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Senate

The Senate met at 9:15 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty and eternal God, we thank You for our country. We praise You for her hills and valleys, her fertile soil, her trees, her plains and mountains.

Forgive us when we seek material power alone. Forgive us if, in our prosperity, we have been condescending to others. Forgive us, too, if we have neglected the admonition of Your word. Lord, we confess our mistakes.

Use our Senators today to keep us a great Nation, full of truth and righteousness.

We pray in Your wonderful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 25, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2611, which the clerk will report.

The bill clerk read as follows:

A bill (S. 2611) to provide for comprehensive immigration reform and for other purposes.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

SCHEDULE

Mr. SPECTER. Mr. President, we have a unanimous-consent agreement limiting the remaining number of amendments, with time agreements worked out. We would appreciate it if the Senators in sequence would be ready to go when the next amendment comes up.

We anticipate a long session today. There will be other votes following completion of the immigration bill, including a vote on cloture on the nomination of Brett M. Kavanaugh, U.S. circuit judge for the Court of Appeals for the District of Columbia.

We are now ready to proceed with the Cornyn amendment.

I should announce further that it is our intention to stack the votes at the conclusion of the debate on remaining amendments.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

AMENDMENT NO. 4097

Mr. CORNYN. Mr. President, I call up my amendment No. 4097, which is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from Texas [Mr. CORNYN] proposes an amendment numbered 4097.

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

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

The amendment is as follows:

(Purpose: To modify the requirements for confidentiality of certain information submitted by an alien seeking an adjustment of status under section 245B)

Beginning on page 362, strike line 4 and all that follows through page 363, line 12, and insert the following:

“(e) CONFIDENTIALITY OF INFORMATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2) or (3) or as otherwise provided in this section, or pursuant to written waiver of the applicant or order of a court of competent jurisdiction, no Federal agency or bureau, or any officer or employee of such agency or bureau, may—

“(A) use the information furnished by the applicant pursuant to an application filed under paragraph (1) or (2) of subsection (a) for any purpose other than to make a determination on the application;

“(B) make any publication through which the information furnished by any particular applicant can be identified; or

“(C) permit anyone other than the sworn officers and employees of such agency, bureau, or approved entity, as approved by the Secretary of Homeland Security, to examine individual applications that have been filed.

“(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security and the Secretary of State shall provide the information furnished pursuant to an application filed under paragraph (1) or (2) of subsection (a), and any other information derived from such furnished information, to—

“(A) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested by such entity; or

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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“(B) an official coroner for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

“(3) INAPPLICABILITY AFTER DENIAL.—The limitation under paragraph (1)—

“(A) shall apply only until an application filed under paragraph (1) or (2) of subsection (a) is denied and all opportunities for appeal of the denial have been exhausted; and

“(B) shall not apply to use of the information furnished pursuant to such application in any removal proceeding or other criminal or civil case or action relating to an alien whose application has been granted that is based upon any violation of law committed or discovered after such grant.

“(4) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than \$10,000.

Mr. CORNYN. Mr. President, this amendment is one I believe is absolutely essential to the functioning of this comprehensive immigration reform plan which has been shaped over the last 2 weeks on the Senate floor. It is premised upon the concept of information sharing, and in a post-9/11 world this is the concept with which we have become familiar because the failure to share information between law enforcement and intelligence-gathering authorities and other agencies of the Federal Government was one of the causes of the terrible disaster this country sustained on September 11, 2001.

This amendment strikes an appropriate balance between confidentiality of the records of the applicant for benefits under this bill and fraud detection. The compromise we have heard and which has been carefully crafted by a bipartisan coalition here will not in any way be unraveled or hurt by this amendment.

Finally, I believe an illegal alien will not be deterred from applying because of this amendment. This amendment does not remove confidentiality per se. It applies only after an application is denied and the need for confidentiality passes. The text is modeled after the Violence Against Women Act. And I ask my colleagues, if the limitation on confidentiality is OK in the case of women who are subjected to violence, why isn't it OK for workers who are simply here illegally?

This country's early experience—about 20 years ago now—with immigration reform shows that legalization or an amnesty program is a magnet for fraud and can be exploited in a number of ways. We know that this vulnerability can be exploited, not only by common criminals but also by terrorists. Three terrorists convicted in the 1993 World Trade Center bombing obtained green cards through the 1986 amnesty, including New York City cabdriver Mohammed Abouhalima, who obtained a green card through the agricultural worker amnesty program. The New York Times has described the 1986 amnesty as “one of the most extensive immigration frauds ever perpetrated against the United States Government.”

Within just a few years, it was reported that the Government had already identified almost 400,000 cases of possible fraud. One of the reasons there was so much fraud in the 1986 amnesty was because the law did not allow the Government to share information even after an application was denied. Yet the current bill contains the exact same text and the exact same flaws.

My amendment does not eliminate any confidentiality provisions in the bill. The workers who apply will be protected by the existing confidentiality provisions. My amendment simply allows the Government to share and use information once the worker's application and all appeals are denied.

As I mentioned, my amendment is modeled after the current legal protections provided in the Violence Against Women Act, which allows the Government to share and use information submitted in an application “when the application for relief is denied and all opportunities for appeal of that denial have been exhausted.” If the limitation is OK in that context, why is it not appropriate in this context?

I don't believe this amendment would deter any alien from applying for legal status. Illegal workers face deportation, a secure border, and worksite enforcement. We may hear some say that in order for undocumented individuals to come forward and take advantage of the legalization program provided by this underlying bill, we can't do anything that might cause them to second-guess or question whether they should come forward. But the fact is, I think there has to be a balance struck. I don't believe any illegal alien will be deterred from participating in the very generous provisions of this underlying bill because of concerns that if their application is denied, that information can then be shared with law enforcement personnel.

The fact is, the kinds of things we are looking out for are fraud—massive fraud—schemes which would be designed to undermine the very structure of this negotiated comprehensive immigration reform bill.

Paul Virtue, President Clinton's general counsel at the Immigration and Naturalization Service, testified before Congress that:

The confidentiality restrictions of law [in the 1986 amnesty] also prevented INS from pursuing cases of possible fraud detected during the application process.

That was before the House Judiciary Committee on March 4, 1999.

One of our colleagues who was then in the House of Representatives, Senator SCHUMER, was quoted in the New York Times in 1989 as saying:

One certain product of the agricultural amnesty program . . . is that in developing immigration policies in the future, Congress will be much more wary of the potential for fraud and will do more to stop it.

It has been said famously that those who refuse to learn from history are condemned to relive it. I suggest to my colleagues that we should have learned

something from the massive fraud in the 1986 amnesty, and we should not relive that in this bill today.

