolen Social Security numbers to obtain jobs. They are victimizing hard-working Americans, Americans who want to work. They are also victimizing these young children. The current Social Security policy and this bill will only make matters worse by granting benefits to those who are working illegally.

I am offering an amendment to correct this problem. My amendment will help reduce this kind of document fraud. My amendment will also preserve the integrity of the Social Security system by ensuring that people are not able to receive Social Security benefits based on their prior unlawful activity.

I will explain my amendment to the American people and to the Senate. Under current law, individuals who work in the United States illegally and later obtain legal employment status can use their illegal work history to qualify for benefits. For example, if an illegal immigrant works in the United States for 9 years, and then receives legal status under this bill, the immigrant would qualify for full Social Security benefits after just 1 year of legal work. Essentially, the illegal immigrants can go back to the Social Security Administration and ask them for credit for his or her illegal work.

What is important to understand is that in order to go back to the Social Security system, the illegal immigrant must get legal status in some way. Under current law, an employer and an individual can accomplish that legal status. This bill opens the door for illegal immigrants to get Social Security based on their illegal work history. My amendment closes that door.

I know some of my colleagues may argue that the illegal immigrants paid into the system, and as a result they should be able to collect benefits based on paying into the system. To those colleagues who feel that way, I say this: First, the crime of identity theft and Social Security fraud are not victimless crimes. The victims of these crimes are American citizens and illegal immigrants. My staff has spoken to
some of these victims. Some victims’ Social Security records are such a mess that the Social Security Administration has wiped out all of the work history from the victim’s account. That is the only way they believed they could get a handle on the fraud associated with the aliens’ accounts. By wiping out all work history, the victim’s own legal work history is also deleted. Basically, the victims is forced to start over to qualify for future Social Security benefits.

The Social Security Administration advised the victim that the victim’s records are so bad that their only option was to erase the victim’s work history. The victims can rebuild their accounts if they can produce their old W-2s. How many people in America can produce them? Some, maybe. If you are like me, and keep records forever, you will not have a problem. But for most Americans, who do not keep their past W-2s, it will be impossible to prove their work history. As a result, some victims ended up losing their ability to collect their Social Security based on their own legal work history.

At the same time, this bill would open the door to give Social Security benefits based on illegal work history. If Members oppose this amendment, Members are saying they want to reward illegal conduct with Social Security benefits while American citizens cannot collect their rightly earned benefits. This is simply unfair. That is not what America is about.

Social Security is a system based on expectation. For the illegal immigrants who paid into the system using a stolen Social Security card, they never did so thinking they would earn a retirement benefit. They did so, and I don’t blame them, simply to get a job. They could not have possibly ever envisioned we would pass this bill in the Senate. They could not have ever thought that the Senate would let them go back and petition for Social Security benefits. They never had reasonable expectation we would do this and, as a result, that they would be able to receive those benefits in the first place.

Third, for the vast majority of perpetrators who engaged in this kind of identity theft, the only way they would ever be able to petition the Social Security Administration is if we pass this bill. It is reasonable to oppose, as a condition to amnesty, a requirement that the people receiving amnesty give up or surrender their rights to petition for Social Security benefits for their previous illegal work.

I ask my colleagues to consider the message the bill is sending to the victims if we do not agree to my amendment. The victims have already paid a heavy price. If the Senate does not agree to my amendment, the government will be saying: We reward the criminal and want to continue to punish the victim.

We will also be inviting future fraud. How, you might ask? If my amendment is not agreed to, there will be no way, none, for the Social Security Administration to determine who actually did the work associated with a particular Social Security number. If my amendment is not agreed to, this bill will create an incentive for people to engage in illegal activity. That is known as fraud based on fraudulent use of W-2s to petition for illegal work credit. There would be no way for the Social Security Administration to give proper credit for that work if more than one person petitioned. I ask my colleagues to consider the burden this will place on the Social Security Administration itself. As of 2003, there were 255 million records in the Earnings Suspense File. That file is where Social Security places records when the name and social security number that is used do not match. How can the Social Security Administration process tens of millions of petitions to receive credit for illegally performed work? As a result, the Social Security Administration will be inundated with petitions with no way to know to handle them.

The promise of Social Security is for citizens and legal residents of the United States. Legal immigration was not intended for individuals who enter our country illegally, purchase fraudulent green cards and documentation on the black market, and use them to get jobs. It is wrong to allow people who have broken the law, who have committed fraud, to receive an incentive reward, especially when such activity places such a heavy toll on victims.

We should not reward individuals who have knowingly engaged in illegal activity. We should not adopt a policy that will reward this illegal behavior while at the same time continuing to subject the innocent to further victimization. Rewarding illegal behavior is insulting to those immigrants who have played by the rules to qualify for benefits. It is also insulting to hard-working Americans who are paying into the Social Security system.

My amendment allows immigrants to begin accumulating credit to qualify for Social Security only after they have been assigned a valid Social Security number. It does not allow illegal immigrants to receive credit for their past illegal work. This approach is responsible and it is common sense. Especially when it comes to how the Social Security Administration will function.

I hope one of the principles we can reach consensus on is that illegal behavior should not be rewarded at the expense of victimizing American citizens. I cannot go home to Nevada and tell the people we allowed Social Security benefits to go to people who have worked in the United States illegally, especially when Nevadans are too often the victims of this kind of crime.

Mr. President, I will close now by making one additional observation. Under current law, it is a felony to steal and use somebody’s Social Security number. Under this bill, we are waiving that felony. That, in and of itself, is amnesty for the crime of identity theft. I do not think that the Senate should go beyond granting amnesty for criminal identity theft. It is one thing to say that the perpetrator of the crime cannot be prosecuted, but it is quite another to allow the perpetrator to collect Social Security benefits. It is fundamentally unfair to do both when there are victims, like the ones I have talked about today.

So I hope people will see the common sense of this amendment and will, in a bipartisan fashion, overwhelmingly adopt this amendment. I urge my colleagues to adopt this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, identity fraud is a major problem, a major public policy issue. It is not to be dealt with. We ought to do whatever is necessary to make sure we are going to deal with this issue. I think most of us have seen the various national public service announcements and magazines talking about identity fraud. It is the use of credit cards. We have it on telephone calling. We have it for purchasing the Internet, obtaining access of financial records, and with individuals making illegal withdrawals.

All of that is bad and wrong and violates the law, and we ought to deal with that. But we are talking about individuals who are not involved in identity fraud and have paid into the Social Security fund. Should they have that payment that they have made into the fund denied to them? So I am with the Senator from Nevada in trying to deal with identity fraud, but I separate myself from him when he says all illegal immigrants are involved in identity fraud and, therefore, they should not get credit for what they have paid in in terms of Social Security.

Now, who are we talking about? Basically, we are talking about individuals who are the children of illegal immigrants trying to earn their position, the opportunity to be an American citizen, who have to pay a fine, have to go to the end of the line for those who are coming into the United States currently, who have to demonstrate they have paid all of their taxes, who have to demonstrate they have been free from violating the law. There are all of those conditions that are set up. But once they have achieved all those conditions, then they have the possibility of citizenship 11 years from now.

So the issue is, should they be denied the credits they have paid into Social Security? The Senator from Nevada thinks they should.

Well, first of all, who are these people? First of all, his proposal would deprive, for example, widows and surviving children of needed Social Security benefits, even if the widows and children cannot be prosecuted for the theft. In circumstances where the children are American citizens, the widows might be American citizens.
Now, let’s say this individual regularizes their position and has paid into Social Security. If that person dies, their survivors would be eligible for survivor benefits, but not under the Ensign amendment. It is interesting, some 85 percent of immigrant-headed households include at least one U.S. citizen. Under the Ensign proposal, citizen children may not be eligible for survivor benefits if their parents had gained legal status or even citizenship but died before they gained the 40 hours of coursework for Social Security.

The Ensign amendment effectively would deprive the immigrants who have become legal residents of the right to receive Social Security credits for the payroll tax payments they made on the work they performed when they were undocumented. Some do now.

The 1986 act permitted 3 million people—their children—received the amnesty. That was amnesty. We did not move ahead in the enforcement against the undocumented afterwards. But that was amnesty. Now they are able to receive the benefits today. We are going to say to them, we are evidently going to cut you off from being able to get any of that. That is the way along. But you are not going to be able to receive any of that. You are not going to receive a cent of that.

So we are all for Social Security establishing whatever requirements are necessary to ensure the integrity of the fund and the accuracy of work effort by individuals. But I think the reason for the Ensign amendment is to deny the legal residents the Social Security benefits they have earned and paid for. Their money sits in the Social Security Administration waiting to be matched with an eligible beneficiary. Once those workers establish eligibility, how, in all fairness, can we deny them credit for their past contributions?

Legislation before the Senate sets out a difficult process for undocumented workers seeking to become legal residents. Most of them have very little money. Yet the legislation will require them to pay thousands in fines and maybe even hundreds of thousands of dollars to receive Social Security tax dollars they have paid from their often meager wages.

Once these workers are legal residents, if they become disabled, they won’t be able to receive disability benefits based on the payroll taxes they contributed to Social Security? And if they die prematurely, leaving minor children, shouldn’t those children—who in many instances are American citizens—receive survivor benefits based on the payroll taxes they contributed to Social Security?

This is not a handout. This is not welfare. Social Security is an earned benefit. If these immigrant workers earned it, they should receive it like everyone else. The Ensign amendment would take their hard-earned money and give them nothing in return. That is not the way America operates.

And, finally, when they become citizens—11 years from now—the Ensign amendment is going to say: Well, all right, you finally paid the payroll tax, abide by all of the laws, continue to believe in their faith. And then they will have the opportunity to go to the end of the line. And then, in 11 years, they will be able to achieve citizenship. They will be working during this period of time.

They are paying into Social Security. And, finally, when they become citizens—11 years from now—the Ensign amendment is going to say: Well, all right, you finally paid the payroll tax, abide by all of the laws, continue to believe in their faith. And then they will have the opportunity to go to the end of the line. And then, in 11 years, they will be able to achieve citizenship. They will be working during this period of time.

Before this bill passed, these workers were undocumented. But once in the country, they complied with the rules of the workplace and paid Social Security taxes on their earnings. Their payroll tax payments and the matching contributions of their employers were paid to the Social Security Administration on a timely basis. Those dollars are sitting in an account at the Social Security Administration today. Social Security has a record of receiving these payments. There is no dispute about that.

The issue raised by this amendment is whether these workers should be given credit in Social Security for the hard-earned dollars they paid into the system. Shouldn’t the payroll tax payments they made count toward determining the level of retirement benefits they would have earned when they reached retirement age or become disabled?

Now, the amount of benefits a worker receives depends on how many years the individual worked and how much payroll tax he or she paid in. I believe it would be terribly wrong to arbitrarily deny these hard-working men and women credit for all the payroll tax dollars they paid into Social Security on the wages they earned. But that is exactly what the Ensign amendment would do.

Most undocumented workers do pay Social Security taxes. Stephen Goas, Social Security’s chief actuary, estimates that about three-quarters of all illegal workers pay some payroll taxes. "—three-quarters of them.

The amounts paid in by them are substantial. Payments into the Social Security system by undocumented workers total one billion a year. Unfortunately, most of these workers do not have genuine Social Security numbers, so the money goes into what they call the Social Security Administration’s earnings suspense file. This money is identified by the employer who submitted it but not by the individual worker it belongs to. Each year, Social Security identifies approximately 130,000 employers who submitted W-2s that cannot be matched to a worker. So the undocumented workers paid one billion a year. Unfortunately, most of these workers do not have genuine Social Security numbers, so the money goes into what they call the Social Security Administration’s earnings suspense file. The unidentified W-2s closely track their geographic distribution and types of employment to that which undocumented workers typically hold. According to an analysis by the GAO, three of the categories of business with the largest numbers of inaccurate W-2s were restaurants, construction companies, and farm operations.

In order to get credit for the payroll tax paid in, in which case has undocumentum, a worker would have to prove how much he paid in while working for a particular employer and when it was paid. The burden of proof would be on the worker, and the worker would only receive credit for payments that the Social Security Administration could verify.

Whatever rules and regulations Social Security established, we are for. They ought to be accurate. They ought to be tough. They ought to be fair. But we are not going to say that, every individual who paid in, who is now in the process, over this 11 years—here, they are paying in. I want to be a citizen. I am paying my fine. I paid my back taxes. My sons have joined the military serving in Afghanistan. We are going to church every single week. And I am paying into Social Security. I wait 11 years, and I finally become a citizen. Under the Ensign amendment, I am not going to receive any of that. You are not going to receive a cent of that.

And then, in 11 years, and I finally become a citizen. Under the Ensign amendment, I am not going to receive any of that. You are not going to receive a cent of that.
The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, may I inquire as to whether we might be set now to enter into a time agreement on this amendment?

Mr. KENNEDY. Mr. President, I have been here on the floor since the Senator started, and in response, I would be glad to inquire of those who are interested. I think there are some members of the Finance Committee who are interested in this amendment and want to be here so that it deals with the Finance Committee jurisdiction. So I will inquire and report back to the floor manager.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, Senator LUGAR has come to the floor and would, jointly with me, request a few minutes to get more business to introduce legislation.

Would the Senator from Nevada be willing to yield for—how long do you require, I ask Senator LUGAR?

Mr. SPECTER. Five minutes.

Mr. ENSIGN. Mr. President, I say to the Senator, could I spend 5 minutes responding to a couple things, and then I would be willing to yield to the Senator for 5 minutes in morning business.

Mr. SPECTER. By all means. I will yield to Senator ENSIGN. And I ask unanimous consent that then Senator LUGAR and I be recognized for 5 minutes each to introduce a bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada is recognized.

Mr. ENSIGN. Just to respond to a couple of things the Senator from Massachusetts talked about, that section 614 and a provision in section 601 in this legislation on page 395 would enable the Social Security Administration to enter into a time agreement on the Senator’s amendment?

Mr. SPECTER. Mr. President, let me respond to the Senator, whose amendment seeks to correct.

Mr. SPECTER. Thank you. The last point I want to make is that the Senator from Massachusetts said that this illegal immigrant who is now legalized or regularized, whatever you call it, cannot be prosecuted for document fraud. He said they weren’t receiving amnesty. If there was a felony they were committing, and now they can’t be prosecuted, that sounds like amnesty to me.

A couple other points he brought up: Legal aliens who were here and who overstayed their visas have a legal Social Security number. They are paying into the system with a legal Social Security number. Even though they are legal under a visa, got a legal Social Security number but overstayed, at least they had a legitimate Social Security number.

Another point I want to address is that the Senator from Massachusetts brought up concerned the Social Security Administration. These illegal workers would come to them and petition for the benefits, and they would have to prove that they actually worked where they worked, they paid in the taxes, and things like that. Let’s try to think about the burden that this would place on the Social Security Administration itself.

Currently, there are 255 million earning suspense files. Those are the ones where the Social Security number and the work don’t match, 255 million. Try to imagine how many of these are going to come forward with the Social Security Administration where people are trying to prove something to gain benefits. They are going to be overwhelmed. What is that going to do to the normal processing for people who have problems with their Social Security benefits? It is a situation that we now find ourselves back in. All of these documents are mistakes made. We have had people who have actually received a letter where the Social Security Administration told them that they had died. It was kind of a surprise to them. But they called us, and we were able to bring them back to life. We jokingly refer to these cases as Lazarus cases. It is a situation that we need to get more help. If the Social Security Administration is burdened with all of these potential cases, it just boggles the mind how people could be against this amendment.

The next point I want to make is that the Senator from Massachusetts said that this illegal immigrant who is now legalized or regularized, whatever you want to call it, cannot be prosecuted for document fraud. He said they weren’t receiving amnesty. If there was a felony they were committing, and now they can’t be prosecuted, that sounds like amnesty to me.

There is a great incentive for them to do that. Once again, it will be an extra burden on the Social Security Administration trying to prove or disprove whether these documents are real.

The last point I want to make is that the Senator from Pennsylvania said that the Social Security Administration, what it is going to do to the trust fund and, mostly, what it is going to do to the victims. We have had people who are not taking care of the victims in the United States fundamentally is unfair.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I ask unanimous consent that 5 minutes be allotted to Senator DODD after Senator LUGAR and I speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Indiana is recognized.

(The remarks of Mr. LUGAR, Mr. SPECTER, Mr. DODD, Mr. SHUMER and Mr. SESSIONS pertaining to the introduction of S. 2381 are located in today’s RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

The PRESIDING OFFICER. The Senator from Massachusetts has asked for 5 minutes. If other Senators want to debate this amendment, I ask them to come to the floor. If there is no time agreement, there are no people to debate, I will move to table the amendment so we can get the bill moving.

I now yield to Senator SESSIONS.

Mr. SESSIONS. Mr. President, regarding the Ensign amendment, I will say a few things. No. 1, Social Security is a benefit this country provides to American citizens and people lawfully in this country. That is what it is about, the benefit. For the most part, people are not allowed to put anything into it. That is one reason it is going bankrupt.

The people covered by Senator Ensign’s amendment have done a number of things that other illegals have not done. They have come into the country illegally or they would not be here, or they would be legal and would be not covered by his amendment. They have worked in the country without authorization, and they have not illegally taken advantage of this country if you are not here legally. So they have committed a second illegal act. In the course of working in this country, they may have submitted forged, false, stolen, or bogus Social Security numbers—a separate crime, if you examine the U.S. Code. Maybe they have even broken other laws.

As Senator Ensign pointed out, so many of these numbers are other people’s numbers, seizing their identity and causing all kinds of confusion and disruption in their lives.

Under the language of the bill, not only do they get protection from prosecution for violation of these laws, they would be given the benefits of Social Security. Although he clearly and properly so—an exemption for those who came into the country legally under a visa, got a legal Social Security number but overstayed, at least they had a legitimate Social Security number.

Mr. President, I had an opportunity, for strange reasons, in my career as a prosecutor and as a private lawyer to deal with contracts based on illegality. I had a situation in which a client—a young man—was sued by a home builder. The reason he signed the note that he signed to the home builder. The reason he signed that note was the home builder loaned him the downpayment to buy a house. The mortgage and the Federal act required that the deposit or downpayment be your own money or you could not fund it by a mortgage. The builder was in on the deal. He was there at the closing of the loan. He got the big check, so when it came to suing on
that note, I defended the client and said the court had no jurisdiction over the case. There is a principle of law—in our English American tradition—founded on fraud, stating that a contract founded on illegality cannot be enforced in court.

So that person who comes into our country illegally and submits a false Social Security number has no legal right to expect to ever collect on that amount. They are not entitled to legally not having a right to that, they have no moral right to that. To have a moral right to come to court, you ought to have clean hands. You should be a person that is legitimately here and you can make a legitimate claim. I see no reason these persons who come here in order to work and, as a cost of doing business, accept and sign up for Social Security without any expectation whatsoever that they would ever be entitled to it, or any expectation that money would be paid in as Social Security benefits, should now be awarded by this legislation that would allow them to get it. They would say they paid into it, so they are entitled to it. Not so, in my opinion.

I see how you can make this remark, but I think we are too far down the road of an entitlement mentality. This whole bill contemplates people having an entitlement to come to America, to bring in their parents and children, and they are entitled to have them ultimately be on Medicare and go to hospitals and be treated, even though they are not properly here.

We need to clarify our thinking. We are a nation of laws. Let's think this through. That is all I am saying. I submit to my colleagues that the process by which an immigrant who comes here illegaly, works illegally, and illegally submits a false, bogus Social Security number as a price to get the job and be paid, that is no entitlement to claim that money—not legally because it is founded on a false claim and a false premise, and not morally because they knew they were here illegaly and they never expected to receive it.

I think the Senator from Nevada has proposed an amendment that is important. It asks us to think, for a change, of our manager is somewhat limited. Might have. I understand the patience and I suspect the Senator from Massachusetts would be willing to join us in working with the Senator from Nevada, and I am saying the patience and I will defend the client and say, ‘no, we are not agreeing to work in a way that is entirely appropriate. But we all know that thousands of undocumented immigrants pay Social Security and Medicare taxes for years and sometimes decades while they work to contribute to our national system.

According to Stephen Goss, the Social Security Administration’s chief actuary, three-quarters of illegal immigrants pay payroll taxes. These payments generate approximately $8.5 billion in supplemental Medicare and Social Security taxes each year. In fact, according to a 2005 New York Times article, the Social Security Administration records these payments in a so-called earnings suspense file, which grew by $189 billion in 2002. It continues to grow by over $50 billion each year, generating up to $7 billion in Social Security tax revenue and about $1.5 billion in Medicare taxes. According to the article, most of these payments come from illegal immigrants.

The Ensign amendment would undermine the work of these people by preventing lawfully present immigrant workers from claiming Social Security benefits that they earned before they were allowed to work in our country. If this amendment is enacted, the nest egg that these immigrants have worked hard for would be taken from them and their families.

It pains me to disagree with my good friend from Nevada on this matter, but I believe the amendment is wrong. It is fundamentally unfair to collect taxes from these workers and then disqualify the taxes paid once the workers achieve legal tax status. I believe instead of supporting the amendment, we should support the principle that people who worked and paid into the Social Security system for years should be able to depend on their retirement income to which they contributed.

The amendment compounds the unfairness by ignoring the underlying legislation that already calls for payment of all back taxes and a $2,000 fine. So what we are asking the immigrants to do is pay all back taxes and, at the same time, forgo the taxes they already paid into the Social Security trust fund. It is fundamentally unfair.

Mr. MCCAIN. Mr. President, will the Senator yield?
Mr. SPECTER. I agree. I yield to Senator ENSIGN for some comments and then to Senator DODD, and if no other speakers appear, I am going to move to table.

Mr. ENSIGN. Mr. President, I wish to ask my friend from Arizona a question of his amendment to this bill and about my amendment in particular. The bill does not require that the people whose status is adjusted pay all back taxes. The bill only requires that people pay any back income taxes. There is no mention of the employer who hired them. Is the Senator aware of that distinction?

Mr. McCAIN. The Senator is aware of that. When their employer pays them, the taxes are withheld.

Mr. ENSIGN. First, if the alien is self-employed, that is not correct. Remember, the employer pays half and sends in those funds.

Mr. McCAIN. As is true of anyone else who works in the United States.

Mr. ENSIGN. That is correct. But the bottom line is, they are levying FICA taxes under this bill, they do not have to pay those back taxes.

Mr. McCAIN. I have another question for my friend from Arizona. Is he aware that it is a felony to use someone’s Social Security number?

Mr. ENSIGN. I’m not aware of that.

Mr. ENSIGN. Under this legislation, we forgive that felony. We grant amnesty for that felony.

Mr. McCAIN. Under this legislation, we allow the illegal immigrants a path to citizenship which, if they are convicted of felonies or misdemeanors, are not eligible. It is true that they are allowed to have Social Security numbers. Is the Senator aware of that?

Mr. McCAIN. The Senator is aware that when people come here illegally, obviously, they do not have citizenship, so, therefore, any Social Security number they use, whether it belongs to someone else or is entirely invented, is not valid. But I also know, if I can complete my answer to my friend, their taxes, part of their earnings are going into the Social Security fund, and that is a fact that it is theirs and their employers.

Mr. ENSIGN. Mr. President, I agree with the Senator from Arizona that many people are paying into the system. They paid into the system with no expectation of getting Social Security’s benefit because they didn’t know we would be enacting a bill like this. They paid into the system simply because that is what they were working at a job in the United States. The immigrant knew they were using an illegal Social Security number but without regards of the impact of the victim. I have reviewed case after case related to identity theft and Social Security fraud. These cases are occurring all over the United States. In every case, in every State, where someone’s Social Security number was stolen, an illegal immigrant used it to get work. Their credit history is destroyed. Sometimes their work history is too. Earlier I talked about Caleb, a gentleman in Nevada. The illegal immigrant who used Caleb’s Social Security number was not trying to harm that person but he did. Caleb applied for unemployment but couldn’t get it because the agency said he was working when, in fact, he wasn’t. He lives in Reno. They said he was working in Las Vegas. It was an illegal immigrant using his Social Security number in Las Vegas.

I never said this amendment is going to prevent identity theft. What I have said is that it is not right for somebody to steal somebody else’s identity—forged for the noble purpose of getting a job—and reward the theft by giving work credit that counts towards Social Security. We should consider the victims who are forced to deal with the terrible consequences of the crime.

Mr. McCAIN. I am aware of that. The chairman of the Finance Committee supports this amendment. One of the reasons the chairman of the Finance Committee supports this amendment is because the Social Security Administration will not be able to make determinations with respect to the earnings suspense files that the Senator from Arizona referenced. As of 2003, there were 255 million instances where the Social security number did not match the name given the employer. This bill will legalize those who are in the workforce today—the 7 million or so in the workforce out of the 12 million who are in the country. The effect of this amnesty over the next 10 years, will require the Social Security Administration to hire nearly an additional 2,000 employees to handle the cases of people who worked illegally, received amnesty under this bill, and are now applying for this benefit. A benefit they earned illegally.

Point No. 2 is, it is going to cost $1.7 billion in administrative costs—$1.7 billion in administrative costs. It does not include any future costs in benefits that the United States will have to pay out, and the beneficiaries have entered the United States, and we have no way of knowing what amnesty will cost. The cost estimates for these policies are not known. My amendment is absolutely the right thing to do. Illegal immigrants did not expect to ever receive this benefit. They were using somebody’s Social Security number or a made up one. They did so to get a job. I can appreciate that. I appreciate somebody trying to come to this country to better themselves. I don’t think we should reward the conduct of identity theft by giving people the right to claim the work history for purposes of Social Security.

Our Social Security trust fund is already in trouble. We all know that. This will further put the Social Security trust fund in trouble. The costs could be potentially huge. We don’t even know that in this bill. That is why I think we should adopt this amendment.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, very briefly, of course, they didn’t expect to receive benefits they had to pay into the system because they were here illegally. The whole thrust of this legislation is to give them not only Social Security benefits but, as importantly, the protections under the law, as they now live in the shadows and are exploited and mistreated in many cases. Of course, they didn’t expect to. That is why we are going through this process of letting them earn citizenship.

The amendment the Senator from Nevada will let you earn citizenship, but what you have paid into a system, you will not only not receive the benefits but on top of that is a $2,000 fine.

This is not about administrative costs. The fact is that each year the Social Security tax revenue continues to grow, $50 billion, generating up to $7 billion in Social Security tax revenue and about $1.5 billion in Medicare taxes. So as to the Senator’s argument that this could cost money administratively—yes. But the fact is that when these people came here, they accepted—because they came here illegally and broke our laws—of course, they accepted the fact that they probably wouldn’t get Social Security or Medicare or protection of our laws against exploitation and mistreatment and all the protections that citizens have. We are trying to give them a path to earn that. Yet under the Senator’s amendment, they would be ineligible for the same benefit of citizenship that under this legislation, are trying to make them earn.

I apologize to the Senator from Pennsylvania for taking additional time, and I understand the pressing time issue.

I yield the floor.

Mr. SPECTER. Mr. President, Senator DODD is next in line to speak for 4 minutes, as agreed.

Mr. DODD. Mr. President, I thank the chairman very much. I just want to make a brief comment, may not not about the matter of this amendment right before us, but about a vote that occurred yesterday regarding the construction of the fence along the southern border. I was 1 of 16 people who voted against that amendment, and I wanted to take a minute or so to explain my concerns.

Primarily, my concern is because the decision to place this fence down here without any other additional consultation with local communities in the United States or with our neighbors to the south is something that worries me. There are implications of that. I firmly believe that any discussion...
about immigration policy must begin with border security. If there is a failure to do that, I don’t think you have much of an audience.

My concern is if we unilaterally do this without seeking the cooperation of the countries involved, then the question next to us that we are dealing with primarily on this issue, we may have absolutely the opposite effect. In fact, there are implications of this decision. So at some point, in consultation with the managers of this bill, I may offer an amendment that would require some consultation with the U.S. communities involved, as well as with the Mexican Government, so that we are not unilaterally placing a fence here.

Believe me when I tell you this. I have spent a lot of time in this region, as my colleagues know. There will be political implications. There is a national election in Mexico in about 6 weeks, and I will guarantee this issue will be a major issue in that debate. I have spent a weekend with our colleagues from Texas, Senator CORNYN, and I believe the cooperation we get on dealing with the Mexican Government, so that we are not unilaterally placing a fence here.

Mr. SPEECHER. Mr. President, I believe there are no other speakers on the amendment. Mr. President, I move to a time agreement to finish debate or if there are side-by-sides that have been prepared so that we could move ahead there.

Mr. LEAHY. Mr. President, would the Senator with hold? Mr. SPEECHER. I would.

Mr. LEAHY. Mr. President, the President said: Every human being has dignity and value, no matter what their citizenship papers say. I believe this amendment is antithetical to that sentiment.

Senator ENGLISH has proposed an amendment antithetical to the sentiments that the President expressed, and which most Americans share. Americans understand that for years there are undocumented workers who have tried to follow our laws and be good neighbors and good citizens, and have paid into the Social Security Trust Fund. Many do not yet have Social Security numbers but they and their American employers have paid in their contributions. Once that person regularizes his or her status, and as they proceed down the path to earned citizenship, they should have the benefit after having followed the law and made those contributions. Americans understand fairness. That is fairness. We should not steal their funds or empty their Social Security accounts. That is not fair. It does not reward their hard work or their financial contributions. It violates the trust that underlies the Social Security Trust Fund.

Senator ENGLISH proposes to change existing law to prohibit an individual from gaining the benefit of any contributions that the individual was in an undocumented status. I oppose this amendment and believe it is wrong.

Under current law, immigrants who have paid Social Security while in an undocumented status may gain the benefit of all of their contributions once they gain legal status and become eligible to collect Social Security benefits. They paid in and they should have the benefit of all of their contributions. They understand respecting other people and respecting their contributions in terms of work and Social Security. They understand respecting other people and respecting their contributions in terms of work and Social Security payments. They do not want to steal those contributions and benefit and deny fairness to lawful immigrants and their families.

They also understand that if the Republican-controlled Senate is prepared to take these Social Security funds today, the risk increases that their Social Security funds could be targeted tomorrow. After all, the Social Security Trust Fund is already being used to mask the deficit. As it becomes harder and harder to pay for tax breaks for millionaires and rising gas prices and lucrative Government contracts, some will be tempted to use money diverted from the Social Security Trust Fund. The President has already proposed draining the Crime Victims Trust Fund. We should maintain these trust funds for the purposes for which Congress created them and keep them safe. We should reauthorize the trust funds that make these to these trust funds and not look for excuses to start denying legal residents and citizens the Social Security funds that they have been promised.

Let us not take a giant misstep that we will surely regret. If we are going to encourage and support a path to citizenship for many people under this bill, we must do so in a way that ensures independence and security once that journey is complete.

Mr. SPEECHER. Mr. President, I move to table the Ensign amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.
The PRESIDING OFFICER: Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 49, as follows:

[Roll Call Vote No. 130 Leg.]