This amendment improves the current bill by preserving the confidentiality of applicants while allowing the Government to share information, perhaps to uncover massive frauds, criminal syndicates that are designed to try to circumvent the protections in this bill and gain access to our country and our immigration system in spite of massive criminal organized crime. I ask my colleagues, do we really want to grant impunity for fraud? Do we really want to invite criminals and those who would perpetrate such fraud to do so again when we have the very tools at our command which will allow us to strike the proper balance between prosecution for fraud and yet at the same time encouraging those who would benefit from this program to come forward?

I have heard some suggestion that the only way we are going to encourage people to come forward is if we make doing so an unequivocally positive experience. In other words, it is all carrot and no stick. But I would suggest that the most practical way to deal with the current situation is for a combination of carrot and stick—the carrot being, obviously, the offer of the great benefits and very generous benefits provided by this underlying legislation, but the stick has to be things such as worksite verification. Ultimately, I believe that is the linchpin of the success of this entire program. Not even border security represents the linchpin for the success of this comprehensive immigration reform plan because 45 percent of illegal aliens currently in the United States entered legally, like the three convicted bombers of the 1993 World Trade Center explosion. But we need a combination of border security, worksite verification and enforcement, and employer sanctions for those who cheat, in order to dry up the attraction of those who want to come to the United States to work. But in doing so, we can provide a good balance for those who are here and who Congress is in the process of determining should be available for certain benefits under this bill, but I believe do so in a way that would prevent and make far less likely the massive fraud which undermined the 1986 amnesty.

I reserve the remainder of our time and yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. Mr. President, I was here in 1986. I understand the 1986 act very well. I listened to my friend from Texas describe the provisions we have for earned legalization, saying effectively it is the same as offered in 1986. Of course, it is not because in 1986 that was a real amnesty. We have had that debate for 10 days. We can have it again today.

What we are talking about in this program is recognizing the people who have violated the law are able to work

and earn their way into a position where eventually they can apply for citizenship if they pay a penalty, if they demonstrate they have paid their back taxes, have had no trouble with the law, and they are prepared to learn English. After the last person in line legitimately is able to gain entry into the United States, they can adjust their status.

The 1986 failure is entirely different than what we have now. We had a proliferation of fraudulent documents. That is the history. We understand that. We had Republican and Democrat administrations that refused to enforce the 1986 laws. That is history. We can complain about 1986, but 1986 is not 2006. What we did in 1986 is not 2006.

We can talk about how some of the terrorists got into the United States. Most of the September 11 terrorists got into the United States through Saudi Arabia. The reason they got in is because the CIA didn't talk to the FBI or the Immigration Service. The majority of those who came here and were part of September 11 were known by the CIA, and they never shared that information with the Immigration Service or the FBI. They did not need fraudulent documents. We needed the FBI and CIA to work together.

Having said that, hopefully we have a better relationship between the Central Intelligence Agency and the FBI now than we had then. However, that is the past. We have to learn from the past.

I listened to the Senator say what we need is tamper-proof documents. If we do not have tamper-proof documents, this system is not going to work. Tamper-proof documents is what we are committed to, to try and deal with the fraud.

People can come to the Senate and talk about the fraud in our immigration system, which is true. What we are trying to do with this legislation is remedy that. I don't know what the alternative is from the Senator from Texas. I know what his concerns are, but I don't know what his remedy is. We are talking about tamper-proof documents. We are talking about tamper-proof documents for guest workers. We are talking about tamper-proof documents so laws can be enforced against employers who are going to fire undocumented individuals who do not have the tamper-proof documents. We are talking about tamper-proof documents for those individuals who want to play by the rules and go by earned legalization.

The language in this legislation is very clear. That is, if you lie on your application, you lose all your rights, and you are subject to deportation. However, if you commit an innocent mistake on your application, that can be considered and not be used as a vehicle for deportation. That is the principal difference. I don't think that is unreasonable.

The Senator believes if we do not change what we have in our law to what he wants, if we accept his amend-

ment, people will not be discouraged from coming forth. Of course they will be discouraged from coming forth. People come forth and they, in good faith, make an application. They find out that application somehow is defective. Whether it is willful, knowing, or they lied about it, they are subject to deportation. If it is an innocent mistake, we don't want them deported. If this is subject to the Cornyn amendment, why are they going to come forward and share information if they know if they share information confidentially they will be deported? We are undermining an essential aspect of this legislation—bringing people out of the shadows.

Of the millions of people who are here, we have people who have come here because they want to work hard, they want to provide for their families, they want to be part of the American dream. They are prepared to learn English. They are prepared to pay their taxes. They are prepared to pay their penalty. They want a sense of pride. They practice their faith. They want to be able to come in and be able to adjust their status so they can be legalized to have the respect of their children, their family, and their community. That is what the great majority of the people want. That is what we are trying to do.

If we follow the Cornyn amendment, people come in good faith, someone flyspecks that particular application and says: No, it is a question whether this is criminal intent—boom, you are gone; you are deported. We will have a very difficult time.

We have crafted this legislation so those who are going to lie on that application, those who are involved in criminal activity are subject to deportation—no ifs, ands or buts. But we also understand in this complicated world there will be innocent mistakes made, and we do not want to subject those people to deportation. That is not what this is about.

It seems to me honest people who submit a good-faith application to earn legalization should not be citing their own deportation orders; otherwise, why should anyone apply? That effectively is what the Cornyn amendment does. It effectively undermines the whole purpose and scope and thrust of the legislation.

I withhold the time.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. I have enormous respect for the knowledge and passion the Senator from Massachusetts brings to this issue. He is reading more into the amendment than certainly I intend. I would like to explain that.

First of all, I don't want to get into an argument with him today about what is and what is not amnesty. We have had that debate. We will leave further discussion of that for another day.

I agree with the Senator that what undermined the 1986 amnesty, which I think we both agree was amnesty, was the proliferation, as he said, of fraudu-

lent documents. He acknowledges, and correctly so, coming here now 5 years post-September 11, that it is important all of our law enforcement and intelligence agencies communicate with one another in a way that protects the American people.

He talks about tamper-proof documents. This bill does not provide for such tamper-proof documents. In fact, it maintains the current regime of allowing people to prove their eligibility to work by showing some combination of up to 20 different documents. That is where fraud has such great potential. We know there are document mills, there are criminal organizations that will generate a passport, a Social Security card, a driver's license—you name it. Some of the quality of their work is very high, and it easily passes for a valid document. But we do not have that tamper-proof document in this bill, and I hope in the conference committee we will agree among ourselves that is an essential part of this comprehensive immigration reform.

What I am getting is, if someone used a fraudulent document to apply for the benefits under this bill, and they are denied the benefits under this legalization program, that information ought to be shared with the FBI and with, potentially, the CIA in cases where their jurisdiction is invoked. This has the opportunity not only to lead our law enforcement personnel to shut down these fraudulent document mills, but also potentially to crack criminal syndicates engaged not only in generating false documents but trafficking in persons, in drugs, in guns, and even potentially terrorist organizations.

It is absolutely critical we have the Department of Homeland Security able to share that kind of information with the CIA and the FBI. It is important we bring down those stovepipes that prevented the information sharing that might have prevented September 11.

I am not suggesting a good-faith mistake in an application for the benefits under this bill would result in deportation. To the contrary. I am glad to hear the Senator from Massachusetts say, if you lie, you lose, you get deported. I believe we need to have a commonsense availability of this information—not on a widespread basis; we are not going to publish it on the Internet. But law enforcement ought to be able to share in some of this information on a case-by-case basis in a way designed not only to root out and prevent crime and punish crimes that already have been committed but potentially protect America against future terrorist attacks.

I cannot for the life of me understand why this is controversial, particularly coming up as we are on the fifth anniversary of September 11.

I withhold the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, under title III, there are only 4 documents, not 20 documents. Title III,

4 documents: the passports, REAL ID, the green cards, and employment authorization documents. They are basically biometric documents, 4 documents in title III, not 20.

Second, the Senator from Texas is describing the conditions we had in 1986, not in this legislation. There is the encouragement of cooperation with the Department of Homeland Security and the FBI when we have document fraud or when there is fraud. We make that extremely clear. That was not clear, as the Senator appropriately pointed out, in 1986. There was not that kind of cooperation. There was some but not nearly what there should be. We are all for that.

The confidentiality clause in the underlying bill does not protect the criminals. On the contrary, the bill requires DHS and State to disclose all information furnished by legalization applicants to law enforcement entities conducting criminal activity and national security investigations.

We learned from what we called IRKA, the 1986 act, and we have that in the legislation. On page 38 of the legislation:

OTHER DOCUMENTS.—Not later than October 26, 2007, every document, other than an interim document, issued by the Secretary of Homeland Security, which may be used as evidence of an alien's status as an immigrant, nonimmigrant, parolee, asylee, or refugee, shall be machine-readable and tamper-resistant, and shall incorporate a biometric identifier to allow the Secretary of Homeland Security to verify electronically the identity and status of the alien.

We have spent time on it. I am a strong believer that is what we need. This legislation is not going to work unless we have an effective system, unique, special. Other countries have this; we ought to be able to do it, many of the countries in the Far East, also Brazil, South America, and other countries. We can and should do it. We will do it. We have developed the language to do it.

We are for prime documents that have been accepted and recommended. We worked with the Department of Homeland Security on what documents they are for. We have insisted on cooperation between the FBI, the Department of Homeland Security and the Justice Department in any area of criminality.

We are all for at least what I understand the Senator has said. We are glad to clarify that. We believe we have attended to that.

There is no question in 1986 that was not the case. We were rife with fraudulent documents, failure to enforce the law against employers, separation between the INS at that time and the FBI. We did not have the Department of Homeland Security. All of that we have learned from. We have addressed the principal issues and questions the good Senator has outlined.

I withhold the remainder of my time. The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I appreciate the comments of the Senator

from Massachusetts, but looking at the page he refers to on page 38 of the bill, it says:

Not later than October 26, 2007, every document, other than an interim document, issued by the Secretary of Homeland Security . . . shall be machine-readable and tamper-resistant. . . .

I certainly applaud that aspirational goal. I would just note that just within the past few days, though, we have postponed the implementation of the Western Hemisphere Travel Initiative card for another 18 months. There is no certainty that will happen by that date. What happens in the interim?

Let me just provide a couple of examples.

In 1995, Jose Velez, was found guilty of immigration fraud after he filed fraudulent applications under the 1986 amnesty. Let me just parenthetically note, in talking to Emilio Gonzalez, the current head of Citizenship and Immigration Services, he tells me there is still litigation over some of the cases covered by the 1986 amnesty—still in litigation.

But getting back to Mr. Velez's case, he said the task force that brought down Velez resulted in the guilty pleas or convictions of 20 individuals who together are responsible for filing false legalization applications for in excess of 11,000 unqualified aliens. Between March of 1988 and January of 1991, Velez and his coconspirators submitted approximately 3,000 fraudulent applications.

In connection with the 1986 legalization program, there were 920 arrests, 822 indictments, and 513 convictions for fraud and related criminal activity.

I would just return to something I said at the outset.

What we are talking about in this amendment is essentially the same language contained in the Violence Against Women Act.

The language in that act, which was designed to protect battered women and family members, states that the confidentiality provisions end "when the application for relief is denied and all opportunities for appeal of the denial have been exhausted."

I would suggest, if that language is good enough for the protection of women against whom violence has been committed, isn't it good enough for a worker who is simply out of status?

This amendment is not designed to undercut the compromise or the overall structure of the plan that is on the floor. This is designed to make it work. I want to make sure we are committed not only to comprehensive immigration reform but that we are actually going to make it work. That is all this amendment does.

I ask for the support of my colleagues.

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

The ACTING PRESIDENT pro tempore. Who yields time?

The Democratic leader.

Mr. REID. Mr. President, I yield 1 hour of my time postcloture to the

Senator from Massachusetts, Mr. KENNEDY.

The ACTING PRESIDENT pro tempore. The Senator has that right.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, early this morning, as we do every morning before coming to the floor to debate the immigration bill, a group of Senators sat down to consider and analyze the amendments which are on the list for today. In discussing the amendment by the Senator from Texas, there was, candidly, more confusion than I have seen on any of the amendments which we have analyzed so far.

When the Senator from Texas says the immunity is eliminated only after the application is denied, then the reason for confidentiality ends, I disagree with him about that because the reason for the confidentiality is to get the applicant to be candid and complete and honest about all of the information in the application. So if the applicant knows that at some point the confidentiality is gone, there is no longer the motivation to be completely open and completely candid in making out the application.

What we are really seeking, as a public policy matter, is to get the applicants to be candid and forthright and complete in the information they are providing. If there is evidence of fraud in the application, or if there is evidence of crime, that will be provable by evidence outside the scope of the application.

There is another aspect of the confidentiality; that is, the confidentiality or safe harbor which applies to the employer. When the immigrant makes an application, there is material which has to be supplied by the employer—illustrative of which is a check stub, which authenticates that the applicant has a job.

Now, the confidentiality applies to what the employer provides as well. The safe harbor or confidentiality protects the employer so the employer does not run the risk of providing some information which ends up on the application, then is disclosed, that could be used against the employer in a variety of contexts.

Now, it is possible that the amendment by the Senator from Texas could be adopted and that aspect could be cured in conference. But it is my thought, after reflecting on it considerably, that the issues ought to be weeded out and resolved in conference as opposed to having the adoption of the Cornyn amendment.