YEAS—50

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Brownback
Cantwell
Carper
Chafee
Clinton
DeWine
Dodd
Dorgan
Dodd
Durbin
Feinstein
NAYS—49

Alexander
Allard
Allen
Bennett
Bond
Bunning
Chambliss
Collins
Cochran
Coleman
Collins
Conrad
Curnyn
Craig

NAY VOTING—1

Rockefeller

The motion was agreed to.

Mr. BOXER. Mr. President, I move to reconsider the vote.

Mr. DURBIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MENENDEZ. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that following the sense that Senator AKAKA, and 5 minutes to split between the floor managers of the debate. Next is the Vitter amendment, with a total of 45 minutes equally divided. Then we proceed from 2:45 to 4:15 to the Inhofe amendment, with a possibility of a Democratic side-by-side amendment.

Is that the summary of the unanimous consent proposal?

Mr. SPECTER. I ask consent for that.

Mr. INHOFE. I object.

Mr. SPECTER. Without any second degree to Vitter and Akaa.

The PRESIDING OFFICER. The proposal would exclude second-degree amendments.

Mr. INHOFE. And for clarification, there would be a vote on the Inhofe amendment at 4:15; is that correct?

Mr. SPECTER. That is correct.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I further ask that following the sequence already discussed, we take up an amendment from the Senator from New York, Mrs. CLINTON.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the unanimous consent agreement, the Senator from Hawaii is recognized for 25 minutes.

AMENDMENT NO. 4229

Mr. AKAKA. Mr. President, I call up amendment 4229 to S. 2011 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. AKAKA], for himself and Mr. INOUYE, proposes an amendment numbered 4229.

Mr. AKAKA. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To grant the children of Filipino World War II veterans special immigrant status for purposes of family reunification)
United States, . . . all of the organized military forces of the Government of the Commonwealth of the Philippines.’’ This order drafted over 200,000 Filipino citizens into the United States military. Under the command of General Douglas MacArthur, Filipino soldiers fought alongside American soldiers in the defense of our country.

Throughout the course of World War II, these Filipino soldiers proved themselves to be courageous and honorable as they helped the United States fulfill its mission. There was no hesitation when they were fighting that they would be treated the same as American troops. For example, Filipino soldiers fought side-by-side with American soldiers in the Battle of Bataan and the Battle of Corregidor. When Bataan fell and the Bataan Death March began, Filipino soldiers were forced to march more than a hundred kilometers from Bataan to Tarlac along with their American comrades. Filipino soldiers faced hardships in concentration camps, and they endured 4 years of occupation by the Japanese. In every sense, Filipino soldiers proved their allegiance to our country through thick and thin.

These Filipino soldiers are war heroes, and they deserve to be honored as such. They served active duty service on behalf of the U.S. military, which should qualify them for the same benefits as other veterans of active duty. Congress portrayed these veterans by enacting the First Supplemental Surplus Appropriation Rescission Act in 1946, which included a rider that conditioned an appropriation of $200 million, for the benefit of the postwar Philippine Army, on the basis that service in the Commonwealth Army should not be deemed to have been service in the Armed Forces of the United States.

Commonwealth Army members were those called into the service of the U.S. Army for the Far East. The members served between July 26, 1941, and June 30, 1946. Similarly, Congress enacted the Second Supplemental Surplus Appropriation Rescission Act, which provided that service in the New Philippine Scouts was not deemed service in the U.S. Army.

New Philippine Scouts were Filipino citizens who served with the U.S. Armed Forces with the consent of the Philippine Government. They served between October 6, 1945, and June 30, 1947.

This generation of veterans is predominantly in their eighties. Of the 200,000 Filipino veterans that served in WWII, there are close to 49,000 left. Some of these veterans receive U.S. benefits who do not. By 2010, it is estimated that the population will have dwindled to 20,000.

With the passage of the Immigration and Naturalization Act of 1990, the courage of the many Filipino soldiers who fought alongside our troops during World War II was finally recognized by our Government, and Filipino veterans were offered the opportunity to obtain U.S. citizenship.

According to the former Immigration and Naturalization Service, about 15,000 Filipino veterans live in the U.S. and became citizens between 1991 and 1995 under the authority of the Immigration Act of 1990. Between that time, about 11,000 veterans who live in the Philippines were naturalized. These thousands of Filipino veterans clearly wished to spend their golden years in the United States, and I am pleased that the 1990 Immigration reform efforts offered them the opportunity to do so.

Unfortunately, the offer did not extend to the adult sons and daughters of these veterans. As a result, the brave Filipino veterans who fought on behalf of America, and who now live in America, continue to contribute to America, must do so alone. Due to a backlog in the issuing of visas, many of the children of these veterans have waited more than 20 years before they were able to obtain an immigrant visa. Unfortunately, many more are still waiting.

It is a no secret that U.S. Citizenship and Immigration Services in the Department of Homeland Security is facing significant backlogs. However, it is not as widely appreciated that family-sponsored immigrants from the Philippines have the most substantial waiting times in the world before a visa is scheduled to become available to them. What this means, is that these honorable Filipino veterans who faced numerous dangers to defend this Nation now face the prospect of spending the last years of their lives without the comfort and care of their families.

It is a shameful disgrace that the sons and daughters of these brave soldiers are now last in line to become citizens of our country. This is no way to honor Filipino soldiers who bravely fought on the front lines with American soldiers during World War II.

As a World War II veteran myself, I am proud to have answered my nation’s call to active duty. During my time of active service, I was driven by a love for my country, and I was comforted by the love of my family. The support that a soldier’s family offers during military service is an invaluable buoy to a soldier’s spirit.

A family’s role in caring and supporting for a soldier becomes even more important after active military service is completed. Being surrounded by my family after my service. My heart goes out to those families who have not yet been reunited with their family members share a universal bond of heartache.

Another important commonality among Filipino World War II veterans is hope. Those Filipino World War II veterans still separated from their families are hopeful that we will use this opportunity to rectify the unjust oversight in current law. The poignant truth behind this matter is that if we don’t act now, we may not have another opportunity.

This weekend I am participating in the first annual “A Time of Remembrance” event, which honors the families of the American fallen. Family members from all 50 States will come to the National Mall at noon this Sunday, May 21, 2006, to recognize the important contributions our fallen heroes have made on behalf of America. I am proud to take part in this event, which points out the very real ways that families are impacted when soldiers courageously leave their family and fight to defend our country. I am pleased that World War II veterans who are still with us, this event points to the importance of honoring them now, before it is too late.
Let us prove those wrong who say that we are waiting until enough veterans die before we right this injustice. These veterans have been waiting for 60 years to have their benefits reinstated. Unfortunately, our efforts to provide them with benefits they were promised, the benefits they fought for, have been unsuccessful because opponents have cited the payment of such benefits as too costly.

The Filipino Veterans from World War II have already made extreme sacrifices. They were not expected to endure the further sacrifice of life without their loved ones. It is time that the United States fulfills its responsibility to these veterans. The least we could do is to honor these aging veterans with their families. We are a nation that keeps its word...not a nation that uses people for our own purposes and then casts them aside.

Ensuring that our World War II Filipino Veterans can enjoy and be supported by their family members in their twilight years is a simple yet profound way of honoring these war heroes.

My amendment has received strong support from Filipino veterans, the Filipino-American community, and the Asian-American community. The Japanese American Citizens League, the Organization of Chinese Americans, and the Asian Pacific American Legal Center have endorsed my amendment. In addition, the American Coalition for Filipino Veterans, which represents over 4,000 Filipino Veterans across the country, has wholeheartedly endorsed my amendment with a letter of support that states:

S. Amdt. 2049 will be a timely benefit to address the veterans’ loneliness and will provide them with a partial measure of U.S. veterans recognition that they were unjustly denied in 1946.

Mr. President, I ask unanimous consent that the full text of the letter of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ASIAN AMERICAN JUSTICE CENTER, Washington, DC, May 18, 2006

DEAR SENATOR: The Asian American Justice Center writes in strong support of S. Amdt. 4029 to S. 2611, the Comprehensive Immigration Reform Act of 2006. This important amendment, introduced by Senators Akaka and Inouye, would allow the sons and daughters of naturalized Filipino veterans who fought for the United States during World War II to finally reunite with their aging parents in the United States. Approximately 200,000 Filipino soldiers fought for the U.S. during World War II. They were promised U.S. citizenship as a condition of their service to our country, but that promise was retroactively withdrawn in 1946. To address this injustice, Congress belatedly granted U.S. citizenship to these veterans as a part of the Immigration Act of 1990. However, it did not grant citizenship to the children of these veterans, thereby causing many of these families to be separated. A long immigration backlog developed as these veterans petitioned for their sons and daughters to immigrate to the U.S. This has not only negatively impacted the veterans and their families, but also other Filipinos who are caught in the same backlog. The Philippines have the worst immigration backlogs in the world. A U.S. executive order who is petitioning for his or her unmarried son or daughter must wait approximately 14 years before they can immigrate to the U.S. If the son or daughter is married, they must wait roughly 18 years. The Akaka-Inouye amendment would address this problem by allowing the sons and daughters of the U.S. citizen veterans to immigrate to the U.S. without being subject to numerical limitations. Of the 200,000 Filipino soldiers who fought for the U.S., only approximately 49,000 remain alive, and they are predominantly in their 80’s. They have served our country well. They deserve to be reunited with their sons and daughters after years, sometimes even decades, of waiting. Please support the Akaka-Inouye amendment.

Sincerely,

KAREN K. NARASAKI, President and Executive Director.

Mr. AKAKA. My President, I urge my colleagues to honor their vital contributions to our Nation by supporting my amendment.

Mr. INOUYE. Mr. President, I rise to join Senator AKAKA in support of his amendment that grants immigrant visas for alien children of Filipino veterans of World War II, who were naturalized pursuant to section 405 of the Immigration Act of 1940, a measure which I authored in the 101st Congress. In recognition of Filipino veterans’ contributions during World War II, the Congress, in March of 1942, amended the Nationality Act of 1940, and granted Filipino veterans the privilege of becoming United States citizens. The law expired on December 31, 1946. However, many Filipino veterans were denied the benefits of naturalization under this act because of an executive decision to remove the naturalization examiner for the Philippines for a 9-month period. The 9-month absence of a naturalization examiner was the basis of numerous lawsuits filed by Filipino World War II veterans. On July 17, 1988, the U.S. Supreme Court ruled that Filipino World War II veterans had no statutory rights to citizenship under the expired provisions of the Nationality Act of 1940. Section 405 of the Immigration Act of 1990 was enacted to make naturalization available to those Filipino World War II veterans whose military service during the liberation of the Philippines rendered them deserving of United States citizenship. Approximately 25,000 veterans took advantage of the naturalization provision which expired in February 1995. Unfortunately, the 1990 Act did not confer naturalization to the children of Filipino World War II veterans. Accordingly, they are enduring decades of family separation due to the long waiting periods under the numerical limitations on immigrant visas for alien children of citizens of the United States. Many of these veterans are in their twilight years, and declining in health. They long to see their sons and daughters. If we choose to turn a blind eye or ignore, let us not turn our back on those who sacrificed so much. Let us show our appreciation to these gallant Filipino men and women who stood in harm’s way with our American soldiers, and who fought the common enemy during World War II by granting their children a special immigrant status to immigrate and reunit with their aging parents who have made sacrifices for this country.

Mr. AKAKA. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. At the moment, there is not a sufficient second.

Mr. KENNEDY. Mr. President, will the Senator withhold for a moment.

The PRESIDING OFFICER. At the moment, there is a sufficient second.

Mr. AKAKA. Mr. President, I would like to ask for a voice vote.

Mr. KENNEDY. Fine.

The PRESIDING OFFICER. The Chair would note that under the unanimous consent agreement, there is 5 minutes to be split between the Senator from Massachusetts and the Senator from Pennsylvania.

Does the Senator wish to yield the balance?

Mr. KENNEDY. Mr. President, I will take 2 minutes. Then I will yield back the time. And then I think we will be prepared to vote.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I commend the Senator for raising this issue. He has been a constant
advocate for the families he has spoken about today. And he has communicated with us in the Immigration Committee on so many different occasions about the fairness and the importance of the family reunification and the uniqueness of senators that so many of these patients were involved in at a very difficult and challenging time during World War II.

So the Senator from Hawaii deserves great credit for bringing this to the attention of us in the Senate. I speak for the Senator from Pennsylvania, who urges the acceptance of this amendment. This will help provide some very important family reunification. It is entirely warranted and entirely justified.

We thank the Senator for bringing this issue again to our attention and for his continued advocacy on this issue. We will do everything we possibly can to make sure this is carried at the conference as well.

Mr. VITTER. I yield back the remainder of my time.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 4029) was agreed to.

Mr. KENNEDY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I thank the Senator. I suggest the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

Mr. SPECTER. Mr. President, under our unanimous consent agreement, it is now time for the amendment by the distinguished Senator from Louisiana under a time agreement of 45 minutes equally divided.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 3964

Mr. VITTER. Mr. President, I call up amendment No. 3964.

The PRESIDING OFFICER. The clerk will report.

The Senator from Louisiana (Mr. VITTER), for himself and Mr. GRASSLING, proposes an amendment numbered 3964.

Mr. VITTER. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To modify the burden of proof requirements for purposes of adjustment of status.)

Beginning on page 350, strike line 1 and all that follows through “inference.” on page 351, line 1, and insert the following:

...(II) OTHER DOCUMENTS.—An alien who is unable to submit a document described in subclause (I) may satisfy the requirement in clause (I) by submitting to the Secretary at least 2 other reliable documents that provide evidence of employment for each required period of employment, including—

(a) bank records;

(b) business records;

(c) sworn affidavits from non-relatives who have direct knowledge of the alien’s work, including the names, addresses, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information;

(d) remittance records.

...(IV) BURDEN OF PROOF.—An alien applying for adjustment of status under this subsection has the burden of proving by a preponderance of the evidence that the alien has satisfied the employment requirements in clause (i).

On page 374, line 22, insert after “work” the following: “—, including the name, address, and phone number of the affiant, the nature and duration of the relationship between the affiant and the alien, and other verification information.”

Mr. VITTER. Mr. President, yesterday on the Senate floor I briefly began to explain the purpose of this amendment. As was clear from yesterday’s debate, illegal immigrants need to have distinctions with many parts of this bill. One of those hesitations is about the huge loopholes and encouragements for fraud that exist in the bill in many different sections.

We are very good on the Senate floor in debating, tossing around ideas, general concepts, broad principles, but I fear we are often very bad at really looking at the details of a proposal and walking through how it is going to work in the real world and in practice or, perhaps it is more appropriate to say, how it is not going to work. Again, this bill is a glaring example of that.

Amendment No. 3964 does not correct all of those deficiencies. It does not close all of these very important distinctions between the person who has been in the country over 5 years or between 2 and 5 years or under 2 years, but when it does come to the actual workings of this, it will operate in the real world, all that person has to do is write out a fairly simple statement—“I have been here for over 5 years”—sign his name to it, and under the details of the bill that is good enough. To me, that makes a mockery of the entire system that is being proposed. That makes an open invitation for fraud. Why would a person who is in an admittedly difficult and strenuous, stressful, even desperate situation, why would a person put himself in category B or category C with all the hoops he has to jump to get a piece of paper to get in the best category, the clearest route to citizenship, category A? It makes no sense. Of course, a lot of folks in that desperate situation will do exactly that. This is a loophole, an invitation to fraud which we need to close.

Under a similar provision of the bill, also in section 601, there is a similar glaring loophole and open invitation to fraud in terms of the type of evidence that is being proposed. That makes an open invitation for fraud, the second category, being in the country between 2 and 5 years. I don’t know why this is so much an issue because if I were the person, I would immediately rush to the best category, sign a simple piece of paper, and have the clearest route to citizenship. But still in the evidence accepted in category B, between 2 and 5 years, a person can supply a simple statement, a piece of paper signed by a nonrelative third party. Again, the requirements for that are so loose. It is a giant loophole and an open invitation to fraud.

If this system is to have any meaning, if these distinctions in terms of
how long a person has been in the country are to have any significance, if this plan is to have any hope of working in practice, rather than just being something pretty to talk about on the floor of the Senate, we need to close these loopholes. We need to end these practices, including many that are not covered by our amendment, this is going to prove very unworkable in the real world and be wide open with loopholes you can drive a truck through, with open invitations for fraud. My amendment simply highlights perhaps the two most obvious or egregious examples of that and tries to close those loopholes, close those open invitations for fraud. I believe this is an example of that. I believe in many aspects, including many that are not covered by our amendment, this is going to prove very unworkable in the real world and be wide open with loopholes you can drive a truck through, with open invitations for fraud. I support this amendment. It goes to some of the important respects.

To summarize, my amendment would do five specific things that would close these loopholes, shut down these very wide open invitations to fraud.

No. 1, it would strike the language allowing an alien to prove employment history by providing a self-signed, sworn declaration; in other words, nothing more than a piece of paper that he himself signs.

No. 2, it would require that sworn affidavits from nonrelatives who have direct knowledge of the alien’s work— and that is a phrase in the underlying bill—called corroborated by the Secretary of Department of Homeland Security and should include contact information of the affiant, the name, the address, the phone number, the nature and duration of the relationship, so that the Department has some hope, some reasonably looking into this declaration, cross-examining the affiant to determine if this is trustworthy and if this declaration is truthful.

No. 3, the amendment would make the types of other documents evidenced to prove work history the same for those illegal aliens who have been living in the United States over 5 years and for between 2 and 5 years. So there would be uniformity, and we would be talking about objective documentary evidence.

No. 4, the amendment would strike the provision stating that Congress believes the Department of Homeland Security should “recognize and take into account the difficulties encountered by aliens in obtaining evidence of employment” because of their illegal status. That quote is in the underlying bill, that the Department must “recognize and take into account the difficulties encountered by aliens in obtaining evidence of employment” because of their illegal status. That quote is in the underlying bill, that the Department must “recognize and take into account the difficulties encountered by aliens in obtaining evidence of employment.” In other words, the bill itself is telling the Department: Let it slide. Anything that is stated, you virtually have to accept. That is ridiculous, and we would remove that directive from the bill.

An amendment would clarify that the alien has the burden of proving his or her employment history by “a preponderance of the evidence.” It is very reasonable, and, in fact, there is no other workable way to do it, to put the burden of proof on the illegal alien to prove the amount of time he has been in the country. Any lesser burden of proof, any other way of going about it will be a glaring loophole and an open invitation for fraud.

Let me underscore the general thrust of my amendments. It goes to some of my broad concerns about the bill. We are very good, all of us, both parties in the Senate, in making arguments, talking about broad values, outlining generalities, and talking about how a new system of laws should work. In my opinion, we are very bad, almost always, at actually designing a concrete system and paying attention in excruciating detail to how make sure that systems can actually work in the real world and not simply be unworkable beyond being able to be administered full of glaring loopholes, full of invitations to fraud. I believe this is an example of that. I believe in many aspects, including many that are not covered by our amendment, this is going to prove very unworkable in the real world and be wide open with loopholes you can drive a truck through, with open invitations for fraud. My amendment simply highlights perhaps the two most obvious or egregious examples of that and tries to close those loopholes, close those open invitations for fraud.

With that, I am happy to hear from Members who would like to debate the amendment pro or con.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand the amendment, on page 350, you strike lines 8 through the rest of the page; am I correct?

Mr. VITTER. I don’t have that in front of me. If you could read me the lines.

Mr. KENNEDY. Well, this is on the intent of Congress, the basic kind of understanding, the intent of Congress be interpreted in a manner that recognizes the difficulties encountered by the alien in obtaining evidence. As I understand, you strike that. And then you strike the burden of proof provisions through the top of 351, once the burden is met, the burden shall shift to the Secretary of Homeland Security. So those provisions are dropped. The essence you are essentially tightening up verification in terms of the applicant.

Mr. VITTER. The Senator is correct. Mr. KENNEDY. And that is effectively the purpose of the amendment. In your description and in the language, you talk about bank records, business records, sworn affidavits from nonrelatives who have direct knowledge of the alien’s work, including name, address, phone number of the affiant, and the person’s relationship. You also talk about remittance records and that the burden is on the alien applying for the adjustment, the burden of proving by a preponderance of evidence that he has satisfied the employment requirements.

Mr. VITTER. The Senator is correct on all of that.

Mr. KENNEDY. I am going to urge that we accept that amendment. We believe to make sure, those of us who support this proposal, that we are going to reach those people who are defined in the legislation. And we want to make sure that it is accurate.

We are not interested in people gaming the system or in the identity theft problems and other kinds of challenges and false documents. We have made a very strong effort because if we have that and we lack the verification in information and lack the verification in terms of the individual and we are going to have continued forgery of documents, this is going to be a disaster. But we have given strong emphasis in terms of legality and veracity, and we are going to have the biometric identification cards. We are going to try to do this correctly and by the book, so to speak.

The Senate has redrafted provisions we had in the legislation to ensure the applicant is going to provide the best information and that the best information has to be reliable and dependable in order to be able to participate in the system. I think it is useful and valuable. At the appropriate time, I will urge our colleagues to accept the amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, there is no doubt that we have to have appropriate evidence in order to establish a criteria for meeting on the path to citizenship. I believe the Senator from Louisiana has structured a realistic amendment and made improvements to the bill. We are prepared to accept it on this side.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I thank the Senator from Pennsylvania and the Senator from Massachusetts for their encouraging and supportive words. Obviously, I welcome that. Obviously, I welcome this amendment being adopted.

Without taking away anything from that statement, I simply add that, unfortunately, while these are very important examples we have to this bill that highlight these problems, these are not the only cases. Unfortunately, I think they are an example of the general nature in which many aspects of the bill were drafted.

In a spirit of working toward the end all of us have said we fully support, I encourage all of the Members intimately involved in continuing to draft the bill, including if a bill should go to conference—and I will certainly include the Senators from Pennsylvania and the Senator from Massachusetts—to continue to identify those problem areas in the bill language. I hope this amendment will be adopted and we will have addressed two of them. I will continue identifying more. I am encouraged by the comments that they will join us in that endeavor as this work product moves on.

With that, I am prepared to yield back my time if we can proceed to voice vote.

Mr. SPECTER. Mr. President, I think we are ready for a voice vote on the Vitter amendment.

The PRESIDING OFFICER. Is all time yielded back?
Mr. SPECTER. It is.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (no. 3964) was agreed to.

Mr. SPECTER. Mr. President, we have concluded the Vitter amendment a little earlier than expected. It would be appropriate now to proceed with the debate on the Inhofe amendment, with the prospect of later having a side-by-side. I urge my colleagues who wish to be heard on that subject to come to the floor so we can proceed.

Mr. President, while we are awaiting speakers to arrive on the Inhofe amendment and since we have concluded the Vitter amendment early, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, we are now going to the Inhofe amendment No. 4064. It is my understanding that we have between now and 4:15, with the time equally divided on my amendment and an alternative amendment that is proposed by Senator SALAZAR, and I would ask if that is correct.

The PRESIDING OFFICER. An amendment has not yet been proposed by the Senator from Colorado. However, the time between now and 4:15 is allocated to the Inhofe amendment and any Democratic amendment which might be proposed as an alternative.

Mr. INHOFE. Mr. President, I thank the Chair for that clarification. It could very well be, and it is my understanding that some others do have an alternative that they want to have considered.

Mr. President, this is an issue that has been with us for a long time. Due to the great history that is very often presented to this Chamber by the occupier of the chair, we went back into history and saw that for hundreds of years we have been trying, many of us, as often tried, to make the English the national language. The last time we had a vote was 1983. In 1983, there was a—I don’t remember who the author was at the time, but it was before I even came to the House. But that was 23 years ago. So 23 years has taken place since we have voted on this issue.

Ours is a very simple amendment. It is very straightforward. We have perfected it by adding things that the Senator from Tennessee and the Senator from Arizona and the Senator from Alabama have added, and we think as a result of that, we have a bill that is actually better than ours was when it first started.

Mr. DURBIN. Mr. President, would the Senator yield for a question?

Mr. INHOFE. I yield.

Mr. DURBIN. First, I thank the Senator for his cooperation. I think we have had a very valuable dialogue, and the Senator from Oklahoma has made some important concessions. But I would like to make sure that, for the RECORD, I understand the intent and language of the amendment which he currently offers.

Has the Senator changed the version which referenced section 161: “Declaration of official language,” which shows on page 2 of the amendment?

Mr. INHOFE. Yes, that was changed. It was totally written up—they wrote the word “national” in the wrong place. It is, “Declaration of national language.”

Mr. DURBIN. Thank you. May I ask the Senator if he would tell me whether it is his intention to in any way diminish any rights that currently exist under the laws of the United States of America which would provide individuals with materials or services in a language other than English?

Mr. INHOFE. Mr. President, I think it is very appropriate the Senator asks that question. We have had a chance to discuss that at some length with a large number of people, and I have stated fast to my belief. Now, keep in mind I am one of the few people around here who is not a lawyer, and therefore sometimes that puts me in a better position to understand the law than some of my lawyer friends. But I actually written up—we write down, “unless otherwise authorized or provided by law, no person has a right, entitlement, claim,” et cetera, in the bill, which is the form of the bill that you have seen and that we have been working on, so my feeling is that that language takes care of any problem within the existing law that is on the books.

Mr. DURBIN. If the Senator would yield, then—

Mr. INHOFE. Mr. President, let me ask if it would be all right, if you have a number of questions—I don’t mind yielding, but I would just as soon yield on your time.

Mr. DURBIN. Fine. Mr. President, I would like to have the time for the questions and answers count against me.

So would the Senator say for the RECORD, is it your intention by this amendment to diminish any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English?

Mr. INHOFE. Mr. President, I would respond by saying I think the statement stands by itself, speaks for itself. It says, “unless otherwise authorized or provided by law.” We are a country of laws, and if there is anything that is inconsistent with that is an exception under section 162.

Mr. DURBIN. Reclaiming my time, Mr. President, this is the problem. This is what it comes down to. This is an easy question to answer: Yes, it is not my intention to diminish any rights under the law given to any person for services or materials provided by the Government of the United States for services or materials provided by the Government of the United States. If the Senator said yes to that question, it would put a lot of people at ease.

But let me tell you what I am afraid is at stake. In the language which the legal staff has prepared, I am afraid there is more to it. It is apparent that at least some believe you are going further than what you have indicated; that you are trying to diminish existing rights of the law. That is troubling to me, that is the reason that we are talking about are rights that are over 40 years old, dating back to the 1964 Civil Rights Act. And if the Senator from Oklahoma wants to make a statement of policy that English is the language in the United States or it is a common and unifying language, then he will have 100 votes in the Senate. It will be an important statement. But when he goes on and adds this other language, this amendment raises questions.

I just gave the Senator a chance to clarify the rest of his language, and he didn’t want to do it. I am afraid that is where we are going to have a parting of the ways.

I think it is valuable for us to establish that the English language is common and unifying in America and that success depends on it, and I believe that. As I have said many times on the Senate floor, I am the son of an immigrant. My mother came to this country; her parents struggled to learn English. She spoke both English and Lithuanian. I speak only English today. My life experience is not much different than most.

We had a recent survey that found an interesting statistic. The Pew Hispanic Center documents that about 80 percent of third generation Latinos in the United States speak their dominant language. Exactly zero percent speak Spanish as their dominant language. It suggests that what happened in my family is happening with most immigrant families.

So they know the obvious: Success in this country depends on mastering and speaking English. So if the Senator wanted to make that statement, that English is our common and unifying language in this country, we would join him.

Mr. INHOFE. Mr. President, let me respond.

Mr. DURBIN. Mr. President, I still have my time, and I would like to say this: When I asked him straightforwardly a question as to whether he wanted to diminish the rights of anyone in this country currently under law, which would include Presidential Executive Orders, I might say to the Senator and his legal staff if he wants to diminish those, he would not give me an affirmative answer which I think would satisfy many on this side of the aisle.
I reserve the remainder of my time, and I yield back to the Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me first of all say no, it is not my intent, nor is it the intent of this amendment, to do that. This amendment is pretty straightforward. It says, in other words, ‘otherwise authorized or provided by law.’ What that says to me is if there are some of these privileges out there that you believe are not in the law, then I would not be addressing those. I think what we are talking about is a matter of law, but I don’t know that. I would rather say if it is a matter of law, we are providing an exception. And I guess I would ask you the question, since I now have the floor, do you believe that some of these rights are entitlements?

Mr. DURBIN. Mr. President, I don’t know whose time this counts against.

Mr. INHOFE. It is mine.

The PRESIDING OFFICER. The Senator from Oklahoma has the floor.

Mr. DURBIN. Mr. President, as I said earlier, this is dangerously close to debate in the Senate, and I am glad we are doing it. My feeling is this: When you say: What are you entitled to? Well, we are entitled to be protected from discrimination. That is an entitlement to every American. We are entitled to be protected from discrimination. And the 1964 Civil Rights Act says one of the things you cannot do is discriminate against your national origin, where you were born. We say in America, no, you cannot be discriminated against based on national origin. And based on that provision in the Civil Rights Act, we will provide, when it comes to essential services, appropriate language assistance to help those who are availing themselves of the services.

As I said earlier, in Chicago, that may be Polish or a Filipino dialect. But let me say what we have said is, yes, you are entitled not to be discriminated against.

Now, if the Senator wants to wipe away that entitlement, he should make it clear. But I am not sure that he wants to. If he does, I hope he will say so.

Mr. INHOFE. No, no. Mr. President, reclaiming my time, it is certainly not our intention. And I think what the Senator is saying is that language and national origin are the same when, in fact, I am not saying that language and national origin are the same.

Let me go ahead and try to respond, even though I am speaking to lawyers and I am not one, with some court cases that I think might clarify things for all of us.

Mr. SALAZAR. Mr. President, would my friend from Oklahoma yield for a question?

Mr. INHOFE. Mr. President, let me hold off yielding until I get through with what I am about to say. I was going to mention these this morning, but I would like to go ahead and say where I believe we are today in responding to the question that has already been asked. I think it speaks for itself, but let me see after reading these cases whether you agree with that or not.

Mr. SALAZAR. Mr. President, again, if I may ask a question of my friend from Oklahoma.

Mr. INHOFE. All right. I would rather wait until I am through, but go ahead.

Mr. SALAZAR. This is not on the substance—

The PRESIDING OFFICER. The Senator from Colorado is recognized to ask a question.

Mr. SALAZAR. Mr. President, what I would like to do as we move forward in this discussion is also lay down the amendment that I have which I believe accomplishes the objectives which have been articulated by the Senator from Oklahoma and, hopefully, after the Inhofe statement, I can lay down my proposal. What I think addresses some of the questions we are talking about on the floor.

Mr. INHOFE. Mr. President, it is my understanding—we talked about this before the Senator came in—that we will have two amendments that we will be talking about the Salazar amendment and the Inhofe amendment. They will be side by side. There will be a vote at 4:15. That vote will take place on my amendment first and then on the Salazar amendment, is my understanding.

Mr. SALAZAR. I thank the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, first of all, I would like to get into some of the legal background. For the legal analysis, let me start by mentioning Wesley Newcomb Hohfeld who was the author of the seminal Fundamental Legal Conceptions, a powerful and enduring analysis of the nature of rights and the implications of liberty. Hohfeld noted that rights correlate to duties. A has a duty to B if B has a right against A. If A has no duty, that means B has no right and A has liberty, are the terms that he used. Such Hohfeldian analysis applies here.