The value of confidentiality to encourage the immigrant to make full disclosure, and the value of confidentiality that the employer has, outweighs the advantages which the Senator from Texas articulates. And when the immigrant is faced with a situation where the confidentiality ends at some point—it is hard enough for Senators and experienced lawyers to figure it all out, and expecting an immigrant to be able to figure it out—I think the consequence for the immigrant will be to

be hesitant and unwilling or chilled, if you will, to provide all the information.

My sense is that our system will work better if there is no ambiguity or no uncertainties to the confidentiality being maintained throughout the entire process beyond when the application and appeals have all run out.

But this is an important issue. I thank the Senator from Texas for focusing our attention on it. I do believe it is better addressed in conference.

Mr. President, how much time remains on this amendment?

The ACTING PRESIDENT pro tempore. The amendment's sponsor retains 12½ minutes. The opponents retain 14 minutes.

Mr. SPECTER. Mr. President, I had announced earlier that in the management of the bill we would stack the five votes we have remaining on the immigration bill. I think that is the most efficient way to handle the matter because we know when we have a 15-minute vote, and 5 minutes more, they frequently extend far beyond that time, not wanting to cut off Senators.

We had two Senators out last night. We went to about close to 30 minutes, and I did not want to call for regular order. Evenings are a little more difficult. But it is very difficult to cut off Senators when the Senator is on the way. The Senator can be on the way for a very long period of time.

But I cannot control the stacking of votes because it requires unanimous consent to set aside the Cornyn amendment before going to the next amendment. Anybody can object. So we are going to have a vote after the Cornyn amendment. We will then try to see if we cannot get consent to stack the remainder of the votes. But the earlier announcement that the votes would be stacked will not take place because objections have been raised to that procedure.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take just a few minutes.

Mr. SPECTER. Mr. President, may I, before the Senator from Massachusetts continues, ask that the proponent of the next amendment come to the—well, he will be in the vote, so I withdraw that suggestion. We will have just one vote.

Mr. KENNEDY. Mr. President, just along those lines, I think our colleagues ought to be alerted we can anticipate a vote fairly shortly.

Mr. President, just in response to my friend from Texas, he is familiar with the fact that we passed the Border Security Act in 2002. The idea was to understand everybody coming into this country, to know where they were, and when they were leaving. We have not completed that kind of circle, but we have made dramatic progress. As of now, every green card, every work permit, every visa is machine readable and biometric—every single one that we

have working today. So this is a dramatic shift in terms of dealing with the issue of fraud, which has been talked about here.

Now, in order for immigration reform—we have talked with security officials who have all told us it is in our interest, in our national security interest, to bring people out of the shadows. They have all indicated that. We have so many individuals here whose names we do not know. We do not know their locations. They are living in a shadowy world that can more often than not—or at least sometimes can—be connected with crime. And many of these people, obviously, want a different life and a different future.

To be able to make that progress and isolate those individuals who pose a threat to us, our security officials who came before our committee said that a real confidentiality clause is necessary—absolutely necessary—for the earned legalization to succeed, in order to have immigration reform. Current undocumented immigrants will have to be persuaded it is safe to come forward to an agency they have come to mistrust, and they will need to feel comfortable the information they provide on their applications about their histories, their employers, and their families will not be used against them or their loved ones.

Churches, community agencies, and attorneys who will be helping people apply will also need confidence they are not exposing their clients to immigration enforcement by encouraging them to apply for legalization.

I believe the change in the Cornyn amendment would make the confidentiality clause worthless. Hundreds of thousands of immigrants who qualify for earned legalization will likely be dissuaded from participating, undermining the effectiveness of our entire reform effort. And hundreds of thousands of immigrants would be encouraged to remain in the shadows rather than risk coming forward under these conditions.

The confidentiality clause in the underlying bill does not protect criminals. On the contrary, the bill requires DHS and State to disclose all information—it is at the bottom of page 362 of the bill—unlike the provisions the Senator referred to in the Violence Against Women provisions. The penalties for the disclosure of information, and the exceptions: The Attorney General may provide, in the discretion of the Attorney General, the disclosure of information to law enforcement officials to be used solely for law enforcement purposes.

Our legislation says:

The Secretary of Homeland Security and the Secretary of State shall provide the information furnished pursuant to an application filed under [the] paragraph . . . and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution. . . .

Mr. President, I do not think you can do better than that. We are even stronger on this issue. I have mentioned the other reasons for it. I agree with the Senator from Texas. We have to put in place a very effective biometric system. We have a real downpayment for it. We want to strengthen that. But we are making very dramatic and significant progress, and we will continue to do so.

We have indicated, in this most strenuous way, why we have drafted these provisions the way they have been drafted. We think they best serve the interests of the innocent and the prosecution of the guilty.

The PRESIDING OFFICER (Mr. ENSIGN). Who yields time?

The Senator from Texas.

Mr. CORNYN. Mr. President, it really boggles my mind we are having a debate over such a commonsense and straightforward amendment coming up on the anniversary of 9/11. To say the Department of Homeland Security cannot share information about potential fraud and crime and potentially disclose organized criminal activity and potentially even terrorist activity because of the provisions of this underlying bill—I cannot believe we are having that debate. But we are.

Hopefully, our colleagues will join us in accepting this amendment which will reconcile this bill with other provisions of the law that we have amended and reformed over the last few years, which have improved information sharing between our intelligence community and our law enforcement agencies, which have made us safer. I don't think it is any accident that while there have been terrorist activities taking human life in places such as Madrid and London and Beslan and other places, we have been fortunate enough to avoid another travesty such as occurred on September 11. Part of it is because of information sharing.

This amendment would not deter any alien from applying for legal status. If we are going to say that once that application is denied for whatever reason that it can't be used to investigate potential crimes and fraud and potential terrorist links, that doesn't do anything to encourage or discourage people from coming forward. This is somebody whose application has already been denied. They already have come forward.

If we are going to have any criteria at all for taking 12 million people and moving them from an illegal status to some sort of legal status, we ought to be willing to enforce that criteria. That requires access to information and facts that will inform whether or not an individual satisfies the criteria that Congress has put in place.

I suggest to my colleagues that the American people are profoundly skeptical of taking 12 million people from undocumented or illegal status and all of a sudden putting them on a path to legalization and citizenship. That skepticism comes from many different directions. One of those is because they

saw the tremendous fraud associated with the 1986 amnesty. The language here is precisely the same as was contained in that legislation.

What we are saying by refusing to adopt this amendment is, we haven't learned any lessons, either from the mistakes that were made in the 1986 amnesty and the fraud that occurred in connection with that, or from the terrible tragedies of 9/11.

There is not a lot more that can be said about it that we haven't already said. I hope my colleagues are listening. I hope they will consider this carefully. I hope they will consider the fact that all we are doing is something that is contained in established laws such as the Violence Against Women Act. This does not undermine the ability of people to take advantage of the benefits of this program. What it does is help make that program work, work for people who are actually qualified to receive the benefits of the program while eliminating those who are not and those who engage in fraud and criminal activities to facilitate the immigration into this country of people who are not legally authorized to be here.

May I ask how much time I have remaining?

The PRESIDING OFFICER. The Senator has 8 minutes 20 seconds.

Mr. CORNYN. I will reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. How much time do I have?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. KENNEDY. Mr. President, I am glad the Senator from Texas invited our colleagues to listen carefully. I hope they will listen carefully to what I am reading from the underlying bill. No matter how many times the Senator from Texas says he doesn't believe there will be reporting, prosecution, and cooperation between the agencies, I suggest that any of our colleagues who are in question read page 362 of the bill:

Required disclosures—The Secretary of Homeland Security and the Secretary of State shall—

Not may, shall—

provide the information furnished to an application filed under the paragraph (1) or (2) of subsection (a), and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by an entity.

I can't make it any clearer than that, with all respect. That was not the way it was done previously. That is the way it is now. It has been mentioned, let's have the Violence Against Women Act legislation. I have that in my hand. For our colleagues to understand, it says:

The Attorney General may provide, in the discretion of the Attorney General, for the

disclosure of information to law enforcement officials.

We say "shall provide." The Violence Against Women Act says "may provide." We have a much stronger provision.

We are not defending actions of the past. We are talking about learning from the past. We have. Tamper-proof documents, we are strongly committed to that, and fair and effective enforcement at the employer level and, when we discover criminal activity—lying, deceit—on these applications, prosecution. But let's not wrap the innocent into that package as well.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I think we have said about all there is to say. Maybe we said it several times. I appreciate the Senator from Massachusetts pointing out page 362 of the bill. This is a voluminous bill, but my reading of this bill says that the section the Senator quoted only applies to the applicant and that application. In other words, if somebody fills out an application and is denied, then a criminal prosecution investigation may be had only against that applicant, but there are limitations which prohibit its distribution to third parties for purposes of investigating an organized crime syndicate or potentially terrorist links. There seems to be no common-sense reason why we would limit the availability of a document and that information, when it could well root out crimes involving hundreds and maybe even thousands of instances of fraud.

I believe the amendment strikes a balance. It is not designed to undermine the compromise that we have heard so much about. Indeed, this is to make sure that the underlying bill actually has a chance to work and isn't undermined by the fraud that has been so well documented underlying the 1986 amnesty but, rather, to fight that fraud and help build public confidence that we are serious about making this work.

Much of the problem with the 1986 amnesty was that it granted amnesty to 3 million people. The tradeoff was supposed to be effective work site verification to make sure that people who are qualified to work legally could work and those who were not could not and to sanction employers who cheat. But unless we have a system in place that will actually make it work, then all of the discussion about a comprehensive plan is a ruse. It will not work.

While I do have some differences with the Senator from Massachusetts about what this comprehensive immigration reform plan ought to look like, I trust we will be able to work on that some more when we get to conference with the House. My goal is to actually make sure it will work. He and I share that common goal, I believe. The amendment I have offered helps make that more likely.

I am prepared to yield back.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will make a brief comment. On page 119, immigration and visa fraud, it says:

Any person who knowingly—completes, mails, prepares, presents, signs, or submits any document knowing it to contain any materially false statement or representation [is subject to prosecution].

It continues on page 120:

... transfers or furnishes an immigration document to a person without lawful authority for use . . .

Any lawyer or social service agency, advocacy group, or notary, or any other agent who assists an immigrant in making a fraudulent claim is subject to criminal prosecution and also unprotected by confidentiality language.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, the provisions in the underlying bill are the same as those contained in the 1986 act that was the subject of so much fraud. I suggest that while we are all entitled to our own opinion, we are not entitled to our own set of facts. The facts are that the same provisions in this underlying bill are in the 1986 act. We can do better, and we can make this work. We can avoid the 400,000 fraudulent applications that tarnished the concept behind the 1986 bill.

I see the Senator from Alabama. May I inquire how many more minutes we have on this side?

The PRESIDING OFFICER. The Senator from Texas has 4 minutes remaining.

Mr. CORNYN. I am prepared to yield to the Senator from Alabama 3 minutes and retain 1 minute as the balance of my time.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 3 minutes.

Mr. SESSIONS. Mr. President, I thank the Senator from Texas for his exemplary and hard work on this legislation. From the beginning, had we listened to him, we would not be in the fix we are. With regard to this amendment, I have to tell my colleagues, it is a defining amendment. It defines us as a nation, as a Senate.

The question is, Are we going to continue to allow lawlessness to operate at the border? If we don't pass the Cornyn amendment, we will be saying we have no more intention to see that we have lawfulness in the immigration system in the future than we had in the past.

I was a Federal prosecutor for almost 15 years. What do you mean you can file a document and Federal investigators can't look at it to determine whether you committed fraud when you filed it? They are not going to be looking at people in the millions who are going to file to try to find some innocent mistake. How silly is that? They are not going to be able to prosecute blatant fraud, frankly, in large numbers. But we don't want them to be incapable of doing so. We don't want to set a policy that would prohibit criminal investigators of the United States

to examine an application for amnesty under this bill and not be able to prosecute, if it has fundamental fraudulent statements in it, or even be able to use it to build some larger investigation that may relate to coyotes or organizing rings. That is what we are most likely to come up with, in my experience.

Most likely they will be investigating rings of illegal aliens who have used false identification or come across the border illegally. And you are trying to put that together, and you go back and look at these applications which will be critical in establishing that case. They are barred from doing that. This is really a big deal because one of the weaknesses I have seen in our whole approach to immigration and, frankly, other issues is that we as a nation are becoming so soft that we are incapable of drawing a line anywhere. We are incapable of drawing a line anywhere. So the proponents of this legislation are saying it is somehow wrong that we could hold people to account if they file an application to become a beneficiary of amnesty. We cannot even investigate that and prosecute them, or prosecute other people who brought them in illegally in some sort of conspiracy, and deny the investigators that.

I thank the Senator from Texas, who is a former attorney general and a former justice on the Texas Supreme Court. We should listen to him.

I yield the floor.

Mr. KENNEDY. Mr. President, I am prepared to yield back our time. I think all time has expired.

The PRESIDING OFFICER. There is 30 seconds.

Mr. CORNYN. We will yield back our time.

The PRESIDING OFFICER. All time is yielded back.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment of the Senator from Texas.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

The PRESIDING OFFICER (Mr. CHAMBLISS.) Are there any other Senators in the Chamber desiring to vote?