My amendment makes clear that nobody has a right or entitlement to sue the Federal workers or the Federal Government for services or materials in languages other than English. In Hohfeld terminology, the Federal Government has no duty to provide services or materials with a violation of the prohibition language with their national origin in dozens of court cases. This is what I referred to. It seems to me perhaps the other side is trying to say they are one and the same.

But the Federal courts have rejected the attempts to equate a person’s language with their national origin in dozens of court cases and court decisions going back more than 30 years. Therefore, any expansion of the concept of national origin to encompass a theory repeatedly rejected by the Federal courts must come explicitly from Congress. It must be a law. It must be something that Congress proposes and passes and not be imposed by a flawed or arbitrary interpretation of the law. The Senate is stating that there is no right, entitlement or claim to foreign language services and materials in any language other than English. That is assuming we pass our amendment.

I will mention just three of the long, unbroken line of court cases spanning over 30 years.

In 1983 the Second Circuit Court of Appeals determined in Soloris-Perez v. Heckler, which the Supreme Court let stand, that there is no right to government forms in languages other than English.

In 1994 the Second Circuit Court of Appeals determined in Toure v. U.S. that there is no right to government deportation notices in languages other than English.

The most recent United States Supreme Court case in this area is Sandoval v. Alexander, the Alabama driver’s license case. Justice Scalia wrote the decision in Sandoval in 2001. The Supreme Court in Sandoval rejected the equation of language and national origin.

Indeed, the Federal courts have repeatedly considered and rejected just that equation of the failure to provide foreign language services and materials with a violation of the prohibition against national origin discrimination.
There is no support in the legislative history or judicial interpretations of title VI for the right or entitlement to Federal Government services or materials in languages other than English. Executive Order 13166 purported to interpret title VI, but it was written before the Supreme Court’s decision in Sandoval.

This amendment now clarifies in Federal statute the line of cases culminating in the United States Supreme Court decision in the Sandoval case. Here we are saying that there is no legal basis for Executive Order 13166 that purported to direct services and materials in languages other than English. I state it again clearly: There shall be no right or entitlement to services or materials in languages other than English.

I ask unanimous consent additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEGISLATIVE HISTORY

The legislative history does not support a language-based definition of national origin. The Supreme Court has noted that the legislative history concerning the meaning of national origin is not present in this case as “quite meager.” Espinoza v. Farah Mfg. Co., 414 U.S. 86, 88 (1973). Nevertheless, “[t]he terms ‘national origin’ and ‘ancestry’ were considered synonymous.” 414 U.S. at 89. Focusing debate on the 1964 Civil Rights Act, Representative Roosevelt stated: “May I just make very clear that ‘national origin’ means national origin of the country from which you or your forebears came. You may come from Poland, Czechoslovakia, England, France, or any other country.” 110 Cong. Rec. 21649 (1964).

The Supreme Court supports that assessment: “[t]he term ‘national origin’ on its face refers to the country where a person was born, or, more broadly, the country from which he or her ancestors came.” Espinoza, 414 U.S. at 88; see also, Perez v. Hughes Heliocopters, 840 F.2d 667, 672–73 (9th Cir. 1988) (persons of national origin are members of a protected class under Title VII).

CASH HISTORY

Federal courts have rejected attempts to equate a person’s language with their national origin in dozens of court decisions going back thirty years. Therefore any expansion of the concept of national origin to encompass a theory repeatedly rejected by federal courts must come explicitly from Congress, and not be imposed by a flawed and arbitrary interpretation of the law.

The Supreme Court has never held that the language ability bears a close relation to ethnicity, and that, as a result, it violates the Equal Protection Clause. “We need not address that argument here.” 500 U.S. at 369. The Circuits, on the other hand, have rejected such an equation. See, e.g., Soriano v. Pardee-Fox, 866 F.2d 429 (11th Cir. 1989) (rejecting argument that language ability bears a close relation to ethnicity); Sandoval v. Alameda County Mental Health Services, 24 F.3d at 466 (noting that this theory of discrimination is implicitly made, but it is on the basis of language, i.e. English-speaking versus non-English speaking individuals, and not on the basis of race or national origin). Language, by itself, does not identify members of a suspect class.”

See, also, Toure v. United States, 24 F.3d at 466 (affirming Soriano-Peres and rejecting request for multilingual forfeiture notices). “A policy involving an English requirement that is not otherwise based on race or national origin.” “An v. General Am. Life Ins. Co., 872 F.2d 426 (9th Cir. 1989) (table).

The common administrative interpretation linking language and national origin is the EEOC’s arbitrary presumption against English-language workplace rules, 29 C.F.R. § 1606.7. The Supreme Court has never reviewed those purely administrative interpretations. But many other courts have reviewed the language ability to determine the legitimacy of national origin claims. See, e.g., Garcia v. Span-Stech, 998 F.2d 1490, 1490–99 (9th Cir. 1993) (1990’s EEOC Guidelines equating language and national origin were ultra vires); Vasquez v. Mallen Bag & Supply Co., 660 F.2d 686 (5th Cir. 1981) (upholding English-on-the-job rule for non-English-speaking truck drivers); Garcia v. Rush-Presbyterian St. Luke’s Medical Center, 660 F.2d 1217, 1222 (7th Cir. 1981) (upholding hiring practices requiring English proficiency); Long v. First Union Corp., 904 F. Supp. 933, 941 (E.D. Virginia, 1995) (“there is nothing in Title VII or pre-employment practices that requires an employer to have a right to speak his or her native tongue while on the job.”), affirmed, 86 F.3d 1151 (4th Cir. 1996).

A few cases have accepted the language policy is a pretext for intentional discrimination, a language-related rule might violate national origin rules. In addition, two recent lower court decisions have adopted the EEOC’s interpretation equating language and national origin. See, e.g., EEOC v. Synchro-Start Products and Judge Shadur was following the Executive Order 13166. Neither is there any legal basis for Executive Order 13166. Neither is there any legal basis for federal regulations based on Executive Order 13166, including, but not limited to those federal regulations in the following list:

INDEX OF FEDERAL REGULATIONS ON EXECUTIVE ORDER 13166

CABINET-LEVEL DEPARTMENTS


Proposed HHS Regulations as published in the Federal Register (August 30, 2000).


Strategic Plan to Improve Access to HHS Programs and Activities Limited English Proficient (LEP) Persons (December 14, 2000).


Proposed HHS Regulations as published in the Federal Register (August 30, 2000).

Hired employees, by their nature, have a right to speak their own native tongue while on the job.”
May 18, 2006

CONGRESSIONAL RECORD — SENATE

S4755

Human Services, Office for Civil Rights (September 26, 2000).

Appendix A: “Questions and Answers” (August 29, 2000).


Justice

Bush Justice Department issues reaffirmation of E.O. 13166 and a new set of Questions and Answers (October 26, 2001).


Commonly Asked Questions And Answers Regarding Executive Order 13166, Department of Justice (November 13, 2000).

Civil Rights Forum (Summer-Fall, 2000).

EO 13166 Implementation Plan (January, 2001).

Labor

REVISED Department of Labor Policy Guidance (May 25, 2003).

Department of Labor Policy Guidance.

Transportation


Treasury

Department issues EO 13166 regulations (March 7, 2001).

Department of Veterans Affairs

Guidance to Federal Financial Assistance Recipients (Meaningful Access to an Interpreter) Individuals Who Have Limited English Proficiency in Compliance With Title VI of the Civil Rights Act of 1964

Subcabinet agencies

Corporation for National and Community Service Plan.


REVISED General Services Administration (2003).

General Services Administration.

FIN Institute of Museum and Library Services (August 7, 2003).

REVISED Institute of Museum and Library Services (April, 2003).

Institute of Museum and Library Services.

Legal Services Corporation (January, 2003).

National Aeronautics and Space Administration Language Assistance Plan for Accommodating Persons with Limited English Proficiency in NASA-Conducted Programs and Activities.


National Credit Union Federation (undated).

National Science Foundation plan.

Office of Special Counsel’s Plan for Agency Compliance With Executive Order 13166.

Pension Benefit Guaranty Corporation’s Plan for Agency Compliance With Executive Order 13166.

Mr. INHOFE. Mr. President, I know we can get bogged down. I suspect the reason this particular amendment that has been proposed numerous times in the past 30 years, and that it is going to get bogged down on a lot of technical questions, is that perhaps some people do not want this amendment, so they come up with all kinds of technical reasons to oppose it. But what we are doing is declaring—we are making a declaration—that English is the national language for the United States of America.

We are talking about exceptions, for example, the Court Interpreters Act. Before the Court Interpreters Act passed in 1978, defendants did not have a right to an interpreter. It was up to the Court’s discretion. The Court Interpreters Act protects already existing constitutional rights such as in the sixth amendment, the fifth amendment, the 14th amendment, amendments on due process. It is very important to know that is one of the many exceptions that is written into law. It is a very important exception.

You also have some exceptions found in the Voting Rights Act. Somebody mentioned this morning some disaster could take place in California, a tsunami or something such as that, and when that disaster come, obviously, if you are addressing Chinatown, it would be in Chinese. We know that. That protection is there.

I believe we have covered the legitimate concerns that are out there. I know there are those who do not want this to happen who are going to vote against this. I understand that. That is what this is all about. It has been 23 years since we had an opportunity to vote for it or against it. Those of you who want to vote against it, you are going to have your opportunity at 4:15 today. In the meantime I agree with the Presidents—almost every President of the United States going back long before Teddy Roosevelt. One of the things he said is, “We must also learn one language and that language is English.” As we remember, President Bill Clinton in his State of the Union Message in 1999 got a standing ovation when he said that our new immigrants have a responsibility to enter the mainstream of American life. That means learning English and learning about our Democratic system of government.

I agree with that. I didn’t agree with everything that President Clinton said, but I certainly was one who stood and applauded during that State of the Union Message in 1999.

I think other Presidents have done the same thing as recently as a few days ago. The President said that an ability to speak and write the English language, English allows newcomers to go from picking crops to opening a grocery, from cleaning offices to renting offices, from a life of low-paying jobs to a diplomat career and a home with their family. This is an opportunity. We look at people who come to this country and, oddly enough, those individuals that I have spent many hours with—I say to my good friend from Colorado that when I was mayor of Tulsa, we had never had any kind of recognition of our Latin population. Yet I knew it was a very large population. I would say to you, at that time I used to be a commercial pilot in Mexico and I actually spoke the language fairly well at that time. It has been many years, 25, 30 years, I guess. But when I became a mayor I said: I know around here we are very rich in history and have a talented bunch of people here and good citizens of our city of Tulsa. So I formed the Hispanic Commission of the city of Tulsa. This may or may not surprise you. Some of them were kind of in hiding, not even recognized and the ones that they came out. We had the Cinco de Mayo and all the celebrations there. It is probably the most popular thing that has ever been done in the city of Tulsa.

I went back and talked to these people. I said: Do you agree with the poll—data that shows very clearly that Hispanics want to have English as the national language? And they said yes. This is a group I have been dealing with since 1974.

I think it may be someone’s impression that certain extremist groups—and I am sure there are some extremist groups that have a large number of Latinos in them. They may be offenders. They may not want to have this. That is fine. Let them exercise their influence on every voter, each of the 100 Members of this body. That is the way the system works.

But I will say this. Jumping from the one who knows that the ones I have had experience with back in my city of Tulsa, the Hispanic population is very proud of the fact that they are going to learn English, and it should be our national language. As recently as 2 months ago, a Zogby poll, in March of 2006, found that 84 percent of Americans, including 77 percent of the Hispanics, believe English should be the official language of Government operations. In 2002, the Kaiser Family Foundation poll—which I think any question—found 91 percent of the foreign-born Latino immigrants agreed that learning English is essential to succeeding in the United States. In 2002, there is also a Carnegie/Public Agenda poll that found by a more than 2-to-1 margin, immigrants themselves say that the United States should expect new immigrants to learn English. My favorite poll is this one. In 2004, the National Council of La Raza found that 90 percent of those who entered the country in somewhat 10.9 percent—agreed that the ability to speak English is important to succeed in this country. That is a no-brainer. We all know that. There is not a country you go to where that is not true.

I would say this. There are 50 other countries around the world today that have English as their national language. In these countries, they expect you, when you come to their country, to learn English. But if you go to another country, if it is Italy or France or any other country, you are expected to be able to communicate in their language.
In 1988, G. Lawrence Research showed 87 percent favored English as an official language with only 8 percent opposed and 5 percent not sure. That was 1988. Very consistent; about the same numbers. A 1996, national survey by Luntz Research asked, “Do you think English should be made the official language of the United States?” and 86 percent of Americans supported making English the official language and only 12 percent opposed and 2 percent not sure. That was 1996.

In 2004 another Zogby poll, that was a different one than the one I quoted, but 92 percent of Republicans, 76 percent of Democrats, and 76 percent of Independents favored making English the national language. Again, that was a March poll of Zogby. It is consistent throughout.

You do some things working here. You have everybody wanting it, including the Latin community. You have more than half the States, 27 of the 50 States—27 States have accepted English as an official language, including Colorado. I might add, to my good friend from Colorado. Let’s see where Illinois is. Yes, Illinois. You don’t have a problem in Illinois. You already have it as a State concept that has been accepted.

So if you have 27 States, you have 51 other nations accepting English as the national language, you have all the polling data showing this is what people want, you have an exception made so no one is going to lose anything by doing it this way, then I can only come to the conclusion that you don’t want it as the national language.

That is fine. That is good. If that is the case, we are going to have a vote at 4:15 and make that determination.

Before I yield, let me ask how our time is coming along.

The PRESIDING OFFICER. The Senator from Oklahoma has 30 minutes remaining.

Mr. DURBIN. Will the Senator yield for a question?

Mr. INHOFE. I yield the floor at this point.

Mr. DURBIN. I’ll take it on my time. The Senator made it clear; He has two parts of this amendment. The first part is, from your end of it. Is English the common, unifying language of our Nation? The answer is yes. His conclusion is that you can’t succeed in America without being English proficient. If that’s his amendment, that vote would be 100 to nothing.

It is the second part, the part you called the technical arguments, that we find troublesome. You said, in the course of explaining the amendment, that you didn’t want to take away any existing rights of people in law, in courthouses, for example, or going to vote, and I’m glad to hear that. But I want to ask you directly: Do you want to diminish any of the rights currently available to those living in our country under title VI of the Civil Rights Act of 1964, which prohibits discrimination based on national origin?

Mr. INHOFE. Do I personally want that? No, I don’t. This amendment doesn’t do that because it makes those exceptions which you are referring to is the law.

Mr. DURBIN. Let me ask you expressly and specifically, because you did refer to this. This was Executive Order 13166, issued by President Clinton, thatsing the same title of the Civil Rights Act that I referred to. The Executive Order said that agencies of our Government had to make efforts to provide their services and materials to people with limited English proficiency.

Is it your intention with your amendment to, in any way, diminish the responsibilities and rights created by Executive Order 13166?

Mr. INHOFE. It is my understanding, I say to the Senator from Illinois, that the courts already have had some interpretations of that which perhaps are not the same as you are stating right now. What the courts have interpreted I stand behind because that means it is law. What is that according to my amendment.

Mr. DURBIN. So will the Senator accept an amendment to his amendment which says that:

Nothing herein shall diminish or expand any existing right or authority under the law of the United States related to services or materials provided by the Government of the United States in any language other than English?

Mr. INHOFE. You will have an opportunity to have that in your side-by-side amendment that will be voted on after mine. My answer is no because we have already massaged this language. A lot of people are supporting this. If I start changing things now, as you well know, I’m going to start peeling off, and I won’t have the support I have right now. We will have an opportunity to vote on my amendment. Then we will have an opportunity to vote on whatever language you decide to put in, in your amendment.

Mr. DURBIN. I thank the Senator.

Mr. AKAKA. I agree that English is the common language of our Nation. Everyone should learn it, just as I believe everyone should learn other languages and more about the world around them. But I must oppose the Inhofe amendment because it does not merely encourage learning the English language. I am concerned that this amendment will have far-reaching consequences and eliminate the rights of many Americans.

First of all, the Inhofe amendment is unnecessary. English is the de facto official language of the United States. In fact, according to the 2000 census, only 9.3 percent of Americans speak both their native language and another language fluently.

Second, the Inhofe amendment is divisive. The sponsors of the amendment claim that this is needed to promote national unity. However, our common language is not what unifies this country. It is our common belief in freedom and justice. The first amendment to the Constitution ensures that we have the freedom of speech. We are free to speak English, this amendment would deny U.S. citizens with limited English proficiency basic rights. For example, our country was founded on the belief that the people of this country hold the power—they are the check on our Government. However, limiting services to the English language could deny people the right to exercise this power and receive essential Government services.

Moreover, children growing up in homes that speak languages other than English will feel stigmatized. As a young child, I was discouraged from speaking Hawaiian because I was told that it would not allow me to succeed in the Western world. My parents lived through the overthrow of the Kingdom of Hawaii and endured the aftermath as a time when all things Hawaiian, including language, which they both knew and loved, customs and traditions, were viewed as negative. I, therefore, was discouraged from speaking the language and practicing Hawaiian customs and traditions. I remember as a young child sneaking to listen to my parents so that I could maintain my ability to understand and use the Hawaiian language. My experience mirrors that of my generation of Hawaiians.

This is the same problem facing bilingual education. There is a push to stop the learning of other languages when individuals are young, when it is much easier to learn another language, but then we tell those same people that it is essential that they learn another language to preserve our national security. This is contradictory.

Third, the amendment sends the wrong message to our heritage communities. After the terrorist attacks of 9/11, we sought out these individuals to help with our translation efforts; however, now we are telling them that we do not value their language enough to provide them with essential services in their languages. The ability to speak a foreign language is critical to our national security, and we should not discourage it in any way. Fourth, the Inhofe amendment could prohibit the Government from providing emergency services in other languages or providing critical health and safety materials to non-English speakers since such programs may not be required by law. People’s lives might be endangered by this amendment.

Finally, I worry that the very strength of our democracy is threatened by this amendment. I am proud to be an original cosponsor of S. 2703, a bill that amended the Bilingual Education Act of 1965. Importantly, S. 2703 will continue to require bilingual voting assistance. Unless every citizen has access to the
pools and can understand the language on their voting ballot, our democracy is not as strong as it could be.

We want immigrants and individuals from all over the world to learn about the United States and what defines us. I think our freedoms are what define us. To limit the ability of non-English speakers to know about the United States and experience and observe the freedoms on which this country was founded, would be a disservice to themselves. Actions speak louder than words, no matter the language. I urge my colleagues to act to oppose the Inhofe amendment.

Mr. INZI. Mr. President, I rise in support of an amendment introduced by my colleague from Oklahoma, Senator INHOFE.

I firmly believe a common language promotes unity among citizens and fosters greater communication. Establishing a unifying amendment to the immigration reform bill offers unity for the people of the United States.

A recent Zogby poll showed 84 percent of Americans believe that English should be the official language of our Government. Twenty-seven U.S. States have already made English the official language, including Louisiana, which agreed to it as a condition of statehood. My home State of Wyoming made English the official language of the State in 1996. Fifty-one nations also have English as their official language, but the United States does not. It is time that we have a clear statement of national language.

This amendment also addresses the important issue of English proficiency for new citizens. On May 15, 2006, President Bush addressed the Nation about the needed reform of our current immigration system. He stressed the positive role that the English language has for new citizens. Many improvements need to be made to the current process that our new citizens go through. I am pleased that this amendment creates a set of requirements to pass the naturalization exam. Some of the goals are demonstration of sufficient understanding of English usage in everyday life and an understanding of American common values. These common values include the principles of our U.S. Constitution, the Pledge of Allegiance, the National Anthem, and the significance of our American flag. The goals will help new citizens better understand our Nation and become productive members of our society.

Senator INHOFE’s amendment is a good strong statement in support of English as our national language and the importance of sharing this common value with others. I have long supported legislation that would establish English as the official language of the U.S. Government during my service in the Senate and in the Wyoming State Legislature. I encourage all Senators to support this important amendment to the immigration reform bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The assistant legislative clerk reads as follows:

The Senator from Colorado [Mr. SALAZAR], for himself and Mr. DURBAN, Mr. KENNEDY, Mr. BINGAMAN, and Mr. REID, proposes an amendment numbered 4073.

Mr. SALAZAR. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

SEC. 161. DECLARATION OF ENGLISH.

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.

The Government of the United States shall preserve and enhance the role of English as the common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the government of the United States in any language other than English.

For the purposes of this section, law is defined as including provisions of the U.S. Code, the U.S. Code of Federal Regulations, Executive Orders.

(b) CONFORMING AMENDMENT.—The table of chapters for title I, United States Code, is amended by adding at the Language of Government of the United States.

Mr. KENNEDY. Mr. President, I yield 15 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Thank you, Mr. President.

Let me first say that the amendment I send to the desk is sponsored as well by Senators REID, DURBIN, BINGAMAN, and KENNEDY.

I would like to start by reading the amendment in its basic entirety. I think that reflects what it is we are talking about in the Chamber this afternoon. My amendment reads as follows:

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

The government of the United States shall preserve and enhance the role of English as a common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English.

That is the essential and substantive part of the amendment which we are sponsoring today.

As I start to speak about this amendment, I want to say this amendment is a unifying amendment because it speaks to the common language of America. It unifies us from whatever particular language or background we come from.

It is my hope that when we complete this debate today we could have 100 Senators standing up in support of this amendment.

Let me say, for me—as we have approached this debate over immigration and as we approach this debate over official English and other aspects of amendments that have been offered by my friend from Oklahoma—it has also been a time for me to reflect back to the history of America and to the history of my own family in this country. My family came in and founded the city of Santa Fe in 1598, 408 years ago. And the language that is still the language of my home—the language still spoken on our ranch 110 miles north of Santa Fe—is still the spoken language from the 12th and 13th centuries. It is a very old language.

I remember during those days when I was a young man going to school in the 1960s in Conejos County, in the southern part of Colorado, those who spoke Spanish in our school were punished because of the fact they spoke Spanish. I remember seeing the incident where young people would have their mouths washed out with soap because of the fact they happened to be speaking a language other than English in the public school. I have seen these kinds of incidents throughout my lifetime of personal experience.

I think those kinds of incidents and those kinds of experiences run counter to what America is all about. America becomes richer and stronger because of our diversity. We have learned through the hard times of history that America is stronger when it stands together, when we find those issues that unite us as opposed to those issues that divide us.

We found those issues that divided us in the Civil War and over half a million Americans died in that war. We found those issues that divided us in the era of segregation that led to Brown v. Board of Education and led to the Civil Rights Act of the 1960s. Those acts were intended to bring us together as a country.

My fear is that the proposal which has been presented by my good friend from Oklahoma will serve to divide this country and not unite the country.

That is why the amendment I have offered, along with my colleagues, is intended to be an amendment that says we believe the English language is the common language of the United States and that it is a unifying language of the United States and we stand behind that language as the common language of America.

Let me also make a couple of observations regarding Senator INHOFE’s amendment.

First, when you read the language itself and read the technical language of it, you have to ask yourself the question: Why is that language there?
You can read in the second part of the second page of his amendment essentially the language that says "no official will communicate, provide services, or provide materials in any language other than English." I know that there have been exceptions written into the language to try to accommodate times and places where the language other than English might have to be spoken.

We have to ask the question: Why is the language written the way it is which says it is in these narrow, tailored exceptions where we will make the exception that a language other than English can be spoken? It causes me concern because I am not exactly sure what that means. If I am a public official working in law enforcement for one of our Federal agencies, if I work for the U.S. Postal Service, or wherever I happen to be in any agency of the Federal Government, I might read the language that says officials cannot communicate or provide materials in a language other than English. As someone who might not be a lawyer but a public servant serving at any level of the Federal Government, it might give me a signal—and I think it would—and lots of our Federal employees the signal that perhaps providing services to the citizens of the United States in a language other than English is wrong and violative of the rule of law.

They will not have the opportunity that we have had today to go through the fine review of this legislation in the very Chamber in which I have spoken, and even after having gone through that fine review of this language there are still many of us who have questions as to how this proposed amendment will take away rights from the people of America.

As I was listening to my friend from Oklahoma speak about the importance of this amendment, one of the things he said is that he thought it was important that we stand together in opposing any form of discrimination. For sure, we can all agree in this Chamber that we are not to discriminate against someone because they happen to be Irish or French or if they happen to be of Mexican descent, whatever it is; we stand united in this country's belief in the proposition that we oppose any kind of discrimination based on national origin. Yet, it seems to me, from what I was hearing from my friend from Oklahoma, that the same laws cannot apply with respect to language discrimination; if you happen to speak a language other than English, or if you happen, perhaps, to have an accent that indicates you may be of a native tongue that is other than English, then perhaps discrimination on the basis of language then would be sanctioned under our law in America. That is not the American way. The American way is to say that we are a stronger country when we recognize the diversity of our citizens and we accommodate those who are different among us; and that we create a much stronger country when we stand together.

I believe the amendment which Senator INHOFE has proposed will create division within the country. I think it is putting a finger on a problem that does not exist today.

The statistics which Senator INHOFE cited to the members of the Senate from the National Council for Larussa, indicates that most Americans, including most Hispanics, speak English. The National Council for Larussa cites a GAO study in which it was consistently found that U.S. Government documents are printed in English only. In fact, less than 1 percent of U.S. Government documents are published in any language other than English.

They also found that the English language is not under attack in our country. In the U.S. census findings, they found that 92 percent of Americans had no difficulty speaking English. We also found in poll after poll that immigrants in America come because they want to learn English. They want to learn English. They want to assimilate into our society because they know that English is, in fact, a keystone to opportunity.

The INHOFE amendment does nothing in terms of excluding—or encouraging people to move forward and learn the English language. We are already a country that speaks English. Senator INHOFE's amendment does not do anything with respect to moving the English language acquisition forward. Let me finally say that it is true there are many States that have made English their official language. I believe that English being made the official language is also a matter of States rights. It is true that in my State of Colorado, as well as in other States, English has been adopted as the official language of those particular States. I believe we ought to leave it to the States; let the States decide we are a Federal system. I think States ought to decide the way we ought to go with respect to dealing with this issue.

Let me conclude by saying the amendment which I have proposed, along with my colleagues, Senators REID, DURBIN and BINGAMAN, is an amendment that would unify America and not divide our country.

I hope my colleagues will join me in supporting the amendment which we have offered and oppose the INHOFE amendment.

I yield the floor.

THE PRESIDING OFFICER. Who yields time?

Mr. INHOFE. Mr. President, I yield as much time as the Senator from Tennessee requires.

THE PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, first, let me say to my friend from Colorado that if we were to take all 100 of us who are in the Senate, some of whose families have been here for a long, long period of time, I would judge, have families who have been in the United States for longer than Senator Salazar’s family—for 11, 12, or 13 generations. It is a source of great pride to serve with him.

He and I discussed this amendment. I understand his passion and feeling about it. But what I would like to do in a few minutes is take exactly the opposite side of the amendment that Senator from Colorado because I do not see how the United States of America can be unified unless we have a national language. That is all this is about. The INHOFE amendment is not an official English amendment. It is not an amendment to declare English the official language of the United States, which 27 States have done. It does not require that all government documents even be printed in English. It could have done that. But it doesn’t.

It simply says English is the national language of the United States, period. That is the first thing it says. Then it has a provision that talks about the importance of encouraging the learning and understanding of English. It has a provision which, the way I read it, says that nothing prevents the government from rendering services in languages other than English.

That would mean that in a whole variety of areas where the Congress last made a decision—which it is the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Bilingual Education Act of 1967, the provision that Senator Robert Kennedy put into the law recognizing the unusual circumstances of Puerto Ricans who moved from Puerto Rico to one of the 50 States—or an Executive order by any President, this amendment wouldn’t change any of that. That is the whole point of the amendment. It is just to say this is our national language.

Then it says that someone does not have the right to sue to get services in another language unless it is provided by law. It doesn’t diminish a right already established by law.

It does one other important thing. It draws on the beginnings of an amendment by Senator Sessions about the citizenship requirements that have been in our citizenship process. It seeks to make those stronger.

Senator Sessions is not the only one in this Senate interested in that. There is probably no one in this Senate more interested in that than the distinguished senior Senator from Massachusetts, who is not only interested in American history, but his family has a place in it.

We have worked together in a variety of ways to try to get a clearer understanding of U.S. history among our children, among our citizens—not because we want to punish them, but because we have such a unique and diverse country that it is critical that we all understand these common unifying principles which come from our history. If we look at what is happening today: rule of law, equal opportunity, laissez-faire, E pluribus unum. We are not pro-immigrant or anti-immigrant;
we just have four principles on which we all agree, and we are trying to put them together into a bill. Those are the things which unite us as a country, along with one other thing, and that is our common national language.

The second part: The Inhofe amendment has in it language to help improve the citizenship exam that legal immigrants take to become citizens, of which 514,000 did last year. It is good language, language which was in the legislation Senator Kennedy, Senator Reid and I worked on with many others a couple of years ago to help create summer academies for outstanding teachers and students of American history. We tried to define the history we were talking about in the sense of key ideas, key persons. Such as, the Constitution, the Bill of Rights, the Emancipation Proclamation, and key events such as the American Revolution, the Civil War, the world wars, the civil rights movement, and the key ideas and events in those documents know that liberty is at the core of who we are. It is our national language. That is one difference.

No. 2, the Salazar amendment does not include the provision that is in the Inhofe amendment that says for all those people here illegally who may become lawful and put on a path to citizenship who may not be here legally, but who want to learn English. The Inhofe amendment strengthens that requirement. Currently, in the underlying bill, it simply says they must be enrolled in school to learn English, and the Inhofe amendment strikes that, so those persons have to learn English in order to be here lawfully. That is very important. This large number of 10 million or so people who are here illegally is the source of most of the problems in this debate. If we are not going to send them all home, which almost no one thinks will happen, then we either have to put them on a path to citizenship or lock in 10 million people in the United States who pledge allegiance permanently to another flag, which is something we have never done before. The Inhofe amendment is preferable because it helps make it easier for those 10 million to learn our national language. Those are two differences.

The third difference is the Salazar amendment completely takes out the excellent work Senator Inhofe and Senator Sessions did, much of the language having been borrowed from work that Senator Kennedy, Senator Reid, and others worked on, which tried to improve the citizenship test. This may not be an intention of the Salazar amendment, but it does it. It takes out the language that says the test should mention the key documents, such as the Constitution, the Bill of Rights, the Emancipation Proclamation, and key events such as the American Revolution, the Civil War, the world wars, the civil rights movement, and the key ideas and persons. Why is that important? Because we are not a nation based on race, we are not a nation based on ancestors; we are a fragile idea based upon a few principles and our national common language. So I prefer an amendment that has those provisions in there. That is the third reason.

The fourth, as I read it, suggests that Executive orders issued by the President are just like statutes. Constitutional lawyers would have a problem with that.