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

[Rollcall Vote No. 151 Leg.]

YEAS—49

Alexander	Burr	Conrad
Allard	Byrd	Cornyn
Allen	Chambliss	Craig
Bennett	Coburn	Crapo
Bond	Cochran	DeMint
Bunning	Coleman	Dole
Burns	Collins	Domenici

Dorgan	Lott	Stevens
Ensign	McConnell	Sununu
Frist	Murkowski	Talent
Grassley	Nelson (NE)	Thomas
Gregg	Roberts	Thune
Hatch	Santorum	Vitter
Hutchison	Sessions	Voinovich
Inhofe	Shelby	Warner
Isakson	Smith	
Kyl	Snowe	

NAYS—49

Akaka	Graham	McCain
Baucus	Hagel	Menendez
Bayh	Harkin	Mikulski
Biden	Inouye	Murray
Bingaman	Jeffords	Nelson (FL)
Boxer	Johnson	Obama
Brownback	Kennedy	Pryor
Cantwell	Kerry	Reed
Carper	Kohl	Reid
Chafee	Landrieu	Salazar
Clinton	Lautenberg	Sarbanes
Dayton	Leahy	Schumer
DeWine	Levin	Specter
Dodd	Lieberman	Stabenow
Durbin	Lincoln	Wyden
Feingold	Lugar	
Feinstein	Martinez	

NOT VOTING—2

Enzi	Rockefeller
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The amendment (No. 4097) was rejected.

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

Mr. KENNEDY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, we have an amendment, and I think it is that of our friend and colleague from New Mexico. So we want to let our colleagues know there is 40 minutes on this, and we expect to have a rollcall vote on this next amendment, just for the awareness of our colleagues at this time.

AMENDMENT NO. 4131

Mr. BINGAMAN. Mr. President, I call up amendment No. 4131 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 4131.

Mr. BINGAMAN. 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 limit the total number of aliens, including spouses and children, granted employment-based legal permanent resident status to 650,000 during any fiscal year)

On page 316, strike lines 1 through 5, and insert the following:

“(2) VISAS FOR SPOUSES AND CHILDREN.—
“(A) IN GENERAL.—Except as provided in subparagraph (B), immigrant visas issued on or after October 1, 2004, to spouses and children of employment-based immigrants shall not be counted against the numerical limitation set forth in paragraph (1).

“(B) NUMERICAL LIMITATION.—The total number of visas issued under paragraph (1)(A) and paragraph (2), excluding such visas issued to aliens pursuant to section 245B or

section 245C of the Immigration and Nationality Act, may not exceed 650,000 during any fiscal year.

“(C) CONSTRUCTION.—Nothing in this paragraph may be construed to modify the requirement set out in 245B(a)(1)(I) or 245C(i)(2)(A) that prohibit an alien from receiving an adjustment of status to that of a legal permanent resident prior to the consideration of all applications filed under section 201, 202, or 203 before the date of enactment of section 245B and 245C.

Mr. BINGAMAN. Mr. President, the purpose of my amendment is to put some type of limits on the number of new legal permanent residents we approve each year in this country, and that is the question. It is sort of a philosophical question and a practical question: Should we limit this number or should we leave it unlimited as the current bill provides?

We have two large categories under which we approve new legal permanent residents in this country. Let me put one chart up here to show these two categories.

One is called family preference. That is essentially where if a person is already a legal resident in the United States and wants to bring in family members, that is family reunification, and we think that is a good thing and we provide in the law so that can occur. Each year, there can be 480,000 people who gain legal permanent residency in our country under that proposal, and that is right here in the bottom half of this chart.

The other main category we use for establishing legal permanent residency is what we call employment-based, and that is where an employer essentially brings someone to this country to work, along with their family. We have always had a limit on that. The limit in the law today is 140,000.

Let me go through some of the history of where we have been on this issue.

In the law that is applicable today, we allow 140,000 legal permanent residents to be approved each year under the employment-based system. The bill Senator KENNEDY and Senator MCCAIN proposed last May, on which I compliment them—they put a great deal of work into it—that bill said, let's increase that number from 140,000 to 290,000, and I think that makes some good sense. The 290,000 was to include the workers and their families, just as current law was to include the workers and their accompanying families.

Then, 2 months ago, when the Judiciary Committee began its deliberations, the chairman presented his chairman's mark, and it said: OK, the 290,000 is a good number, but let's only apply it to workers, and then any accompanying family will be extra and not count. So on this chart, you can see that this area at the top is the estimated number of family that might actually come to the country.

Now, the estimate is that there would be 1.2 family members accompanying each worker, and that estimate came from the Congressional Research Service. They said they didn't

really know because it is a very different mix of people we would have immigrating into this country under this legislation than under current law. But historically, it has been 1.2 people per employee, so let's just assume that, and that gets you up to 638,000, was the Congressional Research Service's estimate of the number of employment-based visas that would be offered under Senator SPECTER's chairman's mark in the Judiciary Committee.

Well, then, of course, we had some additional deliberations here, and we now have the Hagel-Martinez bill. The Hagel-Martinez bill said the 290,000 figure is wrong; let's go to 450,000. And of course the Congressional Research Service said, OK, let's make the same calculation here: 1.2 family members will accompany each of those 450,000 workers, so you add those in and that gets you to 990,000. That is for the first 10 years. After the first 10 years, this legislation calls for that number to drop back down.

At this point, let me pause and make a point about this assumption which is built in here. Let me show one other chart. This is a very different group of immigrants we are approving to come into the country under this legislation than is currently approved under existing law. If, in fact, there are more family members who accompany these workers, then these numbers go up pretty dramatically. If, for example, instead of 1.2 people—a spouse and two-tenths of a child—coming in with each worker you had a spouse and 1 child coming in with each worker, then it is 1,350,000. If, in fact, there were 2 children, the spouse and 2 children, it would be 1.8 million people under the assumptions that are built into this legislation.

So all I am saying is, we don't know. Under the legislation pending, we don't know whether there are going to be 500,000 employment-based visas issued or a million employment-based visas issued for legal permanent residency or 1.5 million. I think we ought to fix that. My amendment says, let's pick a number.

Let's go back to this other chart, and I will show you how we came up with the specific number in the amendment. The number in the amendment tries to be a rounded-off number from what the Judiciary Committee started with and says, look, if they had kept a cap in the Judiciary Committee, as I believe they should have—we have had a cap in this country, a cap on the number of legal permanent residents historically—if we kept a cap, then it should be about 650,000. That is the estimate we came up with.

Some people say that is a very high number. That is a high number. That is over four times what we currently permit. It is more than twice what Senators KENNEDY and MCCAIN recommended in their legislation, the McCain-Kennedy bill or Kennedy-McCain bill. We have tried to be generous in this and say we should have a

lot of new immigrants transferring over to legal permanent status, but we should have some limit on those.

The real question for each Senator is going to be whether you agree there ought to be a cap. Do you agree there ought to be a limit? I believe very strongly we should have a limit. I believe the limit we have chosen here is a generous one. To leave this bill with no cap at all would be a mistake. To send this bill out of the Senate without knowing whether we are increasing the legal permanent residents under the employment-based system 4 times or 8 times or 12 times, which is very possible, I think would be a very big mistake. So we need to get some certainty into this. We need to try to be somewhat prudent in what we are doing.

Let me just mention one other thing. Mr. President, how much time remains?

The PRESIDING OFFICER. Twelve minutes, twenty seconds.

Mr. BINGAMAN. Mr. President, let me just mention that this cap I am trying to put on is just for one of the categories available for people who want to become legal permanent residents, and I need to underscore that.

There is still the opportunity to become a legal permanent resident as part of this family preference category. That is 480,000 per year, and we are not in any way affecting that with my amendment. There is still the opportunity, if you are already here in this country and you have been here 2 years under this legislation and you are undocumented, you can go through the earned legalization provisions in the bill and become a legal permanent resident. We are not in any way affecting any of that or trying to limit that. If you are an agricultural worker, there are 1.5 million blue card agricultural workers who are provided with an opportunity to become legal permanent residents in this bill, but we are not in any way affecting that. There are various categories in the bill for highly skilled workers who are able to become legal permanent residents without being subject to any numerical cap. I have supported those provisions. I am not suggesting we put a cap on those provisions. These are highly skilled workers, in many cases people involved in science and engineering and other skills that are important to our economy.

Of course, there is provided in the bill an additional estimated 141,000 visas which have been recaptured from the last 5 years because they were unused. We are not doing anything to affect that. That is fine. I have no problem with that.

All we are saying is that this large category that we call employment-based legal permanent residents, we should have an annual limit on that. We have had one for over 100 years. We have always limited that. Every country in the world limits that. We should not be the only exception in the world to this general, prudent rule as I see it.

We can argue about exactly what the right limit ought to be, but I don't think we should give up on having any cap at all, and that, unfortunately, is what the present bill provides.

How much time remains, Mr. President?

The PRESIDING OFFICER. There remains 9 minutes and 50 seconds.

Mr. BINGAMAN. I see my colleague from Arizona wishes to speak. I yield the floor and reserve my time.

The PRESIDING OFFICER. Who seeks time in opposition?

Mr. MCCAIN. Mr. President, I ask that I be allowed 5 minutes in opposition.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 5 minutes.

Mr. MCCAIN. Mr. President, I rise, obviously, in strong opposition to the amendment. The Senator from New Mexico just made my arguments for me. He wants us to be like other countries in the world—maybe France, maybe Germany, maybe those countries where there has been no assimilation, no ability to become part of the society and therefore they have ended up with serious situations—riots, car burnings. It is clear he wants to be like other countries in the world.

He also made my argument in that he pointed out there are lots of ways for highly skilled workers, highly educated people to come in. There is virtually no restraint on them. So he is going to focus on the lower skilled workers. Those are the ones on whom we are going to put the cap. Right.

The overwhelming number of people who have come to this country have started out as low-skilled workers, I remind my colleague from New Mexico, and have worked their way up the economic ladder. If you are rich and educated and highly skilled, come on in. There is no problem with you coming to the United States of America. But if you are low skilled, we are going to make sure that not only you but your children are not admitted.

My parents had three children. I am glad we didn't have that kind of proposal for my family—either I or my sister or my brother may have stayed someplace else, if my parents were immigrants. This is against family. This is against everything that America stands for.

I point out to my colleagues, this is just one in a series of amendments that basically would restrict people's ability to come to this country to not only work but also, over time, raise families and become part of our society. The Bingaman amendment clearly discriminates against people who are low skilled. He wants us to be like every other country in the world. I tell the Senator from New Mexico, I don't want America to be like every other country in the world. He made my argument against his own amendment. I don't want us to be like that.

Mr. BINGAMAN addressed the Chair.

Mr. MCCAIN. Mr. President, I believe I have the floor. If the Senator from

New Mexico—by the way, this amendment is opposed by the Chamber of Commerce and the majority of the unions and certainly by every major Hispanic and immigrant group in the United States of America. The Senator from New Mexico may prevail. But lately these amendments have, obviously—they have a tenor and an effect that I don't think is healthy for this country and I don't think is good for America.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. MCCONNELL. Mr. President, if the Senator will yield for just a moment, I yield my 1 hour postcloture to the Senator from Pennsylvania, Mr. SPECTER.

I thank my friend.

The PRESIDING OFFICER. The Senator has that right. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I was seeking recognition to ask the Senator from Arizona—he says this is unfair to low-income, low-skilled workers because we are putting a cap of 650,000 on this employment base. His proposal, the McCain-Kennedy bill, limited it. It had a cap of 290,000. I am proposing more than twice the admissions under the employment-based system than his proposal had. I don't understand why mine is unfair to anybody whereas his 290,000 was appropriate. He was proposing 290,000 as a limit on the number of people who could transition to legal permanent status, and that is when the guest worker program was being proposed at 400,000 per year. We have now reduced the guest worker program to 200,000 per year, and I am saying legal permanent residents should not exceed 650,000 per year under the employment-based system, in addition to the family preference, in addition to all the other ways that you can become a legal permanent resident. So I don't think this is that unfair. It is more than twice what he and Senator KENNEDY proposed and more than four times the current law.

But it does impose some cap. I understand there are people, particularly inside the beltway, who do not want any cap. A lot of the immigrant groups have indicated very clearly they are opposed to any cap, any limit in this category. Of course, the Chamber of Commerce is opposed to any limit in this category. They would prefer to be able to bring in anybody without limit. I think that is not a responsible course, and for that reason I have offered this amendment.

I reserve my time.

Mr. KENNEDY. The answer is very simple, I say to the Senator. We had one figure when we came out of committee and then we had the Martinez legislation which forced individuals to go on back. We want to make sure the people who have been working here from 2 to 5 years would be able to go back and then come back in employment. So we increase that.

I will just continue—

Several Senators addressed the Chair.

Mr. KENNEDY. I just want to make another point. Here is the legislation, the immigration act. It points out where the priorities for the green cards are. If the Senator offered that amendment and had a fair distribution of the green cards, I would support him. But he does not. Under this he gives the priority to workers, aliens with extraordinary ability. That is No. 1. Outstanding professors and researchers, they will get their green cards; certain multinational executives and managers, they are going to get their green cards; aliens who are members of professions, they are going to get their green cards; skilled workers and professionals, they will get their green cards. But the people we have talked about, to try to make this kind of balance, the ones who have been coming across the border, the ones for whom we are trying to get a legal system so they can come through as guest workers, under this they are the ones who will be left out.