A vote for the Inhofe amendment is a vote to say English is our national language. It is a vote to say that those who may not be here legally, but who want to learn English by taking the naturalization test, should be required, including Senator Martinez, to learn English on their way to citizenship. And finally, the amendment includes a very good section that helps to define the key ideas and events in the key documents.

Mr. SALAZAR. Would my friend from Tennessee yield for a question?

Mr. ALEXANDER. I would be happy to if we can do that on your time. Mr. SALAZAR. I would be happy to do so on my time. Through the Chair, I ask the manager.

Mr. KENNEDY. He is asking the question, and he wants to answer the question on our time. I yield 5 minutes.

The PRESIDING OFFICER. Without objection, Mr. SALAZAR is recognized.

Mr. SALAZAR. Mr. President, through the Chair, I say to my friend from Tennessee, there was an Executive order issued on limited English proficiency and the importance of reaching out to people who are limited English proficient so they could recognize and understand the language of the Government, an Executive order dated August 11, 2000.

Is the Senator’s reading of the Inhofe amendment, that would essentially eviscerate the Executive order issued by then-President Clinton concerning limited English proficiency?

Mr. ALEXANDER. The answer to my friend from Colorado is no. The election of a new President might change an Executive order if the new President modified or changed the Executive order. My understanding of Senator Inhofe’s amendment, and he can speak for himself, is he does not seek to change any right now granted to anyone.

We can have a good debate about whether there ought to be bilingual ballots. In my opinion, I don’t think there should be because you have to be a citizen to vote and you have to demonstrate an eight grade understanding of English to be a citizen. But that is in the law and is not affected by this and neither would be an Executive order. Mr. SALAZAR. My friend from Tennessee, not too long ago in the Senate, we entered into a debate concerning the nomination of Attorney General Gonzales to be Attorney General of the United States. There were Members of this Senate who came to the Senate and spoke angrily in Spanish about why he should be confirmed, including Senator Martinez. Would the Inhofe amendment make it illegal for that kind of activity to occur in the Senate?

Mr. ALEXANDER. Mr. President, I say to my friend from Colorado, that is a preposterous question for what we are talking about and not really a suitable question for a serious proposal.

This is a simple proposal which declares that English is our common and unifying national language. It is the language of a number of countries, but more than that. It is the common language. English is our common language, it is part of our spirit. It is part of what we are. It is our national language. That is one difference.

The PRESIDING OFFICER. The Senator is recognized.
Mr. ALEXANDER. The differences I see in the two amendments are, No. 1, the Salazar amendment says no to making English our national language. It uses another description. No. 2, it says no to the requirement that immigrants who are illegally here and who may wish to become citizens should learn English before they go on that path to citizenship. And it says no to the provisions in the Inhofe amendment which improve the citizenship test, requiring those who become citizens learn the key events and documents, key ideas of our history.

The Inhofe amendment is well within the mainstream of 90 to 95 percent of the thinking of the American people. It is a valuable contribution. It is a re-strained proposal. It does not seek to change any existing right that someone might have to receive services from the Government in some other language.

Mr. INHOFE. Mr. President, I know the minority leader has several speakers who want to speak. I also know that virtually everyone on our side is wanting to stay with the 4:15 vote.

What I would like to do, of course, is encourage the minority leader to use his leader time if necessary but go ahead and allow anyone on the other side to use time at this time. I yield the floor.

Mr. KENNEDY. I yield 10 minutes to the Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank my colleague Senator KENNEDY.

I have been trying to figure out what is, in my mind, objectionable to the Inhofe amendment. I think it comes down to a very basic point; that is, the Inhofe amendment, the language, the operative language of the Inhofe amendment, is: . . . no person has a right, entitlement or claim to have the Government of the United States or any of its officials or representatives to interpret, perform or provide services, or provide materials in any language other than English.

That is the operative provision. And then it says there are "exceptions." The exceptions are where we have specifically written laws which allow that or which provide for the providing of information or communication in a language other than English.

Why is that objectionable? It is objectionable to me because it is directly contrary to the constitution of my State, the thrust of the constitution of my State.

When New Mexico came into the Union in 1912, we had many more people in my State speaking Spanish than we have now. We are a State with an ethnic minority whose numbers are increasing. People were very concerned that the right of individuals in the State to speak either language would be preserved and that no one be discriminated against by virtue of their inability to speak English.

We wrote a provision in our constitution that the right of any citizen of the State to vote, to hold office, or to sit upon juries shall never be restricted, abridged, or impaired on account of religion, race, language, color, inability to speak, read, or write the English or the Spanish language except as may otherwise be provided in the constitution. So the presumption is directly contrary to the Inhofe amendment.

The general rule in my State and in my State’s constitution is that people shall not in any way be discriminated against in their dealings with the Government by virtue of their inability to speak English. And the Inhofe amendment says that the general rule is people have no right to speak any language or communicate with their Government in any language other than English unless we write a law saying they can. I think that is an unfortunate change in emphasis and change in the law, which I cannot support.

Obviously, we have many court cases. And, I gather, under one of the exceptions to the general rule that the Inhofe amendment contains, this might be covered. It has been well recognized. I believe, in our courts for a very long time that it is a denial of due process to non-English-speaking persons if they are denied services and communication interpretation in their own language when they are in criminal proceedings.

We have a provision, again, in my own State constitution which I think is pretty close on this issue. It says: In all criminal prosecutions the accused shall have the right to speak and defend himself in person, and by counsel, to demand the nature and cause of the accusation, to be confronted with the witnesses against him, to have the charges and testimony interpreted to him, and in a language that he understands.

Now, I know there is a Federal law that says the same kind of thing today. So it falls under one of the exceptions that is provided for in the Inhofe amendment.

Mr. INHOFE. Mr. President, will the Senator yield?

Mr. BINGAMAN. Mr. President, I am glad to yield.

Mr. INHOFE. You mentioned several things. I believe the last one you mentioned was covered in the Court Interpreters Act of 1978. It does allow you to have that, and it is actually written into law.

I would also suggest that these are already written. This is not something that has to be done.

Mr. BINGAMAN. Right.

Mr. INHOFE. Those protections are specifically exempted on page 2.

Mr. BINGAMAN. Mr. President, let me reclaim my time and indicate I said that very thing. I am not disagreeing with the Senator from Oklahoma. He has pointed out there are legal provisions that make an exception to his general rule, and the exception in this case is that you are entitled to have the Government provide interpretation when you are accused of a crime and you are trying to defend yourself in court. All I am saying is, why are we writing into law a general rule that you are not entitled to communicate with your Government or have your Government communicate with you in any language other than English, except where we provide for it? I think that is a mistake. It is directly contrary to what my own State constitution does. It is directly contrary to the sentiment behind my State constitution.

We have the Native American Languages Act where Congress specifically found that there is compelling evidence that student achievement and performance and community and school pride and educational opportunity are tied to respect for the first language of the child or the student. And we talk there about that Native American languages shall not be restricted in any public proceeding.

Well, you can say: OK, now, we have already written a law that protects the rights of Native American languages to be used in public proceedings. So that is not a problem.

I do not know that I want to have to have this Congress write a law to cover every circumstance that might arise where an American wants to communicate with his or her Government in some language other than English. I think it is a bad precedent for us. I think it is contrary to the history of my State. It is certainly contrary to that.

I hope very much we will resist this amendment. I think this is a non-problem. I do not know why we are spending most of the day debating an issue of this type, except to say to people who do not speak English. You are not going to be entitled to the full rights that other citizens are entitled to.

Clearly, that is true economically. We all know that. We all know you cannot succeed economically in this town in a full way unless you can speak English, and probably speak English with adequate proficiency. But I do not think as a legal matter we need to be writing statutes into the Federal law that say if you are not speaking English, you are entitled to fewer rights, you are entitled to fewer legal rights than other citizens are, and we want to remind you of it.

In fact, as to this amendment, it is very interesting, because it says: Look, in a full way you can speak English, and probably speak English with adequate proficiency. But I do not think as a legal matter we need to be writing statutes into the Federal law that say if you are not speaking English, you are entitled to fewer rights, you are entitled to fewer legal rights than other citizens are, and we want to remind you of it.

In fact, as to this amendment, it is very interesting, because it says: Look, in a full way you can speak English, and probably speak English with adequate proficiency. But I do not think as a legal matter we need to be writing statutes into the Federal law that say if you are not speaking English, you are entitled to fewer rights, you are entitled to fewer legal rights than other citizens are, and we want to remind you of it.

So we are saying: Look, the general rule is, you have to speak to your Government and communicate with your Government in English. We acknowledge there are exceptions where we will allow you to use other languages, or the Government will agree to communicate with you in other languages, but
AMENDMENT NO. 4073, AS MODIFIED
Mr. SALAZAR. Mr. President, I ask unanimous consent that my amendment be modified with the change that is at the desk.

The PRESIDING OFFICER. Is there objection to the modification?

W ithout objection, it is so ordered.

The amendment (No. 4073), as modified, is as follows:

At the appropriate place insert the following:

Notwithstanding any other provision:

SEC. 161. DECLARATION OF ENGLISH.

English is the common and unifying language of the United States that helps provide unity for the people of the United States.

SEC. 162. PRESERVING AND ENHANCING THE ROLE OF THE ENGLISH LANGUAGE.

The Government of the United States shall preserve and enhance the role of English as the common and unifying language of America. Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the Government of the United States in any language other than English.

For the purposes of this section, law is defined as including provisions of the U.S. Code, the U.S. Constitution, controlling judicial decisions, regulations, and controlling Presidential Orders.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the Language of Government of the United States.

AMENDMENT NO. 4064, AS FURTHER MODIFIED
Mr. INHOFE. Mr. President, I ask unanimous consent to modify the amendment on page 2, to change the word “official” to the word “national.”

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 4064), as further modified, is as follows:

On page 352, line 3, strike “the alien—” and all that follows through line 15, and insert “the alien meets the requirements of section 312.”

On page 352, line 3, strike “either—” and all that follows through line 15, and insert “meets the requirements of section 312(a) (relating to English proficiency and understanding of United States history and Government).”

On page 614, after line 5, insert the following:

SEC. 766. ENGLISH AS NATIONAL LANGUAGE.

(a) IN GENERAL.—Title 4, United States Code, is amended by adding at the end the following:

"CHAPTER 6—LANGUAGE OF THE GOVERNMENT"

"Sec. 161. Declaration of national language

"161. Preserving and enhancing the role of the national language

*161. Declaration of national language

"English is the common language of the United States.

"162. Preserving and enhancing the role of the national language

"The Government of the United States shall preserve and enhance the role of English as the national language of the United States relative to services provided by, or authorized or provided by, law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform or provide services, or provide materials in any language other than English. If exceptions are made that do not create a legal entitlement to additional services in that language or any language other than English. If any forms are issued in the Federal Government other than English (or such forms are completed in a language other than English), the English language version of the form is the authoritative version for all legal purposes.

(b) CONFORMING AMENDMENT.—The table of chapters for title 4, United States Code, is amended by adding at the end the following:

"161. Declaration of national language."

SEC. 767. REQUIREMENTS FOR NATURALIZATION.

(a) FINDINGS.—The Senate makes the following findings:

(1) Under United States law (§ 1423 (a)), lawful permanent residents of the United States who have immigrated from foreign countries must, among other requirements, demonstrate an understanding of the English language, United States history and Government, to become citizens of the United States.

As the Department of Homeland Security is currently conducting a review of the testing process used to ensure prospective United States citizens demonstrate knowledge of the English language and United States history and government for the purpose of redesigning said test.

(b) DEFINITIONS.—For purposes of this section only, the following words are defined:

(1) KEY DOCUMENTS.—The term “key documents” means the documents that established or explained the foundational principles of democracy in the United States, including the United States Constitution and the amendments to the Constitution (particularly the Bill of Rights and the Declaration of Independence, the Federalist Papers, and the Emancipation Proclamation).

(2) KEY EVENTS.—The term “key events” means the critical turning points in the history of the United States (including the American Revolution, the Civil War, the world wars of the twentieth century, the civil rights movement, and the major court decisions and legislation) that contributed to extending the promise of democracy in American life.

(3) KEY IDEAS.—The term “key ideas” means the ideas that shaped the democratic institutions and heritage of the United States, including the principles of democracy, justice under the law, freedom, individualism, human rights, and a belief in progress.

(4) KEY PERSONS.—The term “key persons” means the men and women who led the United States as founding fathers, elected officials, scientists, inventors, pioneers, advocates of equal rights, entrepreneurs, and artists.

(c) GOALS FOR CITIZENSHIP TEST REDIRECTION.—The Department of Homeland Security shall establish as goals of the testing process designed to correspond with provisions of § 1423 (a) that prospective citizens:

(1) Demonstrate a sufficient understanding of the English language for usage in everyday life;

(2) Demonstrate an understanding of American common values, including the principles of the Constitution of the United States, the Pledge of Allegiance, respect for the flag of the United States, the National Anthem, and voting in public elections;

(3) Demonstrate an understanding of the history of the United States including the key ideas, key events, key persons, and key documents that shaped the institutions and democratic heritage of the United States;
(4) Demonstrate an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States, and (5) Demonstrate an understanding of the rights and responsibilities of citizenship in the United States.

(d) IMPLEMENTATION.—The Secretary of Homeland Security shall implement changes to the testing process designed to ensure compliance with (8 U.S.C. 1423 (a)) not later than January 1, 2008.

The PRESIDENTIAL OFFICER (Mr. COLEMAN). The Senator from Vermont.

Mr. LEAHY. Mr. President, I have spoken several times in the course of this debate about my belief that immigrants should learn the English language. In my experience, most new Americans want to learn our language and make efforts to do so as quickly as possible. The bill that we are debating calls for immigrants to learn English as one of the several steps they must take before they can earn citizenship.

We believe that English should be the common language of the United States, but by making English the "national" language, the Inhofe amendment goes too far. The amendment was modified to remove a ban on publishing official documents in any language but English. Still, good intentions aside, in many local communities and States it may well be useful and helpful for the government to reach out to language minorities. Greater participation and informed and appropriate steps communities should be striving for. We should not be mandating artificial and shortsighted restrictions on State and local government.

I regret, however, that the amendment continues to include language that strongly discourages the use of other languages to inform residents and continues to treat those who speak another language as second-class citizens. We would do better to recognize our diversity and provide greater opportunities to those for whom English is a second language to become more fluent.

My mother spoke Italian as a child and learned English when she went to school. My wife grew up in a family that spoke French. She began speaking English when she started going to school. Both were helped throughout their lives by being completely and totally bilingual as a result.

Mr. KENNEDY. Mr. President, if the Senate will yield, we are trying to find out how much time the Senator wants.

Ten minutes, does that work?

Mr. LEAHY. Mr. President, I tell the distinguished Senator from Massachusetts, I will have a total amount of 10 minutes.

Mr. KENNEDY. I thank the Senator.

Mr. LEAHY. Mr. President, information is vital and sometimes lives depend on it. Is it not in the interests of all Americans to have every member of our society as well-informed on matters of health, safety and our democracy as possible? Do we really want to restrict government publications and communications, such as those on disaster preparedness, public health concerns, if there is an avian flu pandemic, to English only? We have recently seen the extensive and effective reach of Spanish radio in this country. Would we not want to employ that resource in our efforts to tie our hands and require Congress to pass a special statute every time health and safety materials, for example, would be useful?

We already have statutes that call for bilingual election materials to assist language minorities in accordance with our commitment to making participation in voting fair and meaningful. We know that there are many circumstances in which effective access to information requires communications in many ways and many languages.

Would it not have been useful for the President to try to sell and explain the Medicare drug benefit plan with all its complications and permutations in English, Spanish, Chinese, or any language the most possible beneficiaries? Do we really intend to require such obviously beneficial actions to need a special statutory authorization? Should we review agency requirements to take steps to ensure that more than English is spoken on our airlines and automobiles and dangerous equipment? Are we going to stop providing court translators and require all court proceedings, which are themselves official government proceedings, to occur in English, only to the detriment of fairness and justice?

Are we going to go back into the CONGRESSIONAL RECORD and scrub the statements of Senators MARTINEZ and others who have used Spanish here on the floor? If I recall correctly, the Senator from Oklahoma has spoken on this floor in Spanish. Would this amendment make his use of Spanish illegal—or does the Constitution’s “speech and debates clause” mean that the Senate is the only place where he can ask us to adopt applies to everyone else but not to Senators?

Now, the distinguished Senator from Tennessee is on the Senate floor. It was only a few weeks ago that we worked together to adopt the Alexander amendment to S. 2454, the immigration bill we debated in April. The text of Senator ALEXANDER’s amendment is included in S. 2611, the bill before us now. The Alexander amendment created a grant program to promote the integration of immigrants into American life by teaching civics, history and the English language.

That is the right approach for America to take. The Inhofe amendment takes the opposite approach, the wrong approach and has the effect of stigmatizing those who grew up where Spanish or Chinese or other great languages were spoken. It risks driving a wedge between communities. This is contrary to our values and what we should be doing. Do we really want to speak to the English with this important legislation?

I recognize that not every State is like my home State of Vermont, where the majority of residents speak English. Even in my State, however, there are many families who first came to America speaking only French. My parents-in-law were proud American citizens. They spoke French at home, and that was the first language of my wife. She grew up in a family from Italy speaking Italian. That was the first language of my mother until she went to school. We are proud of that.

In prior generations, we welcomed large waves of Irish, Italians, Eastern Europeans, and in recent years, immigrants and refugees from Africa, Asia and many other parts of the world. I wish my French was better. I wish my Latin was more polished. I wish I knew more than a few words and phrases in Chinese and Spanish.

On Monday night, the President spoke eloquently about the need to help newcomers assimilate and embrace our common identity. He spoke of civility and respect for others and for our society. America is united together by our shared ideals. These are the messages we must send to the American people, not the divisive message of the Inhofe amendment.

I look around this Senate Chamber and wonder aloud how far behind the elevated desk and chair of the President of the Senate are the words “E Pluribus Unum.” Every school child is taught that expression, “out of many, one” and what it means to our shared values in America. It points to an important value from our history and today. It points to our struggle to become a nation of many people, of many States, and of many faiths. What is wrong with the use of Latin, as we traditionally have and expressing our unity?

Latin expressions mark our official currency and the reverse of the Great Seal of the United States. The phrases “annuit coeptis” and “novus ordo seclorum” are part of the official symbols of the United States. These expressions are traced back to Virgil and a line from his instruction for farmers, which seeks the favor of God or Providence for our great endeavor to create a nation unlike any that had come before. The second Latin phrase is another allusion to Virgil and notes our seeking a new order.

Our incorporation of languages other than English does not stop there. Take our national flags. The flag of the Commonwealth of Virginia includes the phrase “Qui transtulit sustinet”; the flag of Idaho that includes the phrase “Esto perpetua”; the Kansas flag that includes the phrase “ad astra per aspera”; the Maine flag that includes “Dirigo”; the Massachusetts flag that includes the phrase “Ense petit placidam sub libertate quietem”; the Michigan flag includes not only “e pluribus unum” but also “Circumspice.” “Si quaeeris peninsulum amans” and “Tutelus”; the Missouri flag includes the phrase “Salus populi suprema lex esto”; the flag of New York includes the expression “Excelsior”; the Virginia flag includes the
phrase “Sic semper tyrannis”; the flag of West Virginia includes the phrase “Montani semper liberi”; and the Wisconsin flag also includes the phrase “e pluribus unum.”

I see the distinguished Presiding Officer, the Senator from Minnesota, and I thought I would include the flag from his own State. The flag of Minnesota includes a French language phrase befitting its history, “L’etoile du Nord.”

Do we in this Senate mean to demand that the States change their State flags? Does the State motto to eliminate Latin and French? Do we really mean to frown on their use? Or is it only Spanish, a language derived from Latin that we wish to denigrate? In that case, I remind the Senate that the State of Montana includes on its flag the phrase “oro y plata,” a Spanish phrase that serves as the State motto “gold and silver.”

I remember how silly we looked a couple of years ago when some in the House and some in this body that French fries be renamed “freedom fries.” Does this prohibition apply to Roman numerals, such as those included on the flag of Missouri? Does this body intend to embark down that road? I hope not, I pray not.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

I think those who have been listening to this debate understand what this discussion is all about. On one hand, we have the amendment of the Senator from Colorado, which is effectively a way to unite all of us, and on the other hand, we have the Inhofe amendment that is a way that is going to divide us. The language couldn’t be clearer. From the Salazar amendment:

English is the common and unifying language that helps provide unity for the people of the United States.

It is clear.

Preserving and enhancing the role of the English language. On the United States shall preserve and enhance the role of English as the common and unifying language of America.

On the other hand, we have the Inhofe amendment that has the statement:

Unless otherwise offered or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform, or provide services, or provide materials in any language other than English.

We have had a debate about how that applies or whether it doesn’t apply, and we have heard mixed defenses. I would be impressed if the Inhofe amendment had provided some resources to help those who are limited English speaking to be able to learn English. In the immigration legislation before the Senate, we have the requirement, except otherwise provided in this title, can be naturalized upon their application without understanding the English language, including the ability to read, write or speak the English language. That is what we have said. That is underlined. That is what we are committed to.

Now we have this amendment which is effectively a limiting one. In other words, the 9/11 Commission reports 1,000 people on their waiting list and a waiting time of 12 months to learn English. Is there anything in the Inhofe amendment that will help those people? No, there is not. And that is what we have. In Arizona there are 16,000 adults on the ESL list waiting to learn English. It is 2 to 3 years. Anything in the Inhofe amendment to help those people who want to learn English? No. There is nothing. In Phoenix, AZ, in the Rio Solado community, over 1,000 are waiting 18 months. The list goes on. In New York, 12,000 are waiting. All of these individuals are waiting to study English. But does their amendment do anything about that? No. We can’t help people to get to the point where English is their language.

What did the 9/11 Commission say. It said we lacked sufficient translators. It also had a provision in the 9/11 Commission report that we ought to give preference to other languages and that was in our national security interest. It is on page 415, developing a stronger language program with high standards. Do you think that is consistent with the Inhofe amendment? Of course, it is not consistent with the Inhofe amendment.

We have outlined the requirements in this legislation that have to be met. It is very clear that an understanding of the English language, the ability to read and write and to speak, that is the requirement, a restatement of the importance of developing and keeping consistent with a common and unifying language, which is English.

Do you understand those who say that English is a part of our national identity? Is that more a part of our national identity than our common commitment to liberty or fairness or decency or opportunity? Are we going to say we are the only ones who own those? Other countries don’t own those values; it just belongs to the United States? The Salazar amendment states effectively and well what we as a nation are committed to. It deserves to be supported. It defines English as the common and unifying language, guarantees that nothing shall diminish existing rights relative to services and materials in a language other than English. I urge my colleagues to reject the Inhofe amendment and support the Salazar amendment.

I yield 2 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mr. INHOFE. If the Senator from California could hold off for a minute, I think we have heard some very eloquent statements in opposition to an amendment that doesn’t exist. We could stand up and talk about the flags of the different States. This has nothing to do with that. Yes, I have made probably five speeches on the floor in Spanish. Every time we did, I had to go up and put it down in English for the RECORD. I don’t mind that. This has nothing to do with that. As far as I am concerned, being nothing in here encouraging people, if you look at section 767, this is encouraging people and helping people to learn the English language, a concept that 90 percent of Hispanics in America want. I just hope that they are listening realizes that these are excellent arguments, but they have nothing to do with this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I yield 3 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, Senator INHOFE and I have spoken about this amendment. As I said to him when he first decided to offer it, is there any question in anybody’s mind that in America we speak English. That is the language of the country. If you ask any person in this country, they will say English. If you ask any foreigner, they will say English. So the question is: Why do we have to say that English is the language that we speak in America? Are we that insecure about ourselves? Of course, it is. We are a nation of many who proudly keep their own culture. But, of course, English is our language.

If we have to say that it is your language, fine with me. Fine, I have no problem with it. In other words, if there are those who believe we have to now tell people what they already know, fine. But I want to do it in a way that unites us, not in a way that sets up some unintended consequences. Even though my friend from Oklahoma would not agree that there are unintended consequences, I think there are. For example, he said maybe five years ago we had 5,000 people in the basement because many of them have shown up since to learn English. That is what we are committed to. If we go over and did he dub in the videotapes? Because the videotapes will show the speech in Spanish. Is he breaking the rule then by not going up and hiring someone to dub in his words? What if there is an outbreak of a pandemic and it is moving quickly and there is no Federal law saying that you have to let people know in a series of different languages to protect our people and we didn’t have time?

What if there is a terrorist attack, God forbid, and we are not even here, and we need to spread the word and there is no law? The State flags from the basement because many of them have shown up since to learn English. That is what we are committed to. If we go over and did he dub in the videotapes? Because the videotapes will show the speech in Spanish. Is he breaking the rule then by not going up and hiring someone to dub in his words? What if there is an outbreak of a pandemic and it is moving quickly and there is no Federal law saying that you have to let people know in a series of different languages to protect our people and we didn’t have time?

I know my friend tried hard to get us all to unify, but I have to say, if that
was what he wanted to do, Senator SALAZAR has put together an excellent amendment. English is the common and unifying language of the United States that helps provide unity for the people of the United States. That is a beautiful statement. It says that English is our common language. But he doesn’t set up an issue in his amendment, which I have read very carefully, that can have the unintended consequence of coming back to bite us. His particular amendment unifies us. I thank him for that very much, coming from a State that has great diversity, the great State of California. I thank him for his hard work.

I yield the remainder of my time to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, again, it is a beautiful statement in opposition to an amendment that doesn’t exist. When the Senator from California talks about providing services and an emergency evacuation, I previously used the example of California because I suspected she might be coming down. That is, if there is an evacuation or some emergency, it can be done in Chinese so Chinese can all evacuate. That is not a problem.

Yet when I spoke on the floor in Spanish, the only reason I had to translate it is because that is one of the rules of the Senate. It has nothing to do with this bill. That would not be affected in any way.

I yield to the Senator from South Carolina 8 minutes.

Mr. GRAHAM. Mr. President, this is a debate which you wonder why you are having it the more we talk about it. How did we get here from where we started?

Let me suggest that what Senator INHOFE was trying to do here is important. Senator BINGAMAN, my good friend from New Mexico—I disagree with him that this is not that big a deal in terms of its importance to the bill or the debate. I think it is a very important part of the debate. I appreciate Senator INHOFE putting it on the floor of the Senate. We will talk about what I think the amendment does and does not do. Let’s talk about why it is important to the debate.

One thing we have to remember is that the underlying bill that came out of Hunter—McCain-Kennedy concept as changed by Hagel-Martinez, which I support and I think is a good solution for a real problem for America, has as one of the provisions that if you will come out of the shadows and you raise your hand and say: Here I am, I am undocumented, the bill allows you a path to citizenship with several requirements before you can ever apply for citizenship. One of those requirements is that you come out of the shadows, and for a 6-year period you can work here, and you have a $2,000 fine. I think that is fair. I don’t think that is being oppressive. That is making people pay for violating the law. It is a punishment that is consistent with a nonviolent offense.

Another condition is that you must learn English. Why did we make that a condition of coming out of the shadows? I think Senator KENNEDY and Senator BINGAMAN are both very important parts of the debate. I think it is a very important part of the debate. I appreciate Senator ALVAREZ from Tennessee. We put a requirement on the undocumented illegitimate immigrant to learn English but in a true American fashion. We have put some resources—a $500 grant—on the table which will help meet that obligation.

Here is the important point. If you fail to pass the English proficiency exam, you will be deported. Under the bill, if you fail to pass the English proficiency exam, you are probably the worst advocate in the country for the English language—you can be deported. That is not unfair. That is not too hard. That is just. So if you are willing to make everybody come forward and learn English, and if they fail you are going to deport them, why can we not say as a body that the Government of the United States shall preserve and enhance the role of English as the national language of the United States of America? If we are willing to deport people for not learning English, surely we should stand behind the concept as a nation that it is in our best interest for people to learn English.

Now, as to the unintended consequences, I have looked at this all day, and I am of the belief that this amendment, as written, preserves every legal opportunity avenue available for the Federal Government to interact with the people of the United States by issuing forms and documents in languages other than English. The purpose is to say publicly that English is our national language and that the Government shall preserve and enhance the role of English without having the legal consequence of rolling back laws that are already on the books that allow the Government to interact with its people, provide services in other languages. That is why the term “unless otherwise authorized or provided by law” is there. That means, simply put, if there is a law on the books that allows for services in other languages, having a different culture, is not a bad thing but a good thing. There is nothing in this amendment, in my opinion, that does away with any laws that already exist or will exist in the future for a language other than English.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN. Mr. President, the Inhofe language in this amendment...
contains two basic parts. In the first part, we can talk about changing a word or two, but we all basically agree on it. We basically agree that to be successful in America, you must speak English. I imagine there are people on the margins of our society who survive without a command of English, but that is where they will remain. It is rare that a person in America reaches a level of success without a mastery of English. As I go about the State of Illinois and the city of Chicago, where so many people do not speak English, it is well understood that learning English is the first step toward becoming an American and becoming successful in America. We don’t argue about that.

There are different ways to characterize English as our language. I like the characterization of my colleague, Senator Salazar, who characterizes English as “our common and unifying language.” It is that; it is our common and unifying language. Senator INHOFE uses the words “our national language.” But when you get down to it, there is no argument here about the basic premise. We agree on the basic premise. It is not as if it is just in America. We know that the language of aviation around the world is English. We know that the common universal language in most places on the Internet is English. That is a fact. So when it comes to the first part of Senator INHOFE’s amendment and that first part of Senator Salazar’s amendment, there is no dispute. If the debate ended there, we would have voted a long time ago. But that is not where the debate ends. Senator INHOFE added several sentences beyond that, which now take us into a legal thicket.

He argues that these are technical issues. They are not technical issues. They are issues about a person’s basic rights in America. They are issues that really emanate from landmark legislation, from the Civil Rights Act of 1964. This is a technicality; it is the Civil Rights Act of 1964. People literally fought and bled and died for the passage of civil rights legislation. Before we casually cast aside some part of the protection of that law, we should think about it long and hard.

I look at the language Senator INHOFE brings to the floor and, on its face, it appears to be easy to accept:

Unless otherwise authorized or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform, or provide services or provide materials in any language other than English.

You would think if it is not authorized by law, that means the Government cannot communicate or provide materials in any language other than English. How could that possibly come up? Well, it’s one illustration. I happened to be on the floor the day that Senator INHOFE of Oklahoma came to the floor in the midst of a debate on a judicial nominee, Miguel Estrada.

The date was November 12, 2003. Senator INHOFE came to the floor and gave his remarks to the Senate in Spanish. I was impressed. He is proficient in Spanish, and I respect his skills in that language, which I do not share. I didn’t understand it, but I respected him for being confident enough to come to the floor and express himself in the Spanish language. And then what happened was that the CONGRESSIONAL RECORD, which is printed every day from one side to the other, included Senator INHOFE’s speech in Spanish and his translation in English. They are both part of the RECORD.

But wait. Had Senator INHOFE’s amendment been in effect then—the one he wants us to vote for today—it would have been illegal for our government to print the CONGRESSIONAL RECORD with Senator INHOFE’s speech in Spanish. There is no statute which creates the right of any Member to come to the floor and speak in any language other than English. It is not even allowed by law, it cannot be done; it is illegal.

We have done some quick research but there is no statute we have found which says that when Members give speeches on the floor in foreign languages, the government shall print that speech in the foreign language in the CONGRESSIONAL RECORD. It isn’t there. There is no authorization in law for the printing of your remarks in Spanish. And you tell us in the language of your amendment that if not authorized by law, it cannot be done; it is illegal.

The point I am making is that the Senator started with a very positive and important premise, that English is our common and unifying language and that it should be preserved and enhanced by our Government. But the amendment then went too far. I think I know why. I believe what he is really aiming for is an Executive Order by President Clinton. Some on his side want to get rid of that. They don’t like this Executive Order because the Executive Order, which is now being followed by our Government as law, says that when it comes to basic Federal services, we will help people who have limited proficiency in English understand their rights and understand their responsibilities. I think that is reasonable. I believe perhaps the Senator from Oklahoma sees it the other way.

I see my leader is here on the floor. Mr. INHOFE. If the gentleman will yield, colloquy goes two ways. Let me just respond.

Mr. DURBIN. I am sorry, I say to the Senator from Oklahoma, but it is my time. I will conclude by saying that in this situation, I urge my colleagues to take a close look at these amendments. I hope they will consider that the Salazar amendment is really the more positive statement that protects the rights of all Americans. It respects our cultures, but it also makes it clear that we have one common and unifying language in this country, and that is English.

Mr. INHOFE. Mr. President, just one comment.
The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. First of all, I request that the minority leader not use leadership time since he now has 45 more minutes than we have, but that is just a request.

I would say this: We have a very short period of time to wind up. I would have to say that all of these ridiculous examples, such as the one the Senator from Illinois just came up with and the flag examples, have nothing to do with this amendment. It might be some other amendment that was referred to. This merely recognizes and declares English to be our national language. We have exceptions for anything that is in there in law or would refer to anything else that is accepted.

Mr. President, I would like to ask, how much time do we have remaining?

The PRESIDING OFFICER. There is 8 minutes 9 seconds remaining.

The leader is recognized.

Mr. REID. Mr. President, English is today, as I speak, the language of America. In spite of the fact that in Nevada, we have the beautiful Sierra Nevada mountains; in Las Vegas, the meadows. In one of our counties, White Pine County, 200 miles from Las Vegas, there is a place called Ely, a longtime mining community. I can remember going there to the Siav festival and being taken to the graveyard because in the days of early Kennebous, they had a section in that graveyard for Greeks, for Slavs, for Italians.

Today, as I speak, the language of America is English. Things have changed around the world. If a person wanted to join the Foreign Service, whether they were in England, the United States, or any country in South America, to be in the diplomatic corps of their country, they had to learn French. That was the language of diplomacy. Not anymore. It is English. The world in diplomatic relations around the world is English.

If I am a pilot and I am flying into National Airport, the air traffic controller speaks English. If I am a pilot and am flying into Lima, Peru, the air traffic controller speaks English. If I am a pilot flying into Moscow, the air traffic controller in Moscow speaks English. The language of flying is English. It applies to every country in the world where they have an airport or have air traffic controllers. English is the language, and my distinguished friend, the Senator from Oklahoma, knows that. He himself has flown around the world as a pilot.

I have affection for my friend from Oklahoma, but I have the greatest disagreement with him on this amendment. While the intent may not be there, I really believe this amendment is racist. I think it is directed basically to people who speak Spanish.

I have three sons who speak Spanish—fluent Spanish. One of them lived in Argentina for a couple of years, one lived in Ecuador, one lived in Spain. They speak fluent Spanish. I am very proud of these young men. They have acted as interpreters for me when I do radio programs that are in Spanish. I can remember once being so frustrated. I was a guest in a hotel. I had locked the key in the room, I was a lady pushing the cart, and I told her I would like to get back in my room. She did not know what I was saying. She could not converse with me in Spanish. So as luck would have it, here comes one of my sons, he spoke to her in Spanish, her whole demeanor changed. She became a different person because, through my son, we could communicate.

I have a young man who works for me, an American citizen, of course, Frederico. Frederico comes from Puerto Rico. We were talking today after this amendment had been laid down, and Frederico said it wasn’t long ago—and these were his words—that a cleaning lady, a janitor, was buying a home. He had been in Nevada for 10 years, and he was an American citizen for 10 years, doing her best to become part of society. She was very concerned, though. She was buying a home. Maybe by some standards the home wasn’t much, but to her, it was so much more. When she was so frightened. She had papers; she couldn’t understand them. She asked Frederico if he would help her, and he did that. She was able to buy the home.

He also told me that he became ill—very ill. He didn’t know what was wrong with him. He speaks Spanish, and I don’t think I would embarrass Frederico in saying that even today—he is well educated, a longtime citizen—he still speaks with an accent, a Hispanic accent, for want of a better description. He speaks good English with a slight accent. He was so sick. He didn’t know what was wrong with him, and he was afraid, when he went to the hospital, the emergency room, he was afraid he couldn’t communicate to the health care workers what was wrong with him, and he asked: Is there anybody here who speaks Spanish? And there was—one of the nurses—and he was able to communicate. He felt better and the emergency room personnel felt better because he could explain to them what was wrong.

I believe this amendment cuts the heart out of public health and public safety. I gave you the example of the doctors. We have all of the reasons that the Executive order was issued by the President. I think one reason is because of public health. It is so important for us, English speakers only, that when someone goes to get help and they are sick, that they are able to tell the health care personnel everything they need to know because it is important to me if, for example, it is a communicable disease.

So I believe we have to understand that this amendment would hurt public health badly. We need people to be able to take their children, when they are sick, to a facility, whether it is for mumps that is going around now or whether, Heaven forbid, it is avian flu at some later time.

I have served in the Congress of the United States with Jim Inhofe for many years, and we disagree on issues on occasion. But even though I believe this amendment is unfair, I don’t believe that Jim Inhofe is a racist. I don’t believe that at all. I just believe that this amendment has, with some people, that connotation—not that he is a racist but that the amendment is. So I want to make sure the record is clear. I would say that I have only the strongest, as I indicated early on, affection for Jim Inhofe, the senior Senator from Oklahoma.

Public safety. Mr. President, one of the earmarks I got a number of years ago in our appropriations bill was for the Las Vegas Metropolitan Police Department because they needed police officers who were fluent in Spanish. Why? Because we have a large influx of Spanish speakers coming to southern Nevada. We know that applied to people who emigrated from Germany. Itals need apply for jobs. We know that early on, affection for Jim Inhofe, the senior Senator from Oklahoma.

I have been there. A lot of people there who did not really speak English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents were not really good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents were not really good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents were not really good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents were not really good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents were not really good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents were not really good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.

I have said before, my wife is Jewish. Her father was born in Russia. He learned to speak English as a little boy. He spoke good English. His parents were not really good at speaking English. We have to do everything we can, whether people speak Chinese or whether they speak Spanish, to have them assimilated into our society. It is good for all of us. One of my concerns is that this will turn us back in the wrong direction.
in Spanish. I think that is the right way to go. I am not too sure this amendment wouldn’t stop that, or certainly slow it down.

Today, as I speak, the language of America is English. We want people to integrate English for you need tools to do this no matter what their native language. This amendment takes some of those tools away, and we need all of those tools. The fastest growing component of adult America today is English as a second language. This will slow that down. This amendment impacts English speakers, reporting of crimes, reporting of diseases, involvement in commerce. Next, is it going to impact upon the right to vote?

This amendment is divisive. We should be here to unify our country, not divide it by ethnicity or language differences. I rise in strong opposition to this amendment. Everyone who speaks with an accent knows that they need to learn English as fast as they can. Success in America means the ability to speak English. That is the way it is now. We don’t need this amendment. Speaking English is critical to the functioning of anyone in our country, in language of our Government, of our Nation, and as I have indicated before, air traffic controllers and diplomacy. This amendment, I believe, is unconstitutional. It raises serious concerns that American citizens could lose some of their rights.

This amendment directly conflicts with several provisions of Federal law. I believe, that guarantee the right of non-English-speaking students to learn English in our public schools. Does this amendment apply to a Presidential order, an Executive order? Does it apply to a city ordinance? A county ordinance? A State statute? What does it apply to? Federal law.

This amendment conflicts with provisions of Federal law that require language materials or assistance to be provided to voters in some areas of non-English languages, where there is evidence of educational discrimination resulting in high illiteracy and low registration turnout.

One of the problems we are having all over America is children dropping out of school. This amendment will not help that. Do we benefit by children dropping out of school? Of course not. Don’t we want people to vote? This is going to slow that down, people asking to register to vote.

There has been substantial evidence of harassment, intimidation, even violence against language minority voters. This provision makes a blatant violation of the 14th and 15th amendments and criminal provisions of the Voting Rights Act more likely to occur. Look at history. In Nevada, Chinese who couldn’t work to build the railroads, the transcontinental railroad, were treated like animals. There were laws passed, State laws, county ordinances, local ordinances promulgated against the Chinese. Those laws which were discriminatory did not help our country. They hurt our country. This amendment is not going to help our country, it is going to hurt our country.

By the very terms of this amendment, persons accused of crimes would be denied the ability, I believe, to receive information material in their native language to assist in their own defense. This clearly violates the due process clause of the fifth amendment of our Constitution.

I have talked about public health. This amendment will stand in the way of efforts made to facilitate the transmission of vital information necessary for the receipt of health care and public safety, including informed consent by non-English-speaking patients.

Doctors need this. Health care workers need this. This undermines our Nation’s public health and safety.

The foregoing things I have talked about are discriminatory. There are many areas, public service and public safety, that will be negatively impacted by this amendment, hurting all Americans in the process. I hope we all support civic integration, but this amendment, I hope, we do not do it. Why don’t we spend more money so we can educate more people who want to learn English? We are short of money. We have programs that are cut every day. That is the way it is in Nevada and around the country. That is where we should be directing our efforts. That brings people together. That is good for all of us. This does not bring people together. It makes it far more likely that we will end up with civic exclusion, including the denial of rights they should have to millions of U.S. citizens. I hope we reject this amendment. It is bad policy. It is un-American. It turns back the clock on the substantial gains that language minority citizens have made. There will be a resounding vote against this.

I have no problem going home today and telling the people of the State of Nevada: English is the language of America. We are not going to change that with this amendment. This is divisive; it is mean spirited. I think it is the wrong way to go.

Mr. President, I also want to express my appreciation to the manager of the bill and Senator INHOFE for giving me this extra time. We had not enough time over here, and it was gracious of him to allow us the extra time.

The PRESIDING OFFICER. Who yields time? The Senator from Colorado.

Mr. SALAZAR. Mr. President may I inquire as to how much time is left?

The PRESIDING OFFICER. There remains 12 minutes 45 seconds.

Mr. SALAZAR. How much is left on the other side?

The PRESIDING OFFICER. They have 8 minutes 7 seconds.

Mr. SALAZAR. Mr. President, I thank Senator REID and state his eloquence today, in terms of pointing out issues and concerns with respect to the Inhofe amendment, is very much appreciated.

I want to reiterate to my colleagues on the floor of the Senate today that I have asked my colleagues to vote against the amendment that will unify America, that will say that English is in fact the language of the land and that we will work to make sure English is the common language of America. I am also here to ask my colleagues to vote against the amendment Senator INHOFE because I am concerned about the unintended consequences that will flow from the proposal which Senator INHOFE has offered.

Let me say there can be no doubt at all that English is, in fact, the unifying language of America. In my own State of Colorado, as I look at some of the statistics on the number of people who are waiting in long lines to learn English, it is an incredibly long line. In the five-county Denver-Metro area, adult ESL programs working with the Department of Education have 5,000 people enrolled in those programs. They have a waiting list that is up to 2 months, because there are so many people in the Denver-Metro area who want to learn English.

This debate is not about the endangerment of English in America today. People in America understand that we conduct our business in English, that we conduct our business in the Senate today in English. The people of America understand that the workforce is learning the English language, and you need not look any further than the number of people who are enrolled in educational classes, trying to learn English to know they understand that very fact.

The concern with the amendment of Senator INHOFE is that you are going to have unintended consequences that will flow from the language of the amendment. Many of my colleagues have spoken about those unintended consequences. I want to focus on one particular aspect of that which I find to be very un-American and that is the fact that when you allow for discrimination to occur on the basis of national origin, on the basis of race, on the basis of gender, on the basis of language, that we are taking a step back in the progress that has been made. None of us wants to revisit what has happened in the history of America as we have moved forward as a nation to become a much more inclusive nation and a nation that celebrates the diversity that makes us a strong nation. None of us wants to revisit the latter half of the last century, when segregation was sanctioned under the law until 1954, and until the Civil Rights Act. None of us want to move back into those dark days of American history.

Yet the fact remains today we still have some of that discrimination that exists in our society. We have example
after example, personal examples we can cite about people who have been the victims of language discrimination. When we elevate one language, in the manner that Senator INHOFE has attempted to do in his amendment, above every other language, what will happen as an unintended consequence of his amendment is that you will usher in, in my judgment, a new era of language discrimination in America. I do not believe that ushering in a new era of language discrimination in America is something that will be helpful to us as we struggle in this 21st century to make sure that we maintain the strongest America, the strongest Nation possible in our world.

I ask people, those of you who are concerned about language discrimination in America, to vote against the amendment of Senator INHOFE on that point.

Let me conclude by saying that the amendment we have proposed today talks about the importance of English and the importance of unifying America through the English language. I believe we can work together. I believe that will require the immigrants to whom we are trying to address the immigration reform package to learn English. It is important that they learn English.

As I conclude my portion of this discussion, I think back to a mother and a father who in the 1940s were part of that greater generation fighting for the freedom of America—a father in World War II as a soldier, and a mother at the age of 20 speaking Spanish but coming to Washington to work in the Pentagon. They were victims of language discrimination. That generation was a victim of language discrimination. They would have had maybe the same opportunities I have had if they had been part of an America that fully understood they would be treated the same as those who speak languages other than English. But we do not want us to go back in the history of our country to a place where we are darkened again by that discrimination which existed in the 1940s or the 1950s.

My fear is that the amendment that my good friend from Oklahoma is offering today will open the door once again to language that we have had maybe the same opportunities I have had if they had been part of an America that fully understood they would be treated the same as those who speak languages other than English. But we do not want us to go back in the history of our country to a place where we are darkened again by that discrimination which existed in the 1940s or the 1950s.

Mr. ALEXANDER. I thank the Senator.

Mr. INHOFE. Mr. President, I yield 5 minutes to the Senator from Tennessee.

Mr. ALEXANDER. I thank the Senator. I thank the Presiding Officer.

Mr. President, I have been listening to the Democratic leader and colleagues struggle to come up with some reasoning, declaring or saying that English is our national language. They are having a very difficult time doing that. In fact, what they have been doing is arguing all sorts of unusual ways against an amendment that no one has proposed.

Let me say what Senator INHOFE’s amendment does. It declares English as the national language of the United States. It says whatever you want, speak whatever you want, but it is our national language. Specifically, the Inhofe amendment says it doesn’t prevent those receiving Government services in another language from doing so, whether authorized by law or deny Hispanic or other language regulation.

That is No. 1. The Salazar amendment, in contrast, does not say English is our national language. That is the first point.

The second thing is the Inhofe amendment would say that those who are illegally here, who might become legal under this law and get on a path to citizenship, would have to actually learn English rather than just enroll in school. Anyone can sign up and not learn English. The Salazar amendment doesn’t do that.

A third reason Senator INHOFE’s amendment is better, in my opinion, is it has some excellent language that would improve the citizenship test that new citizens take, including the key ideas, key documents, and key events of our history that we all agree on, and which we voted unanimously on a couple of years ago in another piece of legislation.

If you believe English is our national language and don’t want to interfere with any existing law or right, if you want new citizens who might be illegally here today to learn English as a part of that path to citizenship, and if you want a better American history test for new citizens, the Inhofe amendment is preferable.

I think a lot of this debate is about unity versus diversity. That is the struggle. It is a real struggle in this country.

Some on the other side of the aisle said this is unimportant. It might be to them, but it is not to me, nor is it to most Americans. I think it is at the center of this whole discussion about what we are doing with immigration. If the American people got any whiff that we thought having a national motto or a national anthem or a national pledge of allegiance or a national language was unimportant to us, I think they would throw us all out because most people think our diversity is a magnificent strength—we are a land of immigrants—but our greater strength is that we have turned that all into one country.

Iraq is diverse, and Bosnia is diverse. Are they better places for that? They haven’t been able to unite themselves into one country. How did we do that? Partly because of these unifying principles which we debate here with respect for one another, and through our national language.

No matter what they say, the opponents of this amendment are reluctant to say that English is our national language. If they were not, they would vote for the Inhofe amendment. First, it declares that if you have any rights now, you will still have them after the Inhofe amendment passes. It requires those who are here illegally but want to become citizens to learn English rather than just enroll in school. And it beefs up the U.S. history requirement in a way the Senate has previously approved.

The Democratic leader talked about how nice it would be for someone to call 9-1-1 and get a Spanish-speaking voice. It wouldn’t have been so nice to the 200,000 new citizens from Asia who came in last year because they do not speak Spanish. That is why we have a common language.

My goal is that every child in America be bilingual or even multilingual. But one of those must be to learn English, and every child should learn it as soon as possible. We have a common language because we are a land of immigrants. It is our national language.

A vote for the Inhofe amendment is a vote for our national language. It is a vote to leave everyone’s rights to receive services in other languages exactly where they are today. It is a vote to say that those who might be here illegally today but who seek to become citizens must learn English, and it is a vote to beef up our U.S. history tests which are required of those coming into this country and applying for citizenship.

For generations, we have helped people in this country learn English. We do it even further in the underlying bill with new $500 grants. It should be a simple statement to say that English is our national language, that we have a national motto, a national pledge, a national oath.

Then why struggle to come up with reasons not to make English our national language?

I yield the floor.

Mr. INHOFE. Mr. President, I think it is very obvious what is going on here. It has been 23 years since we have had a chance to vote on it. It probably will be the last time most Members—maybe all of the Members in this Chamber—will have a chance to vote to make English the national language.

Those who are offering this amendment today don’t want English to be the national language. They use the word “common,” the common language.

Those opposing this amendment want an entitlement to have the Federal Government provide for language, services, and materials. They can do it now. If you pass this bill, they can still do it. It is just not mandatory. It is not something that can’t be done; it doesn’t have to be done. They say that national origin equates to language. Their claims are consistently refuted by the Federal Government, the most recent one being in 2001, the Sandoval case.

The opponents of this don’t want people learning English but instead being served in foreign languages.
I think it is interesting that the word “racist” was used. I just wish the people here knew what has happened in the past and what I have been involved in in my State of Oklahoma. This is not the time to repeat what I said earlier. But the bottom line is I received the law given by the Hispanic community in the city of Tulsa. I started the first Hispanic community commission, and it is now a model for the Nation.

Mr. LEAHY. Mr. President, I thank the Senator from Colorado for his amendment. He is a Senator who continues to demonstrate his interest and ability in bringing us together rather than seeking to drive wedges between us. We can all agree that English should be the common language of the United States. His is a good suggestion for an alternative that I will support.

In many local communities and States, it may well be useful and helpful for the Government to reach out to language minorities. Greater participation and information are good things. We should not be mandating artificial and shortsighted restrictions on State and local government.

I have spoken in the course of this debate about my belief that immigrants should learn the English language. In my experience, most new Americans want to learn our language and make efforts to do so as quickly as possible. The bill that we are debating calls for immigrants to learn English as one of the several steps they must take before they can earn citizenship.

I certainly understand why the Mexican American Legal Defense and Education Fund, the Asian American Justice Center, the Lawyer’s Committee for Civil Rights, the National Council of La Raza, the National Association of Latino Elected and Appointed Officials Educational Fund and others have been concerned about the Inhofe amendment. But I strongly support the efforts of the Senator from Colorado to find a common ground to unite us rather than divide us and strongly support his alternative amendment.

Mr. MIKULSKI. Mr. President, I rise today in support of Senator SALAZAR’s amendment. English is one of the common bonds that bring Americans together. Just as a new immigrant must learn the monetary currency of a country, so must learn the social currency the English language. Immigrants need to learn English so they can be successful and contribute to their new country. That is why current law already states that anyone becoming a U.S. citizen is required to learn the English language.

Yet as immigrants are learning English, we need to be able to provide them with critical information in a language they can understand. What if there was an avian flu outbreak? What if there was another terrorist attack? Or a hurricane? Our first priority is to make sure they are safe in any language.

English can bring us together, it shouldn’t pull us apart. We must remember that our country was founded by immigrants from around the world. Their contributions to this Nation have made it great. My own great-grandparents were immigrants from Poland. Their desire to secure a better life for them and their children is the part of the American dream.

It is ridiculous. I don’t think people are going to buy into it. I agree with my friend from Tennessee. If they are looking, searching for things to object to, they are not going to find it in this bill.

The racist thing, it is interesting. If you will look at polling data in 2002, the Kaiser Family Foundation poll says 91 percent of foreign-born Latino immigrants agree that learning English is essential to succeed in the United States.

Just 2 months ago, the Zogby poll found that 84 percent of Americans, including—this is significant—77 percent of Hispanics, believe that English should be the national language. That is only 2 months ago—77 percent of the Hispanics.

I think it is an insult to the Spanish to say we are not going to have English as a national language because they are not capable of operating and succeeding in a country like this. They are dead wrong.

In terms of people criticizing us for wanting to make this the national language, 51 countries have done it. Isn’t that interesting? Fifty-one countries have made English their national language, except for us. Twenty-seven States out of fifty States already have it on a State basis.

When you go to your townhall meetings, it is not even a close call. This comes up every time I go to a townhall meeting in Oklahoma. Why don’t we have English as a national language? Now I hope they understand why, if they have seen this debate today, and the dialogue that is going on, pulling out of the air very eloquent statements that might be referring to some bill someone may want to introduce someday, or some amendment. It is certainly not this amendment.

I look at this and wonder, and I shake my head. What have you been reading? It has nothing to do with this. Our amendment does not prohibit using these services. It prohibits using any other Government services in languages other than English. It doesn’t prohibit it at all; it allows it. It doesn’t prescribe and say you have to do it. There is no prohibition of giving Medicare services or any other Government services in a language other than English. This amendment simply says there is no right unless Congress has explicitly provided that right.

If you read page 2 of the bill, it very specifically says “unless otherwise authorized by law.” That is the exception. In every one of these examples that have come up—from the Senator from California, the Senator from New Mexico, the Senator from Illinois, they fall into that category.

This is going to answer the question for a lot of people out there saying: Why can’t we have this as our national language?

It has been 23 years since we had our last vote. You can’t have it both ways. I wouldn’t want anyone here to be under the misconception that they could vote for my amendment and then turn around and vote for the Salazar amendment because that would completely negate our amendment.

This is your last chance to vote to make English the national language. When we listen to the National Anthem: O, say can you see, by the dawn’s early light . . . bombs bursting in air . . . gave proof through the night that the flag was still there . . . the land of the free, and the home of the brave—

That is not an official anthem, that is not a common anthem, that is the national anthem.

This is our last chance to have English as the national language for America.

Mr. KENNEDY. Mr. President, I will take 1 minute.

Patriotism doesn’t belong to a political party or any individual. The Salazar language is very clear. English is the common unifying language of the United States. It helps provide unity for the American people, preserving and enhancing the role of the English language. It couldn’t be clearer.

Let us not distort and misrepresent the amendment that is before us.

I ask unanimous consent that it be in order to ask for the yeas and nays on the Salazar amendment and the Inhofe amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. I ask for the yeas and nays on the Inhofe amendment.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DURBIN. I announce that the yeas and nays on the Inhofe amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the amendment. The clerk will call the roll.

The bill clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ).

Further, if present and voting the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ) would have voted “yea.”

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 34, as follows:

[Roll call Vote No. 131 Leg.]

YEAS—63

Alexander Bennett Brownback Burns

Allen Bond Burr
S4770

CONGRESSIONAL RECORD — SENATE

May 18, 2006

The clerk will call the roll.

SANTORUM). Are there any other Senators from Colorado, Mr. SALAZAR.

Dorgan

Dodd

DeWine

Collins

Clinton

Carper

Brownback

Boxer

Bingaman

Biden

Bayh

Baucus

Akaka

Mr. Dorgan. Senator from Kentucky (Mr. Bunning) is necessarily absent.

Mr. Bunning. Mr. President, I call Senator from West Virginia (Mr. Rockefeller) is necessarily absent.

Mr. Rockefeller. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, we intend to support that as soon as we get a chance to see the Cornyn amendment. May we see that before the Senator makes that request? Is that possible?

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, while they are looking at that amendment, the plans will be that in about 30 to 45 minutes we will have 2 rollcall votes, and then we will keep amendments going, and we will be voting tonight. We will do at least several other amendments.

Mr. SPECTER. Mr. President, I think we are now prepared to go to Senator Cornyn and then Senator Chafee, with 30 minutes equally divided.

The PRESIDING OFFICER. The Senator from New York (Mrs. Clinton) is recognized.

AMENDMENT NO. 4072

Mrs. CLINTON. Mr. President, I call up amendment No. 4072, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mrs. Clinton], for herself, Mr. Obama, Mrs. Boxer, Mr. Salazar, and Mr. Schumer, proposes an amendment numbered 4072.

Mrs. CLINTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To establish a grant program to provide financial assistance to States and local governments for the costs of providing health care and educational services to noncitizens, and to provide supplemental funding for the State Criminal Alien Assistance Program)

On page 259, line 23, strike “section 286(c)” and insert “section 286(a).”

On page 261, strike line 13, and insert the following:

“(x) STATE IMPACT ASSISTANCE ACCOUNT.—

“(i) ESTABLISHMENT.—There is established within the State Impact Aid Account a State Criminal Alien Assistance Program Account.

“(ii) DEPOSITS.—Notwithstanding any other provision under this Act, there shall be deposited in the State Criminal Alien Assistance Program Account 25 percent of all amounts deposited in the State Impact Aid Account, which shall be available to the Attorney General to disburse in accordance with section 241(i).

“(y) STATE CRIMINAL ALIEN ASSISTANCE PROGRAM ACCOUNT; STATE HEALTH AND EDUCATION ASSISTANCE ACCOUNT.—

“(ii) ESTABLISHMENT.—There is established within the State Impact Aid Account a State Criminal Alien Assistance Program Account.

“(ii) DEPOSITS.—Notwithstanding any other provision under this Act, there shall be deposited in the State Impact Aid Account 75 percent of all amounts deposited in the State Impact Aid Account.

“(z) STATE IMPACT ASSISTANCE GRANT PROGRAM.—

“(A) ESTABLISHMENT.—Not later than January 1 of each year beginning after the date of enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary of Homeland Security, in cooperation with the Secretary of Health and Human Services (referred to in this paragraph as the ‘Secretary’), shall establish a State Criminal Alien Assistance Grant Program, under which the Secretary shall award grants to States for use in accordance with subparagraph (D).

“(B) AVAILABLE FUNDS.—For each fiscal year beginning after the date of enactment of this subsection, the Secretary shall use ½ of the amounts deposited into the State Health and Education Assistance Account under paragraph 2(8)(i) during the preceding year.

“(C) ALLOCATION.—The Secretary shall allocate grants under this paragraph as follows:

“(i) NONCITIZEN POPULATION.—

“(II) MINIMUM AMOUNT.—Notwithstanding the formula under subdivision (I), no State shall receive less than $5,000,000 under this clause.

“(ii) HIGH GROWTH RATES.—Twenty percent shall be allocated on a pro-rata basis among the 20 States with the largest growth rate in noncitizen population, as determined by the Secretary, according to the ratio that, based on the most recent year for which data of the Bureau of the Census exists—

“(a) the noncitizen population of the State; bears to

“(b) the noncitizen population of all States.

“(III) NOT VOTING—3

Bunning Martinez Rockefeller
“(I) the growth rate in the noncitizen population of the State during the most recent 3-year period for which data is available; bears to
(ii) the combined growth rate in noncitizen population of the 20 States during the 3-year period described in clause (I).
(iii) FUNDING FOR LOCAL ENTITIES.—The Secretary shall be the recipient of the State Impact Assistance Grants to provide units of local governments with not less than 70 percent of the grant funds not later than March 1 of each year. The State receives grant funding. States shall distribute funds to units of local government based on demonstrated need.
“(D) USE OF FUNDS.—A State shall use a grant received under this paragraph to return funds to State and local governments, organizations, and entities for the costs of providing health services and educational services to noncitizens.
“(E) ADMINISTRATION.—A unit of local government, organization, or entity may provide services described in subparagraph (D) directly or pursuant to contracts with the State or another entity, including—
“(i) a unit of local government;
“(ii) a public health provider, such as a hospital, community health center, or other appropriate entity;
“(iii) a local educational agency; and
“(iv) a charitable organization.
“(F) REFUSAL.—(i) In GENERAL.—A State may elect to refuse funds under this paragraph.
“(ii) ACTION BY SECRETARY.—On receipt of notice of a State’s election under clause (i), the Secretary shall deposit the amount of the grant that would have been provided to the State into the State Impact Assistance Account.
“(G) REPORTS.—
“(I) IN GENERAL.—Not later than March 1 of each year, each State that received a grant under this paragraph during the preceding fiscal year shall submit to the Secretary a report in such manner and containing such information as the Secretary may require, in accordance with clause (ii).
“(ii) CONTENTS.—A report under clause (i) shall include a description of—
“(I) the services provided in the State using the grant;
“(II) the amount of grant funds used to provide each service and the total amount available during the applicable fiscal year from all sources to provide each service; and
“(III) the method by which the services provided using the grant addressed the needs of communities with significant and growing noncitizen populations in the State.
“(H) COLLABORATION.—In promulgating regulations and issuing guidelines to carry out this paragraph, the Secretary shall collaborate with representatives of State and local governments.
“(I) STATE APPROPRIATIONS.—Funds received by a State under this paragraph shall be subject to distribution by the legislature of the State, in accordance with the terms and conditions described in this paragraph.
“(J) EXEMPTION.—Notwithstanding any other provision of law, section 6503(a) of title 31, United States Code, shall not apply to funds transferred to States under this paragraph.
“(K) DEFINITION OF STATE.—In this paragraph, the term ‘State’ means each of—
“(i) the several States of the United States;
“(ii) the District of Columbia;
“(iii) the Commonwealth of Puerto Rico;
“(iv) the Virgin Islands;
“(v) American Samoa; and
“(vi) the Commonwealth of the Northern Mariana Islands.”.

On page 371, line 4, strike “(B) 10 percent” and insert the following:
“(B) 10 percent of such funds shall be deposited in the State Impact Aid Account in the Treasury in accordance with section 286(x);
“(C) 5 percent

On page 371, line 8, strike “(C) 10 percent” and insert “(C) 15 percent.”

Mrs. CLINTON. Mr. President, I ask unanimous consent that Senators SALAZAR and SCHUMER be added, along with Senators OBAMA and BOXER, as co-sponsors of this amendment.

The PRESIDENT proclaims. Without objection, it is so ordered.

Mrs. CLINTON. Mr. President, as has become abundantly clear from the debate on the floor, immigration is a Federal responsibility. As this debate has shown, for too long the Federal Government has neglected its duty.

My amendment addresses one of the clearest examples of this neglect because our failed national immigration policy has left our State and local governments to bear the brunt of the cost of illegal immigration. Our schools, our hospitals, our other State and local services are being strained.

Obviously, this is a problem in many communities and not just in border communities. Throughout our country and in my State, there are counties and municipalities that are covering the costs of dealing with education, health care, and law enforcement without adequate or any Federal reimbursement.

My amendment addresses one of the clearest examples of this neglect because our failed national immigration policy has left our State and local governments to bear the brunt of the cost of illegal immigration. Our schools, our hospitals, our other State and local services are being strained.

This still leaves about $1 billion for processing and administrative costs at Federal Government levels. What happens with this money? Pursuant to my amendment, 25 percent goes to the State Criminal Alien Assistance Program, known as SCAAP, to pay for the cost of detention which our State and local governments incur.

Each year, the SCAAP program is underfunded. A 2005 GAO study documents that State and local governments get only 25 percent of their costs reimbursed through this program.

My amendment would direct certain funds to States and other entities to make Federal immigration costs known as SCAAP, to pay for the cost of detention which our State and local governments incur.

Money is allocated to our States in accordance with a formula based on the size and recent growth of the State’s noncitizen population. The State must then pass the funds on to local governments and other entities that need the money for reimbursement of those expenses. This money is not appropriated any new funds or impose any new fees on immigrants.

Money is allocated to our States in accordance with a funding formula based on the size and recent growth of the State’s noncitizen population. The State must then pass the funds on to local governments and other entities that need the money for reimbursement of those expenses. This money is not appropriated any new funds or impose any new fees on immigrants.

To which fees are we referring? Well, there is a $500 fee for immigrants who participate in the guest worker program. Right now, that fee is not marked for any purpose, and the funds simply go to the Treasury. My amendment directs this $500 fee into the State Impact Assistance Account. Additionally, the underlying bill imposes a $2,000 fee for the undocumented immigrants to participate in the path to legalization program spelled out in title VI of the bill, plus imposes an additional fee that is left to the Department of Homeland Security to determine later. Eighty percent of these funds go to border security; 20 percent go to processing and administrative costs related to the undocumented.

My amendment does not touch the 80 percent going to border security. Instead, it takes half of the processing fees—in other words, 10 percent of the $2,000 fee and the yet-to-be, unspecified fine by DHS—and redirects that money away from Federal Government administration to this fund which will help State and local governments get reimbursed.

To which fees are we referring? Well, there is a $500 fee for immigrants who participate in the guest worker program. Right now, that fee is not marked for any purpose, and the funds simply go to the Treasury. My amendment directs this $500 fee into the State Impact Assistance Account. Additionally, the underlying bill imposes a $2,000 fee for the undocumented immigrants to participate in the path to legalization program spelled out in title VI of the bill, plus imposes an additional fee that is left to the Department of Homeland Security to determine later. Eighty percent of these funds go to border security; 20 percent go to processing and administrative costs related to the undocumented.

My amendment does not touch the 80 percent going to border security. Instead, it takes half of the processing fees—in other words, 10 percent of the $2,000 fee and the yet-to-be, unspecified fine by DHS—and redirects that money away from Federal Government administration to this fund which will help State and local governments get reimbursed.

This still leaves about $1 billion for processing and administrative costs at Federal Government levels. What happens with this money? Pursuant to my amendment, 25 percent goes to the State Criminal Alien Assistance Program, known as SCAAP, to pay for the cost of detention which our State and local governments incur.

Each year, the SCAAP program is underfunded. A 2005 GAO study documents that State and local governments get only 25 percent of their costs reimbursed through this program. A report indicates that my State of New York received even less—21 percent of their costs were compensated in 2002 and 24 percent in 2003. The remaining 75 percent of the money collected from the fees deposited in the State Impact Assistance Account is used by the Federal Government to bear the cost of providing health and education services to noncitizens. This money is allocated among the States in accordance with a funding formula based on the size and recent growth of the States’ noncitizen population.

Now, to ensure that the funds actually get to the counties and cities and don’t sit in State governments, my amendment also requires that at least 70 percent of these funds be passed on to localities within 180 days of the States receiving the money. States can retain the remaining 30 percent to help offset their own costs related to immigration.

I think this amendment helps us fix a problem I care a lot about as I travel around my State. Our local communities have a tradition in New York of being very welcoming. We are a State that is not only built on immigrants but very proud of that, as the Statue of Liberty in New York Harbor so eloquently says. But the costs of immigration have steadily increased, and the Federal Government’s neglect has
strained local and State government budgets. I think if we pass any kind of immigration reform and we don’t take into account the strains on the budget on State and local governments, we will not have done our job.

This amendment helps State and local governments not only recoup some of their expenditures, but it underlines a message to communities that they are working together, they welcome people who work hard and who make a contribution and will be on the path to earned legalization.

I hope this amendment will be supported. It has support from the National Immigration Law Center, the National League of Cities, the National Association of Counties, and the National Conference of State Legislatures.

I think our laws can be both fair and strict. I think we can have laws which don’t shut the doors of America to people who want to make a contribution and at the same time don’t really provide disincentives to communities to be part of that welcoming tradition. Balancing all of the interests in this debate is not easy, but I appreciate the efforts that are being made on this floor. I think this debate is worthwhile. I hope we will also send a message to local communities that we are here to help them because they don’t set immigration policy, they don’t enforce immigration laws, but they are often left holding the bag for the costs that flow because we haven’t done our job.

So I hope that this amendment finds favor in this body and we send a message to our local executives and legislatures around our country that we are going to send other help to them. It is an important part of a comprehensive immigration solution.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I congratulate the Senator from New York on her amendment. One of the greatest scams the Federal Government has ever imposed upon taxpayers across the country is unfunded mandates, and education costs and health care costs imposed by the Federal Government on local taxpayers without reimbursement is not only unfair, it is a scandal.

The estimated annual costs to hospitals and other emergency providers of health care nationwide for undocumented immigrants or illegal aliens, which is mandated but not reimbursed by the Federal Emergency Medical Treatment and Labor Act, is $1.45 billion a year. According to congressional, and enforced immigration laws, the annual cost to just 24 border counties in my State and in New Mexico and California exceeds $200 million a year. Texans spend more than $4 billion annually on education for the children of illegal immigrants and their U.S.-born siblings. Nineteen percent of Texas schoolchildren in K through 12 are children of undocumented immigrants. Texas health care expenditures for illegal aliens are more than $520 million a year.

All States—New York, Texas, and all 48 other States—bear the burden of unfunded mandates providing for the health and education of undocumented immigrants because we have failed to enforce our immigration laws. Again, the Federal Government is twice culpable. No. 1, it imposes these costs on local taxpayers and local government; and No. 2, the very reason why they are incurred is because of the Federal Government’s failure to secure our borders and enforce our immigration laws.

The Federal Government requires, under the IMTALA act, that hospitals treat every person, irrespective of their immigration status. But then Congress fails to secure the border and our local hospitals have become overrun. So while the Government requires hospitals to treat everyone, the Government then fails in its own responsibility to secure the borders or reimburse health care providers for carrying out their federally mandated obligations.

The bill before the Senate fails to reimburse States for the costly burden placed upon their health care system and education system by undocumented immigrants. For example, recent reports are that 70 percent of the children born at Parkland Hospital in Dallas, TX, are born to undocumented immigrants.

What would my amendment do? The current Senate bill does not reimburse State and local governments for health care and education costs related to the millions of undocumented immigrants. While the underlying bill creates a State impact assistance account for future temporary workers, it is an unfunded account. The Cornyn amendment would impose a surcharge on any illegal alien who applies for legal status under this bill.

AMENDMENT NO. 4038

Mr. President, at this time I ask unanimous consent to place the Cornyn amendment aside and to call up amendment No. 4038 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows: The Senator from Texas (Mr. CORNYN) proposes an amendment numbered 4038. Mr. CORNYN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require aliens seeking adjustment of status under section 245B of the Immigration and Nationality Act or Deferred Mandatory Departure status under section 245C of such Act to pay a supplemental application fee, which shall be used to reimburse State and local governments for health and educational services for noncitizens)

On page 264, strike lines 13 through 20.
to be distributed under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resident population of all States, based on the most recent data available from the Bureau of the Census.

(ii) HIGH GROWTH RATES.—Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as determined by the Secretary of Health and Human Services, so that each such State receives an amount equal to the product of

\[ \frac{\text{State's noncitizen resident population}}{\text{Total noncitizen resident population of all States}} \times 20 \%
\]

under this paragraph.

(iii) AVERAGE GROWTH RATE.—The growth rate in the noncitizen resident population of the State during the most recent 3-year period for which data is available from the Bureau of the Census, divided by

\[ \frac{\text{State's noncitizen resident population}}{\text{Total noncitizen resident population of all States}} \times 100
\]

under this paragraph shall be subject to appropriation under this paragraph.

(iv) MINIMUM DISTRIBUTION.—Except as provided in clause (iii), a State shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

(v) EXCEPTION.—If an eligible unit of local government is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

(f) FUNDING FOR LOCAL GOVERNMENT.—

(i) DISTRIBUTION CRITERIA.—Grant funds received by States under this paragraph shall be distributed to units of local government based on need and function.

(ii) MINIMUM DISTRIBUTION.—Except as provided in clause (i), a State shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

(iii) EXCEPTION.—If an eligible unit of local government is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (i).

(g) USE OF FUNDS.—States and units of local government shall use grant funds received under this paragraph to provide health services, educational services, and related services to noncitizens within their jurisdiction.

(h) REPORT.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.

(i) CERTIFICATION.—In order to receive a payment under this section, the State shall provide the Secretary of Health and Human Services with a certification that the State’s proposed uses of the fund are consistent with (D).

(j) ANNUAL REPORT.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.

Mr. CORNYN. The problem is this, Mr. President: Under the current bill, about 80 percent of the $2,000 paid by undocumented immigrants at the time they applied for their green card or legal permanent residency, 80 percent of that $2,000 fee goes for border security. Ten percent of it goes to administering the process provided for under the underlying bill and another 10 percent for other uncovered administrative costs.

In other words, there is an 80–20 split of the $2,000 that are paid by undocumented immigrants at the time they regularize their status. In contrast with the Clinton amendment—the Senator from New York provides essentially an 80, 10, and 10 split, with 80 percent of the money going for border security, 10 percent going to a State impact fund for the administrative costs. In other words, rather than an 80–20 distribution, the Senator from New York sets aside 10 percent for the State impact fund, and then retains the 90 percent to pay for the administrative costs.

The difference between the Cornyn amendment and the Clinton amendment is this: The Clinton amendment takes money away from the program that traditionally finances the improved reform bill in order to pay the State and local taxpayers under the impact fund. I don’t think most of our colleagues are familiar with this, but actually the $2,000 that is paid under this bill is not paid at the time that illegal aliens get a H-2C card and remain in the country for approximately 6 years, pending their application for a green card or legal permanent residency. It is only at the time they apply for their green card or legal permanent residency that money is due. So for 6 years, they are able to stay in the country with an H-2C card without paying a penny, while continuing to impose financial obligations on local taxpayers for health and educational costs that are unreimbursed. Under my proposal, they will get money right away as the money and costs are being incurred and not some 6 to 8 years later.

In other words, Senator CORNYN and others who support the Cornyn amendment are right about who should pay the $2,000 fee, which is a surcharge paid, $750, at the very time that a person enters in the system, not waiting 6 years when they apply for their green card. By paying $750 a person and an additional $100 for each family member, this will generate about $7.5 billion in this State Impact Fund as opposed to approximately $1.3 to $1.5 billion under the Clinton amendment.

Just by way of comparison, in 1986 when the U.S. Congress granted amnesty to 3 million undocumented immigrants, it set aside $4 billion in taxpayer money to help reimburse the States for these uncompensated costs. That is about the amount that would go for 2 million undocumented immigrants to regularize their status. Yet under this bill, if passed, the bill would regularize four times the number of people. Yet under the Clinton amendment it would only provide $6.8 billion to the States for state impact funds. Under my proposal, which would impose a $750 surcharge at the very time an individual registers for the H-2C program, it would generate $7.5 billion, obviously necessary to pay for the unfunded mandates I mentioned a moment ago.

I reserve the remainder of my time and yield the floor.
These localities are not to blame for the Federal Government’s failure to adequately secure our borders or to enforce the immigration laws against employers who do not play by the rules. But more and more, they had to devote already scarce resources to deal with the rising numbers of undocumented immigrants.

They have done the right thing. They have provided medical care, education, other public services. But it has all come at the expense of local taxpayers who are already stretched too thin, and that is not fair.

As we work toward comprehensive reform, we in the Federal Government owe them our help. We need to make sure the flood of new immigrants does not drown out our local governments.

We need to make sure that while we embrace our new immigrants we don’t give the local communities the cold shoulder.

This is not just a problem on the southern border. In Suffolk County on Long Island there are about 40,000 undocumented immigrants. Total estimates for all of Long Island are about 100,000. In Suffolk, the annual cost of meeting the needs of undocumented immigrants has been estimated to be $24 million. Of course, property taxes are too high. The counties are strapped for cash. This amendment will offer some much needed relief to localities such as Suffolk County that have had to go it alone and pay the costs and taxpayers and local hospital districts waiting around this country, the workers, the individuals who are going to receive a benefit under this bill, should be expected, and I think they would expect, to pay some modest cost to help defray the expenses of the States and localities for the entire time they are paying taxes in the United States. No one is talking about being punitive or being unnecessarily harsh. But fair is fair. To suggest that it is not fair for them to pay a fee really stands in stark contrast to the fact that these same individuals, when they apply for legal permanent residency or a green card, will be required to pay $2,000.

The truth is, most individuals who come across at least the southern border in violation of our immigration laws, those who have been human smugglers and pay on average about $1,500 each for each trip they make into the United States. Certainly, these individuals, in return, for the benefits that are conferred upon them under this bill, should be expected, and I think they would expect, to pay some modest cost to help defray the expenses to local and State taxpayers. In fact, these individuals are being given an opportunity for a second chance, and I believe there should be some cost associated with that. In fact, we have been told during the course of this debate that this underlying bill creates a situation where people earn their right to legal status.

As we found out, during the first 6 years of their presence in the United States, after this bill passes, if it passes in its current status, they will be able to live and work and travel and have all the benefits of living in this country and have paid nothing—zero—nada. Only after about 6 years, when they apply for a green card or legal permanent residency, will they then be required to pay the $2,000.

I think it is only just that these individuals be required to pay a surcharge of $750, a reasonable amount for reimbursement to State and local governments and taxpayers for the costs of health care and education that have been imposed by their very presence on both taxpayers and taxpayers for the costs of deporting anybody. This is not about making it unusually difficult for them to comply. This is a matter of simple justice.

Indeed, if the only source of that money is the funds that are paid some 6 years after they began to transition into legal permanent residency, under the Clinton amendment—and I applaud the goals of the Senator, to pay some money into a State impact fund, but it will amount to about $1.3 billion as opposed to $7.5 billion under my amendment. We will not see any of that money for at least 6 years and, in fact, it is taking money away from the program necessary to administer this underlying legislation which is necessary to make it a success.

Certainly, we are not going to build failure into this model by underfunding the very administrative process by which it is supposed to work.

I suggest it is the Federal Government’s responsibility to step up. This is not taking any tax dollars in order to fund this unfunded mandate. This is coming from the beneficiaries of the program that is supposed to be enacted by this underlying bill. In fact, it made sense to appropriate from tax dollars $4 billion for the 3 million individuals who were given amnesty in 1986, it makes sense to me, today, that it is going to cost quite a bit more than the $1.3 billion under the amendment of Senator Clinton. But it also makes sense that burden should not be borne again by the taxpayers of the United States but, rather, should be borne by the individuals who are going to receive a benefit under this bill.

I suggest it is the Federal Government’s responsibility to step up. This is not taking any tax dollars in order to fund this unfunded mandate. This is coming from the beneficiaries of the program that is supposed to be enacted by this underlying bill. In fact, it made sense to appropriate from tax dollars $4 billion for the 3 million individuals who were given amnesty in 1986, it makes sense to me, today, that it is going to cost quite a bit more than the $1.3 billion under the amendment of Senator Clinton. But it also makes sense that burden should not be borne again by the taxpayers of the United States but, rather, should be borne by the individuals who are going to receive a benefit under this bill.

I ask my colleagues to support this amendment. I think it only makes sense, it is only fair and just to the local taxpayers around this country, and it is a matter of funding what is currently an unfunded Federal mandate on those tax credits.

The PRESIDING OFFICER. All time has expired.

The question is on the Clinton amendment.

Mr. SPECTER. Mr. President, for the information of our colleagues, we are now trying to work through another amendment following the votes, the Chambliss amendment. We are checking to see how much time would be needed. But it appears that we have a good likelihood of passing with that amendment and a later vote tonight, after enough time for debate.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. We are not prepared. We thought we were moving ahead with the Kyl amendment. Now we are on the Chambliss amendment. It involves a number of individuals here.
who feel very strongly. We are just trying to find out the amount of time they would need. Hopefully, we are going to be having two votes now, and by the end of those votes we will have more information.

The PRESIDING OFFICER. The question is on agreeing to the Clinton amendment.

Mr. SPECTER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from Florida (Mr. MARTINEZ), and the Senator from Wyoming (Mr. THOMAS).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) and the Senator from Florida (Mr. MARTINEZ) would have voted ‘‘nay.’’

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. DORGAN) and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 43, nays 32, as follows:

[Votepage 4038]

YEAS—43

<table>
<thead>
<tr>
<th>Alexander</th>
<th>Crapo</th>
<th>Murray</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allen</td>
<td>DeMint</td>
<td>Nelson (FL)</td>
</tr>
<tr>
<td>Bingaman</td>
<td>Domenici</td>
<td>Pryor</td>
</tr>
<tr>
<td>Boucha</td>
<td>Dorgan</td>
<td>Noll (NE)</td>
</tr>
<tr>
<td>Boozeman</td>
<td>Feingold</td>
<td>Reed</td>
</tr>
<tr>
<td>Cantwell</td>
<td>Forrest</td>
<td>Robert</td>
</tr>
<tr>
<td>Carper</td>
<td>Kyl</td>
<td>Schumer</td>
</tr>
<tr>
<td>Chafee</td>
<td>Landrieu</td>
<td>Sanders</td>
</tr>
<tr>
<td>Clinton</td>
<td>Lautenberg</td>
<td>Specter</td>
</tr>
<tr>
<td>Conrad</td>
<td>Leahy</td>
<td>Stabenow</td>
</tr>
<tr>
<td>Craig</td>
<td>Lieberman</td>
<td>Stabenow</td>
</tr>
<tr>
<td>Durbin</td>
<td>Lincoln</td>
<td>Wyden</td>
</tr>
<tr>
<td>Feingold</td>
<td>Menendez</td>
<td></td>
</tr>
</tbody>
</table>

NAYS—52

<table>
<thead>
<tr>
<th>Akaka</th>
<th>Bayh</th>
<th>Bennett</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baucus</td>
<td>Brownback</td>
<td>Burns</td>
</tr>
<tr>
<td>Bingaman</td>
<td>Bond</td>
<td>Burns</td>
</tr>
<tr>
<td>Boozeman</td>
<td>Brownback</td>
<td>Burns</td>
</tr>
<tr>
<td>Boucha</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Boozeman</td>
<td>Burnet</td>
<td>Burns</td>
</tr>
<tr>
<td>Chafee</td>
<td>Byrd</td>
<td>Burns</td>
</tr>
<tr>
<td>Clinton</td>
<td>Bryant</td>
<td>Burns</td>
</tr>
<tr>
<td>Coburn</td>
<td>Byrd</td>
<td>Burns</td>
</tr>
<tr>
<td>Cooley</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Collins</td>
<td>Bumback</td>
<td>Burns</td>
</tr>
<tr>
<td>ConRad</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Coram</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Cornyn</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Durbin</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Feingold</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Graham</td>
<td>Bright</td>
<td>Burns</td>
</tr>
<tr>
<td>Gregg</td>
<td>Bright</td>
<td>Burns</td>
</tr>
</tbody>
</table>

The amendment (No. 4072) was rejected.

Mr. BURNS. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.
who want to still stand around and talk—that is Nelson and Ensign and Landrieu or anybody else—let them do it.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Reserving the right to object, may I just ask that at any time tonight or any time in the morning, I be allowed to offer the two amendments that have been pending all week. We can vote whenever the leadership wants us like, in the morning or later tonight.

Mr. SPECTER. Mr. President, we will take a look at the amendments. I will give the Senator from Louisiana an answer as soon as we can take a look at the amendment.

The PRESIDING OFFICER. The Senator from Nevada, Mr. Ensign.

Mr. ENSIGN. Mr. President, I suggest we modify the unanimous consent to accommodate the request from those who want to vote. I would be first recognized for 10 minutes right after the vote on Kyl to lay down my amendment, debate for 10 minutes, followed by Senator Nelson, followed by Senator Ensign.

Ms. LANDRIEU. I want to modify the unanimous consent request that after Senator Nelson from Florida, Senator Landrieu would then be allowed to offer two amendments.

Mr. SPECTER. Mr. President, I am advised that we have not seen the amendments of the Senator from Louisiana. I repeat, we are going to be in here next week. We will take a look at them. We will accommodate her tomorrow, if we can, but we have to see the amendments before we can say anything.

The PRESIDING OFFICER. The Democratic leader.

Mr. SPECTER. Senator Reid has the floor.

Ms. LANDRIEU. Reserving the right to object, I most certainly don’t mind showing the amendments. They have been on file for a week. But I would like it to be in order this week for 10 minutes, either tonight or tomorrow morning.

Mr. SPECTER. Mr. President, we would be glad to respond after we see the amendments. We may need more time. We haven’t seen the amendments. That has been a problem continuously, not having seen the amendments. I repeat to the Senator from Louisiana, if we can see the amendments, we can answer the question.

Ms. LANDRIEU. I appreciate that. I cannot agree to any unanimous consent until we get this.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair would say to the Senator from Louisiana, there is no request pending. The unanimous consent request was agreed to without objection previously. The Senator from Pennsylvania has subsequently spoken about the amendments of the Senator from Georgia, Mr. Chambliss. There is no request pending.

Ms. LANDRIEU. Then I will wait to object to that next request.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. Mr. President, may we start on the Kyl amendment?

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 396

Mr. CORNYN. Mr. President, on behalf of Senator Kyl and myself, I call up amendment 3969.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN], for Mr. Kyl, for himself and Mr. Cornyn, proposes an amendment numbered 3969.

The amendment is as follows:

(Purpose: To prohibit H-2C nonimmigrants from adjusting to lawful permanent resident status)

Beginning on page 206, strike line 8 and all that follow, and insert the following:

"(n) Notwithstanding any other provision of this Act, an alien having nonimmigrant status described in section 101(a)(15)(H)(i)(c) is ineligible for and may not apply for adjustment of status under this section on the basis of such status.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, the bill that is on the floor purports to create two different paths to American citizenship for those, first of all, who are in the country living outside of the law in an undocumented status, and secondly, for those who are not yet present in the country but who want to come here at some future date to work.

We have given the somewhat misleading name of "guest worker" to the so-called future flow, the people who are not yet present in the country.

As I pointed out earlier, a guest is someone who comes into your home or wherever it may be temporarily and then leaves. The title "guest worker" to describe the future flow of people coming into the country to work is simply inaccurate. It does not describe what this bill does.

First let me talk about the future flow. Under the Bingaman amendment, the Government would authorize the entry of 200,000 people a year who would qualify for an H-2C visa. These individuals, guest workers, would work here up to 6 years, live, travel, enjoy the benefits of this country short of citizenship, after which they then apply for a green card, whereby they become a legal permanent resident. They then get on the path to American citizenship 5 years later. Rather than a temporary worker, these are individuals who, under this bill, will become first legal permanent residents and then American citizens. Because of that, the title of "guest worker" is a misnomer. It is a mischaracterization of what this bill does. I submit it is simply misleading.

It is important for us to debate this issue honestly. This is a complicated bill, over 600 pages long. Obviously, the Congress has not debated the issue of comprehensive immigration reform for the past 20 years, since the last time Congress dealt with this in a comprehensive fashion. But at the very least, we ought to require of each of ourselves that we have an honest debate, that we call things what they are and we don’t call things what they are not.

The Kyl amendment, one I am proud to cosponsor, simply makes the point that a guest worker ought to be temporary. It doesn’t sound like a profound amendment but, in fact, it will change the fundamental structure of this underlying bill to make the representation that everyone, from the President of the United States down to those of us here, believes that a guest worker program is part of a comprehensive solution to the crisis that now confronts our country with our broken immigration system, that, in fact, we are talking about a temporary worker program.

That is important for many reasons. Let me mention two beyond the initial reason that we ought to be honest and accurate and clear about what it is we are doing.

First, in terms of the future flow of individuals who come into the country to work, it is important that we have a temporary worker program in order to protect American workers. In fact, if we have an influx of 200,000, or whatever the number is, permanent residents and then new citizens in this country, without regard to the fact that our economy is in a boom time when we need those workers or in a bust when we find that the new workers will end up competing with Americans and potentially displacing them from their jobs, it is important that we keep faith with the American
people and we protect American workers by being able to dial up or dial down the provisions of this guest worker program in order to meet the demands of our economy.

Secondly, Mexico, as an example, which has a very high unemployment rate, has seen the mass exodus of some of its best and brightest and hardest working people permanently out of their country to live forever, the rest of their natural lives in the United States.

Now, I believe we ought to have a legal system of immigration and that ought to serve our national interests. But the reason why there is so much pressure put on our borders and on illegal immigration is because when a country’s young workers leave permanently and never return, how in the world can that country, whatever the country is—Mexico, United States, Guatemala, Honduras, or Brazil—how can any country ever hope to create economic activity and jobs for its citizens if its young, hard-working people leave permanently and never come back?

Well, a temporary worker program would allow people to come to the United States to work for a while and then return to their country of origin with the savings and skills they have acquired working in the United States. That would benefit not only the employers who need the workforce, but it would also be satisfied with sufficient numbers of Americans—but it would also satisfy the demands and the needs of their country of origin by providing circular migration—in other words, people coming for a while to work and then going home with the savings and skills they have acquired in the United States. What are they going to do with the money they have earned? Some may decide to buy a home or start a small business in their country of origin.

I think that has at least the promise of developing economic opportunity and jobs in those countries that are now a net exporter of people to the United States. It would give them a realistic opportunity of creating jobs for those who, in fact, would prefer not to sever their ties with their home and their family and their culture. It would reinstate this circular migration that would benefit both the United States and the countries of origin.

I remember some time ago—maybe 2 years ago—I was visiting Guatemala and had lunch with our American Ambassador to Guatemala at his residence. We were talking about American trade policy, and specifically the Central American Free Trade Agreement, which had not yet come to Congress for a ratification vote. What a gentleman from Guatemala told me at that time very concisely—I will never forget what he said they want to export goods and services, not people, to their home country. He said it perfectly. We ought to provide countries such as Guatemala, Mexico, and others an opportunity to do business with the United States in a way that will help them develop their economy, so their people can stay home and enjoy their culture and their country and their family and not feel compelled to leave permanently to come to the United States and never return home.

Some have said that, well, what attracts countries such as Mexico to massive illegal immigration of its own citizens is the fact that this last year they sent back $180 billion in remittances; that is, savings that workers from Mexico earned in the United States while working in the shadows, in the cash economy, in the black market, so to speak. They sent that money home to their family to help support them. Recently, though, a high official in the Mexican Government pointed out to me that it is not a benefit to countries such as Mexico to see their people leave just to send maybe 10 percent or 15 percent of their money or savings. If you look at the economic activity that occurs in the United States, they would much rather have that economic activity occur in their country of origin.

Let’s say, for example, that $20 billion represents the savings rate. That means that the $20 billion that is sent from Mexican workers back to Mexico, there is $180 billion in economic activity occurring in the United States that could occur in Mexico if people wanted to stay there. Obviously, that kind of economic activity feeds on itself and provides greater opportunity for those people and benefits to those people living at home. It takes a lot of pressure of illegal immigration off our borders.

Ultimately, I believe in comprehensive immigration reform because I believe that whatever we do has to be built upon a foundation of security. In 2006, national security is about border security. We simply must know who is coming into our country and the reasons they are coming here. We cannot assume that people are coming here only for benign reasons. We all understand that when people have no hope and no opportunity where they live, they are going to do whatever it takes. Any one of us, assuming we had the courage, would take whatever risk was necessary, including a risk to life itself, to provide for our loved ones. So at a very human level, we understand that people have no hope and no opportunity where they live, they are going to do whatever it takes.

I believe that whatever we do has to be built upon a foundation of security. In 2006, national security is about border security. We simply must know who is coming into our country and the reasons they are coming here. We cannot assume that people are coming here only for benign reasons. We all understand that when people have no hope and no opportunity where they live, they are going to do whatever it takes. Any one of us, assuming we had the courage, would take whatever risk was necessary, including a risk to life itself, to provide for our loved ones. So at a very human level, we understand that people have no hope and no opportunity where they live, they are going to do whatever it takes.
that we have no option but to legalize those who are here in place and those who want to come in the future. There are those who say there is no such thing as a temporary worker because America has not shown itself capable of enforcing its own immigration laws and making sure that people whose visas expire, in fact, leave the country at the expiration of their legal authorization.

I believe that we can, assuming we have the political will, enforce our laws. We can create humane and realistic laws that provide for our Nation’s needs and that serve our Nation’s interests and which, incidentally, serve the interests of countries who have young women who want to come for a while and then return to their country of origin.

I don’t believe that we are incapable of enforcing our laws. I don’t believe we have to throw our hands up and say the only way we can deal with this is to create an opportunity for people to basically stay in place and become legal permanent residents and citizens. It is not that I think that we should not provide that opportunity. In fact, I believe that we should do it for those who meet our Nation’s capacity to deal with this and who create a realistic cap based on our ability to assimilate those people and for them to become Americans.

So I think we can create a category of temporary workers, people who have no desire to stay, and then those who do want to come to our country, assuming that we can establish realistic caps that date that population and they could become American citizens, and that we ought to create a reasonable opportunity to do that.

But our interests ought to be, first and foremost, what is in America’s best interest? What is in America’s best interest?

I guess I wish that America could open its arms and accept the flood of humanity that might want to come from every corner of the world, from every oppressed and downtrodden part of the planet. But the fact is that we cannot. We cannot do that without jeopardizing what America is. That is not to say that we would discontinue being the melting pot, where people who want to come legally from any part of the world and become Americans can do so. We ought to provide an opportunity for them to do so, to the extent that it serves America’s interests and serves America’s needs.

Mr. President, I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. Is this from the time in opposition?

Mr. MCCAIN. Yes.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I rise in strong opposition to the amendment. It undermines both the intention and the spirit of this bill. The amendment would not only treat future workers as less than American workers, it would treat them as less than all other immigrant workers.

The reality is—I will get right to it—after many long months and weeks and hours of negotiation, we had a proposal that passed through the Judiciary Committee and then a compromise, thanks to Senators HAGEL and MARTINEZ, basically establishing the framework for a compromise in the Senate. If this amendment should pass, that whole compromise is destroyed because it is fundamentally a part of that compromise that was that those who have been here for 2 to 5 years, after having gone back to a port of embarkation, would then be eligible for temporary work under the temporary worker program, and then over time be eligible for green card status and citizenship. This amendment would destroy that.

I understand very well why the Senator from Texas and the Senator from Alabama on the floor of the Senate, and others, have been opposed to this bill from the beginning. I understand that and I appreciate it and I respect it. But let’s have no doubt about what this amendment would do. It would destroy the entire carefully crafted compromise.

Now, the Senator from Texas has an interesting theory about people who would want to come here and only work and then go back, or maybe not go back, but not have any opportunity for citizenship. We have examples today in Europe of the situation that the Senator from Texas and my colleague from Arizona would want to create, which is having people living in your country with no hope to ever be a part of that society.

I would put it to my colleagues of what happened not long ago in France. There were thousands of young Muslims who were burning cars everywhere and rioting and demonstrating because they had no opportunity. Why is it that all over Europe you find these enclaves of foreign workers who are totally and completely separate from society? Because they are in the situation which this amendment would dictate: No hope, no job, no opportunity, no future, but we will let you work.

This is not what we do with highly skilled workers. That is not what we do under the principles, and especially for those who have already been here between 2 and 5 years under this very carefully crafted compromise, the Hagel-Martinez compromise, as it is called, embodied. I understand why the Senator from Texas or the Senator from Arizona would oppose that. They oppose the very principles upon which the legislation was based and the Hagel-Martinez compromise was shaped.

The Senator from Alabama is on this floor constantly against virtually every aspect of the bill. I understand that.

But I want my colleagues who are voting to understand that if this amendment would pass, this whole compromise and this whole legislation collapses because it removes a fundamental principle of this legislation, which is that we give people an opportunity to earn citizenship, which is exactly what the 2- to 5-year part of the compromise under the Hagel-Martinez proposal represents. If you are here between 2 to 5 years, you have to go to a port of embarkation, you come back, you take part in a temporary worker program, and then over time you obtain eligibility for a green card, and ultimately citizenship. That is what America has been all about: people coming here and having the opportunity to obtain citizenship.

So we have a fundamental disagreement. I hope all of my colleagues will recognize that passage of this amendment would cause the entire bill to collapse, which we have been working on not just for a week, but for a decade and good votes, and I think the way the Senate should function. So I hope that everybody understands exactly the implication of this amendment, and I understand and respect the view that is held by my colleagues who support this amendment. But I want all of my colleagues to understand the impact of passage of this amendment. It undermines not only the principles of the bill but, in my view, the principles of what this Nation should be and is all about today.

We have talked many times about people who live in the shadows, the people who don’t have the benefits of our citizenship, or an opportunity to become citizens, these 11 million people who are living in the shadows. If this amendment would pass, I can assure you we would keep several million in the shadows because they would never come out of the shadows because they would never want to return to their country and go back to be on a path to citizenship. So from a principled viewpoint and, frankly, from a practical viewpoint, this amendment is unacceptable.

I know the hour is late. I know a lot of my colleagues are not paying as much attention, perhaps, as they would at other hours of the day, but I hope we make it very clear that the passage of this amendment would cause the entire legislation to implode, and we would then be obviously in a position where we could probably not pass meaningful legislation that would entail comprehensive immigration reform, which is what the President has espoused and what I believe the overwhelming majority of the Senate has proved in numerous votes this week that we support.

Mr. President, I reserve the remainder of my time.

Mr. CORNYN. Mr. President, I yield 10 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.
Mr. SESSIONS. Mr. President, I thank the Senator from Texas for his hard work on this amendment and his thoughtfulness.

The Senator from Arizona just tells us that he and a few masters of the universe have worked out a compromise to which I wasn’t invited—I am not sure many other Senators were invited—and they have decided that this bill as written is the compromise and if any of it is changed, well, the compromise collapses and the bill fails. So, if I am not correct: Senator from Arizona correctly, he thinks we should all just give it up and quit offering amendments. But I don’t think that is the way the Senate does business. I know the Senator from Arizona is a smart man and so are some of the others who have worked on this bill and worked out all of these compromises with Senator KENNEDY.

When they were working out these compromises did they consult the American people? I submit they haven’t consulted the American people. The American people, when they find out what all is in this bill, they are going to be more upset with it than they are today.

More is wrong with this piece of legislation than can be explained. I took an hour or so Friday, not condemning the philosophy of comprehensive immigration reform, not condemning steps to make the legal system work properly in a way that we can be proud of; I talked about why the legislation is insufficient and flawed and is unable to do what the sponsors say.

Senator MCCAIN doesn’t back down from a challenge, and I don’t intend to back down either. I am not going to just hide under my desk because he and Senator KENNEDY have worked out a compromise. They think we shouldn’t even make an argument against it, I suppose.

Let me just show you what the bill says. In big print up here: “Title IV—Nonimmigrant And Immigrant Visa Reform.” All this rubric at the top in big letters: “subtitle A, Temporary Guest Workers.” It says, “Temporary Guest Workers” in big print—not even the normal print. It says “temporary” and “guest” I don’t know how many times in this provision.

The President told me—and he has said publicly a half dozen times—he believes that if he can get the American people, they will think it must be temporary, right? Well, it is not so. Let’s take the people who will be allowed to enter our country in the future under this bill. This bill says that they can come in as a guest worker, temporary, and they can come for 3 years and then they can extend and stay another 3 years.

So that means it is temporary, right? Wrong. All you have to do is read the language of the bill, and as Senator Kyl and Senator CORNYN have pointed out, and you discover that the first day the temporary workers are here they can apply for a green card through their employer. And what is a green card? It makes them a legal, permanent resident. Permanent resident, not a temporary guest workers.

Five years after that green card is issued, they are entitled to apply for permanent residence. If any of them that enter under this so-called temporary provision. That is the truth, but it is not the message we are being told.

Earlier today I thought about offering an amendment or a resolution to bar anyone in the Senate from using the phrase “temporary guest worker” when they talk about this bill because it is so bogus. It is an utter and total misrepresentation. As I just explained, and as the Senators have just explained, everyone coming in under this provision for the indefinite future get to become permanent workers. I challenge anybody to dispute that. They have the ability to become a legal permanent resident, and after that, they get to go and become a citizen. So it is not just a temporary program, it is permanent immigration. That is the deal.

Now, President Bush, as much as he believes in immigration and has been supportive of it, he has made clear that this will not work. He supports the principles behind the Kyl-Cornyn amendment. We need to listen to him. This is a big amendment. And I do not think the Members of this body should feel in any way that they are not able to reject this bill by legislation because some group says they have reached a compromise and nobody can fix it, when they have made mistakes, and there are a lot of mistakes. This is just one of them. But I don’t believe this Senate has ever seen—since I have been here, a piece of legislation of such monumental consequence have a misrepresentation as great as the allegation that the bill deals with temporary guest workers when it absolutely creates an automatic path to citizenship.

So why don’t we do it right? Why don’t we do what Senator Kyl and what Senator CORNYN say and fix it, make it actually do what we the bill claims it does, make it temporary? A green card is valuable. It entitles people to great benefits of the United States alone, even short of citizenship. So we have benefits that accrue like the earned income tax credit, like the food stamps and benefits of that kind as you come to be on the path of legal permanent residence. A legal permanent resident can bring their family into the country, their wife, and their children. When they become a citizen, which they will have a right to do in 5 years, they will then be able to bring in their parents who would probably soon, as a matter of demographics, be eligible and in need of substantial health care as they age, which the American taxpayers would provide them in one form or another in bills that are written with an understanding of what their desires are, know what their aspirations are, know what their relationships are to their country and their family and their culture?
I think there are some people who assume if America was to offer individuals from other countries an opportunity to come and qualify and work legally in the United States for a period of time, that they would not want to do it. There is a supposed attachment, an interesting connection that is not easily severed. The reason why people do sever it is necessity, when they don’t have any opportunities where they live so they are willing to do whatever it takes, including leave their country and come to work in the United States. But what they would like—there is at least some segment of these individuals who like to come and work for awhile and then go back home and then maybe come back again and work for another couple of years and maintain their ties to their culture and their family.

I would like to point out to our colleagues there is one piece of what I would call objective evidence out there that is relevant to the question of assimilation or any supposition or a guess as to what people’s motivations might be. Not too long ago the Pew Hispanic Center took a survey of 5,000 applicants for the Matricula Consular card in the United States. That is basically an identification card that citizens of Mexico can apply for and receive while living in the United States. Five thousand Mexican citizens applied for the Matricula Consular card and they were asked this question: If you were provided an opportunity to work legally in a temporary worker program in the United States, would you participate, even though it meant that at the end of that temporary period you would be required to go home? Seventy-one percent of the applicants said yes. Yes, I think we are fooling ourselves by thinking that the only folks who want to come to the United States want to stay here permanently and that there are not at least a large segment of people who would participate in a temporary worker program. I hope we don’t get too confused about this. There are ways for people to come, immigrate to the United States, and to become legal permanent residents. Mexican citizens apply for there is caps on those. There are waiting lists on those. Those are signed with America’s best interests involved because, frankly, we can’t assimilate everybody who wants to come, as I mentioned a moment ago.

I agree with the Senator from Arizona, Senator McCain. We don’t want unassimilated populations living permanently in the United States who do not speak our language and do not share our values. That has been the great promise and the realization of America that, no matter who you are, how you pronounce your last name, what country you come from, if you believe in our values, you believe in freedom, and you believe in opportunity, that you, too, can become an American if that is what you want. But I believe we ought to provide a reasonable opportunity, based on our national interest, for people who want to immigrate here on a temporary basis, and we also ought to provide another category for people who don’t want to sever their ties, don’t want to come here permanently, they want a job and then they want to go home.

That is why the temporary worker provision would provide. It is, in fact, I believe, an honest representation of what the program is, as opposed to the problem that the Senator from Alabama noted and that I noted earlier. This bill, as written, is neither a guest worker program or temporary in any sense. This amendment, I believe, would correct that.

I yield the floor and retain the remainder of my time.

Mr. KENNEDY. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator has 22 minutes and 42 seconds. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I will take 11 minutes and yield the remaining time to the Senator from Nebraska.

The hour is late. We have had a very good debate over the course of the day. Now we are faced with an amendment that, even though it comes at the late hours of the day, is very basic and fundamental to the success of the whole piece of legislation. Just as important or even more important is the spirit of this particular amendment and what it is meant to achieve and what it is not meant to achieve.

Under the current immigration law, if you have a H-1B, that means you have job and you are highly skilled. The concept behind the H-1B is you are highly skilled, and because you are able to have a particular niche, the result of your service means you are going to have 8 or 10 or 15 more Americans working. So there is a limited number of the H-1Bs.

Under our current law, if your employer wants to petition for you, you can get a green card. If you are highly skilled, your employer can get the green card for you. But if you apply, the Cornyn amendment, if you are low skilled, you are out the window. One set of treatment for the very highly educated, highly skilled, who are working on the computers. But if you are cleaning a building in America, if you are working in menial jobs, if you are looking after children, if you have one of the lower paid jobs, you are out of luck.

Really a nice, fair standard. The Statue of Liberty is turned around to-night, listening to the argument of our friends over here. It is turned around. One standard for high skilled, and, boy, if you are doing the more menial work, which we know other Americans are not prepared to do, you are out. You are finished. You are gone. No chance at all. Work for 6 years and then maybe they will go out and leave the country or maybe they will stay. If they stay, they will be part of a subclass, the legal system. They are going to get too confused about what the program is, as opposed to the history and the tradition of this country about welcoming the poor and the unwashed in our country, you are changing that with the Cornyn amendment. Make no mistake about it. You are changing that.

I was around during the Bracero period, and the exploitation of humanity was extraordinary. We are returning to it if we accept the Cornyn amendment. We are saying: Because you do menial jobs, your life, your worth, your being is not worth as much as somebody who is a highly skilled person. That is a wonderful statement for the United States of America to make.

Are we saying: Because you do menial jobs, are you going to be exploited? If they are women, they are going to be abused. You are going to
I wish the junior Senator from Alabama had said that the White House, the President, was supporting the Kyl-Cornyn amendment.

That is not my understanding. As a matter of fact, the senior Senator from Arizona, Mr. MCCAIN, I thank the Chair.

Mr. HAGEL, Mr. President, I would like to address the Kyl-Cornyn amendment tonight. I obviously have listened to so much debate over the last hour. There is one thing I want to address before I get into what I think are the real critical issues here, not just on this amendment that we are going to be voting on but the bill, the purpose, underlying focus.

I have the junior Senator from Alabama say that the White House, the President, was supporting the Kyl-Cornyn amendment.

That is not my understanding. As a matter of fact, the junior Senator from Arizona, Mr. MCCAIN, and the senior Senator from Florida, Mr. MARTINEZ, and I just got off the phone with the Chief of Staff of the President of the United States. He did not tell us what I just heard on the floor of the Senate as to what position he has as a part of this administration. There seems to be some confusion. I would welcome the junior Senator from Alabama or maybe the junior Senator from Texas clarifying that if they have some tangible evidence that the President is supporting this amendment. As I said, we just got off the phone with the Chief of Staff of the President of the United States.

I would even add further that maybe some of my colleagues didn't hear the President of the United States's support of this amendment. There seems to be some confusion. I would welcome the junior Senator from Alabama or Texas clarifying that if they have some tangible evidence that the President is supporting this amendment. As I said, we just got off the phone with the Chief of Staff of the President of the United States.

I would even add further that maybe some of my colleagues didn't hear the President of the United States's support of this amendment. I think most of America did. As a matter of fact, there seems to be some significant approval developing out there because the President of the United States articulated very clearly essentially the underlying bill that we are debating and have been debating this week on the Senate floor. Much of that is about the Hagel-Martinez bill. The President laid that out rather clearly.

I don't know if the President of the United States is withdrawing his position that he clearly articulated to the people of the United States, and why he felt the underlying bill was important. He laid out his principles. Those principles are the principles in this underlying bill.

I welcome clarification of where the President is on this. Maybe the White House would like to clarify that as well.

Let us talk about what this is about. This is a difficult issue. It is complicated. It is wide and deep. Yes. Why is that? Because we have essentially deferred this issue for years. We have provided residence for the American people. We have not had the courage to deal with it because it is political, because it is emotional, because it cuts across every sector and every line of our society. It is about national security. It is about autonomy, and our future. It is about our society, our schools, our hospitals. That is difficult. It is difficult.

But what the President of the United States did Monday night—and a number of my colleagues have been doing for a long time—was to try to find a resolution.

Mr. President, the American people have a very low opinion of you, of me, of the Congress, of the President—not because I say it. Read the latest polls. I do not put very much emphasis on polls. But, I do not have any heart in the fact that his job approval numbers are higher than ours.

Why are the American people upset with us? Because we are not doing our job. We talk about: Let's run to the base. Let's run to the political, lowest common denominator. That is not governing. That is cheap, transparent politics. That is why we are all down in the twenties and the low thirties. The people of this country have lost confidence in us, and no wonder. We run from every tough issue. We can get into the subsections on page 17 and 500 and 433 of the underlying bill—all imperfect, absolutely, because resolution on this issue will be imperfect, absolutely. But we are trying to come to some resolution. We are trying to find some answer for the American people.

What do we do with the 12 million illegal aliens in this country? Do the American people really believe we are going to ship them all out of here, go to the bus depot? Is that really what they are going to do? Come on. That is not the answer.

Why are we so afraid of this issue? This issue brings out the best in our society and the worst in our society. Why are we afraid to deal with this issue? Do we really want, as Senator MCCAIN, Senator KENNEDY, and others have said, a second-class system in this country? Do we really want that? Do we know what the consequences of that are? I am not sure we do.

This Kyl-Cornyn amendment destroys every fiber of what many of us have worked for, including the President of the United States. We try to find some resolution, some common denominator center point, some consensus of purpose about how we do this. Sure, we can pick apart temporary worker visas. Does that really mean that somebody is going to stay longer or not going to stay longer? All imperfect, absolutely, but do you know what we were doing with a resolution like this, as imperfect as it is? What are we saying to the world? This can deal with the tough issue. We, in fact, can put people onto a path of responsible behavior, of legal status, just like America has always stood for—hard work, opportunity, do your best, 12 million illegal immigrants, not here illegally. Of course, they are. Yes.

This nonsense about amnesty. I said on the floor yesterday—Mr. President, you might remember 1978 when Jimmy Carter gave amnesty, unconditional, no questions asked. Come on back over the border, all of you who ran away from this country and didn't want to serve your country, didn't want to go to Vietnam, didn't want to be a part of our country. Jimmy Carter said in 1978, questions asked, unconditional, come back. That is amnesty.

What are we talking about is not amnesty. The President said it very clearly Monday night.

We are talking about pathways to legality, responsible processes, opportunities for people to come out of the shadows.

Who are we helping with the current situation that we have today? How are we winning? Peopleliving in the shadows, to be honest, we don't have the complete involvement in communities that we have always had from our immigrants. There is a national security element to this. There is a law enforcement element to it. There is certainly an economic element to it.

Are we really winning? No, we are losing. We are losing everywhere.

What we are trying to do is find a way to move this forward so that we can actually get to resolve it. I will be the first to say, since I had a little bit to do with helping construct this and I have been at this for many years—I have not been at this as long as Senator KENNEDY has, but I tell you, not many Senators on the floor of this Senate have been at this as long as I have. It doesn't mean that I am right. But I do know a little something about it. I have been down on the border. I have talked to immigrants and have spent possibly thousands of hours on this issue, as has my staff. It doesn't mean I am right or that I am smarter. But I know a little something about it. I know a little about this country. I know how this country was built, and I know about the people of this country.

The people of this country want us to resolve the problem. It isn't perfect. That is what we have been doing this week. We have been adding amendments. Some amendments I did not think for some I didn't like. But adding to this, crafting something for the future, for our history, for our children, and for our society, that is what it is about.
If this amendment passes tonight, if this goes down, the entire compromise will go down. What will stand in its place? What will stand in its place? I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arizona, on the proponent's side, 2 minutes 28 seconds; on the opposition side, 7 minutes 22 seconds.

The Senator from Texas.

Mr. CORNYN. Mr. President, I yield myself 5 minutes and then the remaining part of my time to the Senator from Arizona, Mr. KYL.

Mr. President, I respect enormously the contributions that the Senator from Nebraska and the senior Senator from Arizona, Mr. MCCAIN, and Senator KENNEDY have made to try to address this problem that has festered for so long and which cries out for resolution.

I daresay, as chairman of the Immigration, Border Security, and Citizenship Subcommittee of the Senate Judiciary Committee, that I have been trying to make a contribution to that solution, as has Senator KYL. We have held numerous hearings of our subcommittee. He chairs the Terrorism Subcommittee of the Senate Judiciary Committee. Inasmuch as our border presents national security concerns, we have held many committee hearings to try to, first, find out what the problem is, and, second, try to couple with practical solutions, to appreciate the contributions of each and every Senator who has tried to find a solution to this problem.

I recognize this is what some have called a "fragile compromise"—that if we tinkering with it, all of a sudden it implodes and nothing is going to happen.

I personally don't believe that because we have seen a number of amendments offered and accepted during the course of this debate, believe that nothing has been done but make this bill stronger and better. I am absolutely committed to seeing passage of a bill out of the Senate and then going to the conference with the members of the House of Representatives. They have some very different views from all of us.

If our colleagues from Nebraska and Massachusetts and the senior Senator from Arizona think that they have found leverage on any one of these points among those of us here, just wait until they get to the conference with Members of the House. Then they will see that we really have a shared vision for comprehensive immigration reform, and we are going to have to work through all of that.

But I don't believe it is appropriate to say that this amendment which merely tries to bring accuracy and truth in advertising to this temporary worker program, that it, in fact, be made permanent. But perhaps that a guest worker program does not mean permanent residence and American citizenship.

I differ with the interpretation of some of our colleagues who say we are trying to replace the normal immigration path with legal permanent residency and citizenship with a temporary worker program. That is not true at all. What the bill does say is that there is an additional way that people who want to come here and don't want to stay here can come for a while and work in a legal system and then go home, and those who want to become Americans we provide you with a temporary but who can in effect automatically get citizenship. When you have a green card, it is permanent. When you have a temporary visa, that gives you a legal right to be in the country. It is temporary. In fact, there are workers who are performing a valuable function in our economy today.

I yield the remainder of our time to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, this is a simple amendment, a very important amendment. It is not inconsequential. It changes in a major way a specific feature of the underlying bill. I believe that feature is wrong and needs to be changed. The underlying bill sets up a temporary worker program, but it is not temporary in the sense that the workers who come here and get a temporary worker permit can then apply for permanent legal residency and ultimately citizenship. There is no reason to deny them that under the bill.

As a result, we have temporary workers. You always have permanent workers, people who are allowed to come here originally as temporary but who can in effect automatically convert their status to permanent legal residency and then citizenship.

The question is, Why is that necessary? The second point is it creates a problem when economic conditions change.

Why would it be necessary? There are many visas in our system today that are temporary. In fact, there are skilled labor visas that are temporary. They can be renewed. They are based on need. There is no key here that a job here that is going unfilled by an American worker, we have the ability to issue visas to foreigners who can then come here and work for a temporary period of time. Then they return home. As long as there are jobs here, those visas ordinarily continue, but when the work is not here, the visas stop. That is a good thing.

I support a temporary worker program under this legislation. However, it should be temporary. That is to say, the program may be permanent, but the visas under it are temporary, for a period of limited time. They may be 8 or 10 years out of the country. That may be 1 or 2 or 3 years in duration. In my view, they should be renewable. There are a lot of different ways to construct it. The bottom line is, when you come in because there is a job available for you, and because you have the same job or another job may not be available to you 5 years later. There may be no work for you 5 years later.

Let me give an illustration I have used before. In my home State of Arizona, we are in a construction boom period. We cannot get enough people to help build houses. There are jobs that go begging, and therefore we have to rely on a large supply of foreign labor to help. It is undoubtedly the case that many of the foreign laborers are illegal. They are not the only way. However, they are workers who are performing a valuable function in our economy today.

Here is the question. I have been in Arizona now for almost 50 years. We have had lots of downturns. What happens when the downturn comes, when we are not building as many houses or office buildings, there aren't many jobs available, and Americans begin to find that jobs are not available for them, they are unemployed, and there is just not the work for people? What happens if you have a temporary visa issued and say that visa is for a period of 2 years? That visa expires, and there is no more job available. In fact, there are Americans looking for work. That foreign worker goes home. When another job opens up, when the construction industry gets going again and there are opportunities for foreign labor because there are no other workers, all of the labor required, the visas would begin being issued again, and that individual could come back and begin working again. Perhaps there is some other industry in which the individual can work. In any event, the visa for that job would, after a year or after 2 years, expire, and if there is not a job available, you do not issue a new visa.

The problem in the underlying bill is that once you get your temporary visa, you can apply or you can apply for you to turn that automatically into a permanent legal residency status or a green card status. And we know from that you can apply for citizenship. When you have a green card, it does not matter whether there is a job here for you, it does matter whether we are in the middle of a recession and Americans are looking for work; you have a legal right to be in the United States and no one can kick you out. That is what legal permanent residency means.

So there is no reason in a temporary worker program to be able to convert the temporary visa or permit into a
legal permanent residency. In fact, there can be great harm done if the economy changes, the economic situations change, jobs are not longer available, and instead of having those visas expire, you have converted the individuals to people who have a permanent right to stay in the United States

This amendment does absolutely nothing to change the existing law with respect to how you can acquire a green card in the United States or convert other legal status into benefits under our immigration laws. You can still apply for a green card. You can still apply for other ways of remaining in the United States for differing periods of time. We do not change any of that. If you are somebody who wants a green card, there is still a way to get a green card. In fact, under different versions of the bill, the number of green cards is increased so that there are greater opportunities for green cards. The bottom line is, you do not have a temporary worker program into a permanent worker program.

There are economic studies which back up what I am saying. For the sake of time, I will not get into the details of some studies. Among other things, in previous times, going back to the year 2000, for example, in the skilled visa era where we issued large numbers of visas, there were economic studies that suggested we could have a continuing need for those visas going into the future for some number of years, and we were issuing those visas at a very high rate at that time. Little did we know that the economic conditions were going to change very rapidly, and very quickly those high-skilled jobs fell off. Yet we had issued visas for people to come into the country at a time when, in fact, we were starting to go into a recession and, in fact, those jobs were not available for those people.

If they had been able to permanently reside in the United States after they got their temporary visas, it wouldn’t matter whether there were jobs available for them; they would be here. It would be legal. There would be no way to remove them. And of course, with green cards, they would be entitled to benefits which would flow from that status. The United States is going to have to pay a lot of unemployment compensation if we now have two bodies of workers where one could get a job or both of which are competing with each other, American workers and foreign workers.

Whether you are talking about purely the future flow workers under the temporary worker program which many in this Senate want to create, although we differ somewhat on the details of it, I would like to create a temporary worker program because we think they may be needed in the future, or you are talking about the people who have been here 5 years or less and are required to go into the temporary worker program—those are the two groups of people we are talking about—our view is they should be temporary workers, subject to the economic conditions of the United States, not replacing American workers but fulfilling a work requirement when there aren’t enough Americans to do the job. It is basically the same thing the President said in his speech earlier this week when he said that the temporary workers should have an opportunity to be matched with a willing employer when there are not Americans who can do the job. If hired, they get a green card, and they can return home. I am paraphrasing, but I think those are the words of the President.

The concept the President has articulated is the same concept that we believe is appropriate. It is the basis of the temporary worker bill in the Kyl-Cornyn legislation. We believe it is appropriate for that same concept to be embodied in this legislation.

Might I inquire how much time remains?

The PRESIDING OFFICER. Twelve minutes to the Senator from Arizona and 7 minutes to the Senator from Massachusetts.

Mr. KYL. I will give someone on the other side an opportunity to speak.

Mr. KENNEDY. Mr. President, I yield the remaining time to the Senator from Idaho.

Mr. CRAIG. Mr. President, I approach this part of the issue as a critical piece of legislation with due caution. I say that because of my respect for my colleagues from Arizona and from the State of Texas and the work they have done as members of the Judiciary Committee and the due diligence they have always put into this critical issue.

I believe there is a component missing from this debate that speaks to the need for this country to be in a continual and progressive mode of training and shaping a permanent stable workforce.

Unlike all of the demographic studies of the last decade or two, there is something upon us as a nation that we have never experienced before. I am a 1945 baby. I am 60 years old. I am just 1 year ahead of a great class of people—77 million Americans—called baby boomers. They, similar to myself, because of their age, will soon be leaving the American workforce. There are demographic studies out there today which suggest that if we are to sustain a 3.5- to 4-percent growth economy, we have to have about 500,000 new, non-U.S. citizen workers in our workforce on an annual basis.

Yes, we will have ups and downs in the economy. We always have. But in the last downturn we had, in the final days of the Clinton administration and the early days of the Bush administration, it was about 3.5 million in the downturn before it came back. In the next 12 months since that time, one-third of them have been claimed by foreign nationals. It speaks to an economic growth pattern that now requires for the first time in our history a sustained, incoming, trainable, and permanent workforce of the kind that the American citizen, by birthright, is not providing.

If we deny that as a country, if we cannot stabilize, we deny ourselves the ability to continue to grow. And if we do not grow, this Senate is going to be faced with public policy decisions we are not yet brave enough to make: Social Security reform, Medicare reform, Medicaid reform. If we do not have the capacity to go without a sustained economic growth cycle, become phenomenally expensive and maybe unaffordable.

That does not sound like part of the debate that would tie itself to the Kyl-Cornyn amendment. But I suggest it does. I suggest it behooves this country to create a legal transparent immigration system with a secured border that allows America’s employers to train and sustain a permanent workforce, a workforce that will be growing and shaping a permanent workforce, because the American, by birth, is no longer going to do that. It is the nature of our country. It is, in fact, the wealth of our country. That is, in part, what all of this debate is about.

Americans said: Get your borders secured and get the illegal flow under control; identify them, control them. That is what we are trying to do.

I do not believe that a constant temporary environment is a stable environment. For those who work for long periods of time and get a green card, does it mean they will become a citizen? No, it does not. Does it mean they are eligible? In this bill, it says: Yes, if you go to the end of the line and apply, and that is 6 years, another 5 years, that is 11 years, and it goes on and on.

I don’t believe this is an appropriate amendment to this bill. There is no temporariness to the bill itself by the nature of H-2A’s, H-2B’s and H-2C’s, and that is written in. There has to be some stability of permanency. That is critical to the American economic scene and to the stability of America’s workforce. And even in that, we will have the down cycles that the Senator from Arizona talks about. I am not sure at that point, when trained workers are at hand and have supplied the American economy with its goods, that we say: The lights are out, leave the country.

Somewhere, we have to balance that out. That is what we are attempting to do. That is why tonight I ask my colleagues to oppose the Kyl-Cornyn amendment.

Mr. LEAHY. Mr. President, this is yet another amendment designed to undermine the well-balanced programs in this bill. The Comprehensive Immigration Reform Act is the product of hard-fought compromise and it reflects a balance between the needs of American business and American workers. Strong coalitions representing both of those sectors of our society support...
this bill and endorse the temporary worker program contained in it.

One critical provision in the bill creates an opportunity for temporary workers who have followed the rules and worked hard while in the U.S. to seek legal permanent status again a period of time. An employer who has come to rely upon an immigrant guest worker and wants to keep that immigrant on staff can file a petition after 1 year for the immigrant to get in line for a green card. The guest worker does not need any preferential treatment in this program. He must get in the back of the line and meet all the other requirements to earn citizenship, a process that will likely take more than a decade to complete.

The Kyl amendment strips out this provision, taking away a valuable option for both the immigrants and their employers.

When a similar amendment was debated by the Judiciary Committee and defeated, as I hope this one will be—the sponsor stated his belief that lower skilled immigrant temporary workers should have to leave the U.S. after a few years. High-skilled workers are not treated in this manner. H-1B visas hold the opportunity to acquire permanent status, and work in the U.S. out of status. They can convert to permanent status automatically, which is what this legislation should allow, they cannot be removed. They are here. They have legal permanent residency and eventually can acquire citizenship, if they desire. The Kyl amendment strips out this temporary worker program that works for many guest workers. It is my question. We all agree with the concept of a temporary worker program for skilled labor. In skilled labor, these visas expire. For student visas, they expire. For tourist visas, they expire. They can be renewed in certain situations. In the different categories the American worker needs, then whatever that number is, we will have a situation in which there is a job, but it is held by a foreign worker rather than an American worker.

Why do we need to take the chance, is my question. We all agree with the concept of a temporary worker program for skilled labor. In skilled labor, these visas expire. For student visas, they expire. For tourist visas, they expire. They can be renewed in certain situations. In the different categories the American worker needs, then whatever that number is, we will have a situation in which there is a job, but it is held by a foreign worker rather than an American worker.

Mr. KYL. Mr. President, let me take a couple of minutes to respond to my friend, the Senator from the State of Idaho.

He projects that 500,000 workers are going to be needed every year. That sounds a bit high, but there is a way to resolve the question. If we have a temporary worker program that works well and brings in all of the temporary employment needed to fill your labor needs, then whatever that number is, can be satisfied with the temporary worker program. But if the Senator is wrong and we do not need that many people but we have allowed that many people to come into this country and remain here permanently, then we have a big problem because we also have to consider the American worker and the worker skill shortage.

The Senator said we need stability in our workforce. Indeed, that is a good thing. But I submit we need stability for the American worker. The American worker needs to know his job is secure. In all of the industries we are talking about, whether there is a significant need for foreign labor, there are far more American workers working in those industries than foreign workers.

The bottom line is, there are American workers who will do these jobs. The industry exception is in certain specters of agriculture. And agriculture, in many respects, is a very different animal.

The reality is, whether you are talking about the hospitality industry with people making beds and washing the dishes or talking about the construction industry or landscaping, there are millions of Americans doing those jobs. And we want to know that those jobs are there for citizens when the economy is not as strong as it is now.

So in periods of decreasing jobs and increasing unemployment, we want to be able to ensure the workforce can remain employed. With a temporary foreign worker program, we can ensure that because the foreign workers are brought in, to the extent they are needed, when they are needed, in each of these industries. But if they can convert to permanent status automatically, which is what this legislation would allow, they cannot be removed. They are here. They have legal permanent residency and eventually can acquire citizenship, if they desire. The Kyl amendment strips out this temporary worker program that works for many guest workers. It is my question. We all agree with the concept of a temporary worker program for skilled labor. In skilled labor, these visas expire. For student visas, they expire. For tourist visas, they expire. They can be renewed in certain situations. In the different categories the American worker needs, then whatever that number is, we will have a situation in which there is a job, but it is held by a foreign worker rather than an American worker.

Why do we need to take the chance, is my question. We all agree with the concept of a temporary worker program for skilled labor. In skilled labor, these visas expire. For student visas, they expire. For tourist visas, they expire. They can be renewed in certain situations. In the different categories the American worker needs, then whatever that number is, we will have a situation in which there is a job, but it is held by a foreign worker rather than an American worker.

The American worker needs to know his job is secure. In all of the industries we are talking about, whether there is a significant need for foreign labor, there are far more American workers working in those industries than foreign workers.

The bottom line is, there are American workers who will do these jobs. The industry exception is in certain specters of agriculture. And agriculture, in many respects, is a very different animal.

Our immigration law has always been very leery of allowing large numbers of undereducated and low-skilled workers into the country. This bill may represent a potential expense for this country in the event that the employment that was promised to them does not materialize or goes away.
So there is no need to take a chance on this. If, in fact, my colleague is correct that we will need more laborers, we can get them under a temporary program where permits can continue to be expanded. We can expand the number or they can be renewed.

In the meantime, there is always the opportunity for people to acquire green cards. In fact, under I think all of the bills that are pending, the number of green card slots is increased. So there is also an opportunity for that.

But in case they are wrong, and jobs evaporate over time, and even Americans cannot find work, why would we want to be granting these foreign residents who are here temporarily the right to be here permanently? It seems to me it is unnecessary. It is potentially devastating, devastating to me it is unnecessary. It is potentially catastrophic to have two 99-to-0 votes fruitless to have two 99-to-0 votes which are meaningless when they could be accepted. It would be ludicrous, notwithstanding the fact that we all deserve to be voting tomorrow on ludicrous matters. But the majority leader decided we will not bring in people to have meaningless votes. It is our hope that this will spurn us to some meaningful votes early on.

The Chambliss amendment will be laid down tonight, and there will be 30 minutes of debate on it before the vote at 3:30 on Monday. We will have a vote on Senator Feinstein’s amendment, where she will have substantial time on Monday afternoon. We will see if we can construct a vote for Senator Ensign on what he is trying to work out, which has quite a number of concerns. Senator Bond has an amendment that we may be able to take.

The remaining business tonight is to take the amendment of the Senator from Florida by a voice vote, which will, I believe, conclude business on the bill for the evening and the week.

Mr. FRIST. Mr. President, in the big picture, let me say at the outset that things are going very well. It is 9:30 on a Thursday night. We are making decisions about tomorrow and Monday. We have had a very good week. I thank the Democratic leader and both managers for making great progress over the course of the week.

It is very frustrating, from a leadership standpoint, for the Democratic leader and myself, and we have to act on that supplemental. So have about two-thirds of the Republican list included, and I think that much or perhaps even more of the Democrats’ list. We are not sure there are many people around to be able to vote on Senator Feinstein’s list. Given where we are, it is in our best interest to complete debate tonight, and the votes we would have tomorrow we will have Monday. There will be at least two votes starting at 5:30 on Monday.

We do have to recognize in this body that we cannot stop work on a Thursday afternoon or evening. We have to be able to use Fridays, especially over the reminder of the session. We don’t have that many free days left between now and next week, we have this bill—and that is why we are working as hard as we can—and we have the Kavanaugh nomination, which is out there and ready to bring to the floor. We have a supplemental spending bill which funds our troops overseas. I talked to three different generals today and the Secretary of Defense, all of whom say we have to act on that supplemental. So we have to have Senators here. We have to have them participating. Again, this is not the fault of the managers. They have done a superb job. It means that tomorrow we will likely be in session, but we will not
Therea rolcall votes. We will be voting
Monday afternoon at 5:30.

Mr. REID. Mr. President, I will make
a brief comment.

Mr. President, we started out on this
with the decision that we were going to
try to do some legislation on this very
difficult bill. This is from our perspec-
tive. We wanted to move through this
an amendment at a time. I think it
worked out well. We are at a point
now, I think, as we have done earlier in
the day, that our hands don’t, to live by
that. We have proven that we can legis-
late. We can always go back and do an
amendment at a time if we have to. We
are going to take an amendment at a
time on a case-by-case basis, and we
have no objection tonight—or very
likely in the near future—to being able
to set amendments aside and move on.
I think we have been able to accom-
plish a great deal in this short week.

This bill is not finished yet, so there
is no reason to give high fives and say
work well done. There is still a lot of
real hard work to do. I have submitted
at the request of the manager, the dis-
tinguished chairman of the committee,
a list of Democratic amendments that
we have handled—a lot of them. I have
indicated to the managers that I am
confident that most of them will not
have to be offered. You asked for that
and you have gotten that.

I think that this coming week we all
have to keep our heads down and push
hard. There is a lot of work to do, and
we have very significant amendments.
I applaud and commend Senator SPEc-
TER and Senator KENNEDY for the way
I see the Senate working. I think we
have done good work. We have had
some very timely amendments and dif-
ficult amendments. We have had win-
ners and losers. That is what legis-
lating is all about. Some of the com-
promise takes place not in the back
room but on the Senate floor when we
vote.

Mr. KENNEDY. Mr. President, I wish
to thank the leaders and my colleague,
Senator SPECTER. I think this has been
a very good week in terms of talking
and debating. I think we have seen
some real debates on the floor of the
Senate, some which we have not seen
for a long period of time. I think the
Members know a great deal more about
what is in this legislation. They may
like it or not, but I think the debate
will be next week. I think we have
made good progress. Some-
times it is useful to take a little time
to go over these amendments, as some-
one who has been here for 12 hours.
Sometimes we can have a better debate
and discussion if we can go over them
and know where we are going to be on
Monday and then what the priorities are
The Republicans have had, as I re-
member, 20 sort of key issues. We have
gotten through a fair amount of them.
There is still a good group of them
that think we did not cover the issues,
and I think we can use this time and be
better prepared and have a better de-
bate and a better outcome next week.
I
thank the leaders for all they have
done, and I thank the Members on both
sides.

Mr. SPECTER. Mr. President, we will
now go to the Nelson amendment.

The PRESIDING OFFICER. Under
the previous understanding, the Senator from
Florida is recognized.

Mr. DODD. Mr. President, if my col-
league would yield, we have an amend-
ment that I think has been agreed to,
and I am prepared to take 5 or 10 min-
utes tonight to get through it. I will
leave it up to the leaders how they
want to handle it.

Mr. SPECTER. Mr. President, let’s
take the Nelson amendment. There is
always manana.

Mr. ENSIGN. Mr. President, par-
liamentary inquiry.

The PRESIDING OFFICER. The Sen-
ator from Nevada is recognized.

Mr. ENSIGN. Mr. President, my un-
derstanding of the earlier unanimous
consent agreement was that I would be
recognized followed by Senator NEL-
SON.

The PRESIDING OFFICER. The Sen-
ator is correct. The unanimous consent
agreement recognized the Senator from
Nevada for 10 minutes prior to Senator
NELSON. The Senator from Nevada is
recognized.

AMENDMENT NO. 4076, AS MODIFIED

Mr. ENSIGN. Mr. President, we have
spent a great deal of time talking about
how to proceed with tonight’s debate.
We have been trying to work out
whether we would have a vote on
my amendment No. 4076.

I send a modified version of my
amendment to the desk which has been
seen by both Senator BYRD and Senator
GREGG who had previously expressed
problems with the text of the amend-
ment. The modification strikes a par-
ticular paragraph which had dealt with
the questions of which agency would
fund the program if the cost exceeded
a certain dollar amount. I would ask for
immediate consideration of the modi-
fied amendment.

The PRESIDING OFFICER. The clerk
will report.

The legislative clerk read as follows:
The Senator from Nevada [Mr. ENSIGN], for
himself and Mr. GRAHAM, proposes an amend-
ment numbered 4076, as modified.

Mr. ENSIGN. Mr. President, I ask
unanimous consent that further read-
ning of the amendment be dispensed
with. 

The PRESIDING OFFICER. Without
objection, it is so ordered.

The amendment (No. 4076), as modi-
ﬁed, is as follows:
To authorize the use of the National Guard to secure the southern border of the United States,

SEC. 133. TEMPORARY NATIONAL GUARD SUP-
PORT FOR SECURING THE SOUT-
ERN LAND BORDER OF THE
UNITED STATES.
(a) AUTHORITY TO PROVIDE ASSISTANCE.—(1) With the approval of the Secretary of De-
fense, the Governor of a State may order any
units or personnel of the National Guard of
such State to perform annual training duty
under section 502(a) of title 32, United States
Code, to carry out in any State along the south
ern land border of the United States these
activities authorized in subsection (b), for the
purpose of securing such border. Such
duty shall not exceed 21 days in any year.
(b) Activities Authorized. The Governor of a
State may order any units or personnel of the
National Guard of such State to perform annual
training duty under section 502(b) of title 32,United States Code, to pro-
vide on-call, continuity of support for
units or personnel performing annual
training duty under paragraph (1).
(a) Authorization of Appropriations.—The
Congress hereby authorizes the obliga-
tion of funds for the purpose of the
activities authorized by this section.
(1) The term ‘State’ means each of the
United States for purposes of this section,
and only the following:
(A) The States of Arizona.

The term ‘State’ means each of the sev-
eral States, the District of Columbia, the
Commonwealth of Puerto Rico, Guam and
the Virgin Islands.

The term ‘State along the southern bor-
der of the United States’ means each of the
following:
(A) The State of Arizona.

(B) The State of California.

(C) The State of New Mexico.

(D) The State of Texas.

The term ‘Authority of this section shall expire on January 1, 2009.

(h) PROHIBITION ON DIRECT PARTICIPATION IN LAW ENFORCEMENT.—Activities carried
out under this section shall not include the direct participation of a member of the National Guard in a search,
seizure, arrest, or similar activity.

Mr. ENSIGN. Mr. President, I will
speak just briefly, because it is late. I
am going to take up a lot of time,
but this is a very important amend-
ment. The substance of this amend-
ment is something that I have been
working on for over a month. During the last Congressional recess, I went down to Yuma, AZ, where the President was today. I saw firsthand what an extraordinary job our Border Patrol is doing. I also observed firsthand how overwhelmed the agents are by the numbers that are coming across our southern border.

When I was at the border, I asked a question of the Border Patrol personnel. That question was: Could you use more National Guardsmen at the border, beyond those in the Counter Drug Program, to help you with your mission of protecting and securing our borders? The overwhelming answer was that they would absolutely welcome our National Guard in larger numbers down on the border.

The Border Patrol was very clear. It would create problems if the National Guard were to come down to the border to carry on law enforcement duties like arresting, detaining, and questioning detainees. Each of those things are part of the speciality role that the Border Patrol should do. They are, after all, highly trained law enforcement personnel while the National Guard is trained in other areas, areas for which the Border Patrol requires support.

In his Monday night address, the President proposed using up to 6,000 National Guardsmen on the border this year. My question was to multiply the force of the Border Patrol that is currently on the border. What do I mean by that? In many instances, the Border Patrol is taken away from their normal duties when they have to, for instance, perform a medical rescue of somebody who has gone into distress. This is actually a common occurrence in the southwest desert. Immigrants crossing the desert become dehydrated and nearly die. Some of the Border Patrol surveillance cameras might be the aliens pulling a distress beacon to signal they need help, and the Border Patrol actually goes to rescue them. This is something the National Guard is very well trained to do. When they are on the border, the National Guard can fulfill that mission which will free up the Border Patrol to perform some of the other functions of their duties, like arrest and detention.

When the National Guard trains today, when personnel are performing their training, they are building roads, building fences, and building bridges. They do all of these things as part of their training. Except most of the time when they are training, after they build something they are required to tear it down. It is a training exercise. What this amendment envisions is that what they will build, fences, barriers, and roadways, will all be essential infrastructure needed to secure the border. The National Guard can use training time to build roads along the border. But at this point they won’t have to tear them down. What they build will actually be permanent structures.

We had a hearing in the Senate Armed Services Committee yesterday. The National Guard told the committee that they are very excited about this mission, about what they will be accomplishing. Instead of building infrastructure and then destroying it, they will actually be building a road that is going to help secure the United States of America. I have received e-mails from National Guardsmen in my State that say they believe in this mission, and they are very excited about it.

I want to be clear. Some people have erroneously reported in the media that the National Guard will be on the border and would be arresting, they would be shooting at people, that they would be militarizing the border and performing law enforcement activities. That is not true. Let me tell you exactly what we have put in this amendment that states exactly what the National Guard will be authorized to do. They will be authorized to conduct ground reconnaissance activities, airborne reconnaissance activities, logistical support, provision of translation services in training, administrative support services, technical training services, emergency medical assistance and services, communications services, rescue of aliens in peril, and construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States. They will also cooperate with ground and air transportation.

We are very clear on what their mission is going to be down there. I appreciate the work of Senator CRAIG on this issue. I see him here on the Senate floor. He has been one of the biggest proponents of using the National Guard down on the border, and I appreciate the discussion that has been in the United States Senate to bring everybody’s attention to this issue.

Mr. CRAIG. Mr. President, will the Senator yield?

Mr. ENSIGN. Mr. President, I would be happy to yield.

Mr. CRAIG. Mr. President, I thank the Senator for bringing this issue before the Senate. Yesterday the Senator from Nevada and I were in attendance at a hearing of the Armed Services Committee chaired by Senator WARNER, with the Secretary of the Army, the Chief of the National Guard, the lieutenant general of the Army, and the Chief of the National Guard. What we saw was the coming together of a complete unit, a complete unit to secure our border and build an orderly process on the border.

We are trying to give the border agent, the border agent from Nevada speaks to tonight a reality that is very doable, and it is done in the normal activity of the summer training of our Guard. The Senator knows that we are not putting Guardsmen out on the front lines. They will facilitate those of the Border Patrol, the officers on the front-line officers in this defensive securing mechanism that we will call the southwestern border of our country.

So I thank the Senator for bringing this to the floor. It is critical and important. It fits well into what our President has proposed, responsibly so, for our country.

Mr. DURBIN. Would the Senator yield to the President?

Mr. ENSIGN. Mr. President, I would ask unanimous consent for an additional 2 minutes so that I will be able to yield for a question.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I would like to ask the Senator a question because perhaps he has thought this through and he could help me understand it. I support the President’s effort to make the border stronger and safer. What I understood him to say was at least 6,000 National Guardsmen at any one time, rotated every 2 or 3 weeks to accommodate what was their required 21 days of annual training. By any calculation, that means that in the first year over 100,000 National Guardsmen from around the United States will be sent to the border. And in the second year, when half as many are needed, and so say, 50,000 of the 400,000 National Guardsmen nationwide—I hope my figure is correct, although I don’t know if it is—but is it your understanding that 100,000 to 150,000 will end up on border duty during a period?

Mr. ENSIGN. Mr. President, I thank the Senator for his question. I was going to address his very point. The way that the Border Patrol, the National Guard, and the administration have developed their plan envisions that about one-third of the 6,000 Guardsmen would actually be on the border for longer than the 21 day maximum. My amendment mirrors their plan. It sets forth that two-thirds of the overall personnel will perform in the required 21 days of annual training down on the border. That time is time that the Guardsmen committed to when they signed up. The amendment also says that about a third of the force, consisting of command personnel and guardsmen who are necessary for integration purposes, will be down there full time. They will be there full time to ensure some continuity. The personnel who are rotating in will need to have leadership that can organize and execute the training that they have some familiarity with. The full time personnel can say to the rotating personnel: you need to go here, this is what you will do, and we need you to work with this other group.

During our hearing yesterday—this very issue came up—according to the National Guard the numbers that the President has committed will work. They have said that this mission can be done, that there is absolutely no problem for them to operate in this fashion, that they will be going through the training anyway. Personnel will have to go through the 2 to 3 weeks of training and this set up will
Mr. DURBIN. I would like to address this question with the Chair. About 75 percent of the Illinois National Guard units have been activated to serve in Iraq or Afghanistan, and some have been on more than one tour of duty. During the course of that, they have left behind in Iraq and Afghanistan a lot of wornout equipment, damaged equipment. Currently our National Guard, in some areas of supplies, like certain trucks, is down to 7 percent of what they need, and nationwide we have been told the National Guard stock of supplies and equipment has been depleted to the level of 34 percent of what they need.

Can the Senator from Nevada tell me whether our commitment of the National Guard to the border will also be a commitment to replenish the equipment they will need to serve effectively there and return home and do their job?

Mr. ENSIGN. Mr. President, to address that question, we actually talked about this right this morning. It was one of the questions that was asked. What the National Guard is going to do, with the Department of Defense, is take the equipment down there, and it will stay down there. If the equipment is broken down, they won’t come down with their own equipment; they will use the equipment that is there. So it will stay there for the 2 years, for the duration, what they need. So that is going to be paid for separately. It is part of the $1.9 billion the administration had requested, so it does not come out of the normal National Guard budget, it doesn’t come out of what we are trying to replenish of the National Guard’s that is coming back from Iraq and Afghanistan.

Those are excellent questions. We have addressed those. We have addressed those as to how the administration policy is going to happen.

This is the last point I will make. This is a critical stopgap, but it is only a stopgap because we can only train about 1,000 Border Patrol agents a year. It was my amendment actually to ramp us up to 10,000 more Border Patrol agents this year, because they need a lot more than that. We can’t do even the 2,000 that bill envisioned, and we certainly can’t get to the 10,000 right way. This bill before us needs this if you are going to have the temporary guest worker program. This National Guard is the temporary measure that we need to fill in so we actually secure the borders. I appreciate very much the indulgence of the manager of the bill. We look forward to further debate, if people have that. I really appreciate your taking the time to allow us to fit in tonight.

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized for 10 minutes.
and qualifications in the agricultural occupation in the area of intended employment, expressed in terms of the prevailing rate of pay for the occupation in the area of intended employment.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that Senators ALEXANDER and BOND be added as original cosponsors to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I have said it before and I say it again today that I think the approach taken in this legislation we are considering today is contrary to the best interests of agriculture. By ignoring proper enforcement of our immigration laws for many years, the Federal Government has been sending the wrong message to farmers and ranchers across the United States: that it pays to break the law.

Quite literally, it has. For those who have flouted rule of law by refusing to utilize the temporary worker program for agriculture—the H-2A program—have gained a tremendous economic advantage over their counterparts who have adhered to the laws on the books today.

I will be the first to admit that some farmers have had little choice but to utilize an illegal workforce—for the H-2A program, as presently written has its limitations—for instance, farmers with jobs that are not seasonal are not able to utilize it. However, changes can be made to the H-2A program to make it more responsive to the needs of agriculture and more user-friendly for farmers.

That is what the focus of immigration reform should be. Instead, the bill we are considering today is putting in statute what has only been implied previously by the Federal Government’s blind eye about illegal workers: it pays to break the law.

The incentives are greatest in the agricultural section of this bill than anywhere else. The amendment I have introduced is one of a series that I will file that will attempt to eliminate some of the hardships this bill levies on those agricultural employers who have been and will continue to utilize the legal program we have in place for temporary agricultural workers.

Currently, agricultural employers who utilize the H-2A program must pay all workers in the occupation in which they work the higher of the applicable minimum wage rate, the prevailing wage rate, or the adverse effect wage rate. The prevailing wage rate is determined by surveys conducted by States, insured that available U.S. workers would not be discouraged from applying for the job because it paid lower than usual wages. It also guaranteed that all workers, both foreign and domestic, would be paid a wage that was competitive in the local area, thus avoiding depressing wages for that occupation or making the use of foreign workers more attractive than hiring U.S. workers.

At present, prevailing wages are required for H-1B, H-2B, and permanent work-related visas. However, H-2A, the agricultural version of temporary, non-immigrant work visas, is not required to pay the adverse effect wage rate.

Unlike prevailing wages, which are established for a local area for specific jobs, and determined by the level of experience, skill, and education they require, the adverse effect wage rate is an average of all wages including incentive pay, bonuses, and seniority for all farm jobs in a multi-State region.

So an H-2A employer in Indiana must guarantee an H-2A worker with no experience who is working on a dairy farm the same minimum wage as a farm employee in Ohio with 5 years of experience operating a combine to harvest soybeans. Likewise, an inexperienced employee who is harvesting lettuce in Arizona must be paid the same minimum wage as an experienced greenhouse worker in New Mexico. It just doesn’t make sense.

Prevailing wages are determined by the U.S. Department of Labor through its State partners, using a methodology designed to capture a fair wage that reflects the local standards specific to a particular occupation. This is currently done for H-1B and H-2B visas.

I might add that the new H-2C program that has been approved as part of this particular underlying bill and was accepted as the prevailing wage for that work was accepted by unanimous consent yesterday.

Conversely, the adverse effect wage rate is determined by a survey conducted by the U.S. Department of Agriculture as part of its larger National Agricultural Statistics surveys. Officials in the Department of Agriculture’s National Agricultural Statistics Service readily admit that the adverse affect wage rate is still higher—for example, an H-2A employer in New York will have to pay his workers $9.16 an hour while an
We are going to have an opportunity to debate in detail what the Senator from Georgia has put before the Senate as it relates to a wage rate for agricultural workers that is embodied within the bill that is before us in comprehensive immigration reform. As I noted after having worked on the agriculture portion of this bill for nearly 5 years, and as a farmer and rancher, I totally agree with the Senator from Georgia, that those who were under the H-2A program were very different, and those who weren’t placing the farmer-producer who had adhered to the H-2A program at a true competitive disadvantage because of the adverse effect wage rate that the Senator spoke to.

As we work to reform and change the character of the H-2A program, and for those Senators who aren’t quite aware of that—that is the agricultural portion—we recognize that the adverse effect wage rate was skewed in large part by comparative and competitive disadvantaged margins that the Senator speaks to. The Senator has proposed moving to a prevailing wage, which, in my opinion, is in itself the right direction.

Let me make those points. What the Senator from Georgia has failed to suggest is after an examination of the adverse effect wage rate and recognizing the problems, we changed it dramatically. We said let’s freeze it at the 2003 level, January 1, which is actually the 2002 level, and keep it flat for 3 years while we adjust the agricultural workplace into a true prevailing wage.

That is what the bill does. Let me show you what I believe the effects are. I will go into those in more detail on Monday because they are significant, and in many instances what the bill does for American agriculture is better than what the Senator from Georgia is proposing. It causes us to focus on what is appropriate and right in bringing about equity and balance in the agricultural workforce and in that wage rate.

In 2006, the adverse effect wage rate was $8.63 an hour. This bill drops it to $8.19. In 2010, $10.25 and it drops it to $9.06, and many examples on a State-by-State basis drop it more than that. But more than dropping the wage rate down and bringing equity in it, we bring equity in a sense by going in and finding out and making sure that we effectively change the indices, immediately upon the enactment of the agricultural portion known as AgJOBS of this bill.

In California, the wage rate will drop by 11 percent; in New Hampshire, 13 percent; South Carolina, 13 percent; Montana, 12 percent; Pennsylvania, 16 percent.

I wish the Senator would check his numbers. The numbers the talks about tonight are not prevailing wage. That is minimum wage. And minimum wage will not stand. That is something we are all going to have to look at as we focus on the Chambless amendment to see if those numbers are truly accurate. I am not in any way suggesting the Senator is wrong, but I am suggesting those who did the research used the Nation’s lowest indices possible. I challenge those numbers. It is appropriate to do so.

By 2016, the average farm wage is projected to be $12.81 but the projected adverse effect wage is $10 or down 17.5 percent below the average farm wage if we look at those kinds of indices. It is important we understand we are proposing significant changes in the wage rate and in the market.

The Senator is suggesting, and appropriately so, embodied within adverse effect wage were a variety of other things that agricultural producers had to supply, in some instances, housing, or housing certificates, and other types of amenities at the workplace. That will still happen, whether it is a transitional blue card employment force or an H-2A force because, clearly, once we have transitioned the modified and reformed H-2A program embodied within the bill before the Senate, will be the effective guest worker law portion of it dealing specifically with agriculture.

Agriculture is a different workforce. And it is a different wage scale. We know that.

Had the Senator embodied within it the advantage of piecework, the adverse effect wage rate does that. Do you know some workers who are getting $7 an hour, if they work piece work, get $12 an hour? It is their advantage to do is. There is a higher level of productivity when you bring them all to a common denominator that goes away. There are a variety of things that are critically important to look at.

I do not mean to suggest in any way that the numbers offered were offered in an untruthful way but the numbers that were provided to the offeror are the lowest common denominator at a minimum wage rate and not the 50th medium talked about by the Department of Labor in the analysis in the establishment of an appropriate wage rate that would be a true prevailing wage rate.

I want a prevailing wage rate. That is what the bill proposes, a transitional pattern of time, a 3-year pattern of time with a frozen adverse effect wage rate, to move us to prevailing. The Farm Bureau asserts that the prevailing crop wage in Ohio ranges from $5.85 to $7.13 an hour. They compare this to the wage rate of $8.36 per hour which would apply during the AgJOBS wage freeze. Those are the kind of numbers that were being offered this evening. However, the medium hourly wage, which would be the prevailing wage under the amendment before the Senate was $8.57 per hour for workers in Ohio in the data sourced by the Farm Bureau.

I am still digging into the numbers because I cannot quite understand it.
There is a disparity that is troublesome if we are to arrive at a fair, responsible, and accurate measurement to establish an effective prevailing wage that is fair to the worker, but more importantly, and as importantly, fair to the producer so that we get out of this prevailing wage system what the Senator from Georgia has recognized and sees as critically important.

In other words, if this data source represented agriculture prevailing wages, I agree with my colleagues. It does not. The prevailing crop rates I mentioned for Ohio would be at least 19 cents an hour higher than the AgJOBS minimum wage even in 2006 before we tamp it down in the law. The projected Ohio prevailing crop wage in 2010, based on the data source, would be $10.33 per hour compared to the AgJOBS minimum wage of $9.29.

In all sincerity, I offer to the Senate from Georgia a time for us to look at numbers and do some comparisons. There is a disparity that Senator Chambliss and I have attempted to negotiate it. It does not. The project Ohio prevailing crop wage in 2010, based on the data source, would be $10.33 an hour compared to the AgJOBS minimum wage of $9.29.

Mr. President, I do not intend to take but a few seconds to not necessarily respond to my friend from Idaho, who correctly states we have been working together in trying to solve a very difficult problem relative to reform of the H-2A program. He has been at it for a long time. My first vote on this was 11 years ago as a Member of the House of Representatives. That has been working on this issue. And we have yet to get the H-2A program reformed.

I am very hopeful, as we go through this, we will have an opportunity to look at the numbers. I did not even mention prevailing wage numbers for Ohio or any other State. Obviously, I am happy to look at those. But the numbers are what they are. And the Senate from Idaho, I assume, agrees with me and is going to vote with me because he wants a prevailing wage, and I am seeking to amend this bill to get a prevailing wage in a bill that has an adverse effect wage rate in it.

But seriously, the numbers are what they are. I think that we can agree that the prevailing wage rate is higher than the minimum wage, and it is less than the adverse effect wage rate today virtually in every State and in every location in the country. Our farmers are very much at a disadvantage today, and it is not fair to pay a fair wage.

You are right, most of our employees work on a piece rate. They cut a bucket of squash, they take it to the wagon, and they get a chip. And that chip may be worth $2 or it may be worth $5. That is the way most agricultural workers are paid: on a piece-rate basis. But there has to be a floor. They have to be paid a certain amount per hour under the law, and that is the way it should be. And that is what we are going to be talking about.

But the numbers are what they are. And the numbers speak for themselves. We look forward to debating in much more detail on Monday. Our purpose today on both ends was simply to get the amendment laid down. We will be back Monday to engage in more extensive debate.

Mr. President, I ask unanimous consent that at 5:30 on Monday, May 22, the Senate proceed to a vote in relation to the Chambliss amendment No. 4009; provided further that the time from 5 to 5:30 be equally divided between Senator Chambliss and the minority leader or his designee. I further ask consent that following that vote, the Senate proceed immediately to a vote in relation to the Ensign amendment No. 4076, as modified. Finally, I ask consent that no second degrees be in order to either amendment prior to the vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MORNING BUSINESS

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMEMORATING THE 80TH ANNIVERSARY OF THE FOUNDING OF THE DESERT NATIONAL WILDLIFE REFUGE

Mr. REID. Mr. President, I rise today to bring recognition to one of the most majestic places in Nevada—the Desert National Wildlife Refuge. On Saturday, May 20 the refuge will have been in existence for 80 years. Established in 1936 during the Presidency of Franklin Delano Roosevelt, the Desert National Wildlife Refuge is a key part of the National Wildlife Refuge System that protects sensitive lands and species throughout our great Nation.

Covering 1.5 million acres of the Mojave Desert in southern Nevada, the Desert refuge is the largest National Wildlife Refuge in the continental United States. The Mojave Desert is known for its wide variety of geology, plant life, and animal life. The Desert National Wildlife Refuge epitomizes this diversity. It contains six different mountain ranges and four different mountain ranges. With an annual rainfall between 4 and 15 inches, elevations ranging from 2,500 ft to 10,000 ft, and over 300 different animal species, the

May 18, 2006

CONGRESSIONAL RECORD—SENATE

S4791