Fair ought to be fair. We have tried to work with the Senator from New Mexico to get a fair distribution so people will be treated fairly, and we have not gotten it. This is why we have this dilemma.

If you wanted to try to work with us to try to get a fair distribution—but that has not been the case. We tried to do that. As a result, the point the Senator from Arizona makes has credit.

I will withhold our time.

The PRESIDING OFFICER. Who seeks time? The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, can I respond? First, on the last point Senator KENNEDY makes about fair distribution, I am accepting the distribution that is in the Hagel-Martinez legislation, the distribution that was in the chairman's mark, the distribution that was in the McCain-Kennedy bill. I am not changing that in any respect. I am not proposing to make any change in that. Whatever the distribution was that they thought was appropriate, that is exactly what I accept. My amendment doesn't affect that.

Let me make this other point because Senator KENNEDY made a point that somehow or other the Hagel-Martinez legislation caused the need for no cap in this area, and for the very large number we are, in my amendment, excluding—we are saying, in calculating this 650,000, we are excluding such visas as are issued to anyone under this 245-B and -C program, which is all of those people who are going to come in under this deferred mandatory departure system, the people who have been here at least 2 years but not a full 5 years, or not more than 5 years.

We are saying let's not count those people. Those folks are home free. Anyone who has been here over 2 years is home free. They are on their way to legal permanent status and I have sup-

ported that aspect of the bill and I continue to support that aspect of the bill.

All I am saying is that once you exclude that group and say, OK, they are home free, then you still have the question: How many new employment-based legal permanent residents are we going to admit each year? Senator MCCAIN, Senator KENNEDY said it ought to be 290,000. I am saying let's make it 650,000, but let's put on a cap. Let's not leave it the way the bill now stands, which is totally uncontrolled.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator controls 5 minutes 45 seconds.

Mr. BINGAMAN. Mr. President, I will reserve my time at this point.

Mr. KENNEDY. I will just take a minute.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. The problem is that there is a limitation with the cap. Under the existing legislation the children and the wives were not counted. You are counting them now. The way the law works is going to be the squeeze. That is the effect. If the Senator wanted to—we tried to work this out. The Senator can say we are not changing anything, but, yes, we are changing it. We are changing it because you are moving numbers around. People will be able to come into this country. There will be a job out there, a person will be able to apply for it and come in here, but they can't get the green card because we only have a certain number of green cards. So that person will not be able to get the green card. So they will never be able to make an application for permanent residency. That is the effect of it.

If the Senator wanted to work with us—which we indicated we were going to—and put in that kind of cap and work this around so we could still maintain that aspect in the legislation, we were glad to do it. But once you have that limitation which is in effect now—is in effect now—this skews this whole process in terms of green card and normalization to the highest skilled individual and says to those people we have been trying to deal with—there is pressure on the border. We spend an enormous amount of time with guest workers saying: You are going to be treated with respect, no Braceros. You are going to work hard for 4 years, and there is going to be a green card out there, and you can work 5 more years, work hard, play by the rules, pay your taxes, and get citizenship.

Can the Senator give us assurance that under his proposal someone who comes as a guest worker and works 4 years is going to be able to get the green card and go for citizenship?

Mr. BINGAMAN. Mr. President, I am glad to respond. I can't give assurance of that. But I can say they are much more likely to get the green card under my proposal than they were under McCain-Kennedy. McCain-Kennedy

contemplated 400,000 guest workers every year coming in and said the total number of green cards we are going to issue to these people is 290,000, including family.

What I am saying is, we should increase that to 650,000, including family, since we have half as many guest workers coming in each year under the bill that we have agreed to on the Senate floor.

I think my proposal, frankly, is much more generous in giving green cards to people who have come here legally than was McCain-Kennedy. It is more than twice as generous. It is more than four times as generous as current law. But I am saying we ought to have some cap. We should not just leave it uncapped entirely.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New Mexico has 5 minutes 35 seconds.

Mr. BINGAMAN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks time? The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I think this has been a very good debate. Why is the Chamber opposed? Why are the groups backing the bill opposed? Do they want just anybody and everybody? Some probably do. I don't believe that is what motivates the authors of the bill.

We are trying to marry up needs, and the numbers we are picking do change because of the politics and because of projected needs.

What I would say to my good friend from New Mexico is, if you think you are helping, you are not. I am not questioning your motives. I will never question the motive of any Senator who votes differently than I do because they are all intelligent people, and I don't claim to know more about any particular area than any other of my colleagues. But what we are doing is trying to create order out of chaos because we live in a chaotic world when it comes to immigration. The numbers change every time the bill changes.

Hagel and Martinez was a new proposal, a new idea that broke people into different groups. The 2-to-5 year group of people was treated differently. Senator BINGAMAN was right, we tried to exclude that. Whether it is 290,000 or 600,000—whatever, what I don't want to do is artificially deny my country the ability to assimilate hard-working people I think we need.

The fundamental disagreement between me and the Heritage Foundation and Senator BINGAMAN is I believe that immigration is going to be regulated by the needs of our economy. When our economy gets to the point that we can't tolerate more people, the numbers are going to change. The Heritage Foundation assumed escalations in numbers apart from supply and demand. To my good friend from New Mexico, the 11 million to 12 million—

whatever number it is—have already been assimilated into our workforce without damage to our workforce because we have historically low unemployment, and the economy is humming, from a Republican sound bite point of view. This is about as good as it will ever get.

When you change the formula, when you introduce the family element of having to choose between family status and work status in a different kind of way than the base bill, then you are going to create a chaotic political event, a chaotic assimilation event.

What I am trying to urge my colleagues to do is let us not create disorder in a way that just doesn't reflect what we want to be as a society. We need the workers. I think we need more than 290,000. But when you start looking at counting the children and family members and they are not workers, you are hurting our business community, and you are putting a burden down the road on people. That just really makes me feel uncomfortable.

I respect Senator BINGAMAN's approach to this problem. He has limited the number of people that can come in. I fundamentally disagree with him. I think 5 years from now we are going to need more people, not less. Japan is our model in this regard. The Japanese demographics have changed. There are more older people there than younger people. They have a closed society. They don't assimilate people from outside their culture, and their gross domestic product has slowed down. Their workforce needs are being unmet.

Whatever number we pick—and we can all talk about what the right number is—to make this change at this stage in the proceedings to introduce family status versus work status is a new concept, something we haven't all thought about and worked through before. That does more harm than good.

I hope we can march forward, work with the numbers based on what we think the economic needs of the country will be in a way that is fair to people.

We have changed the bill fundamentally from Hagel-Martinez. We are trying to accommodate business needs; we are trying to accommodate the needs of our society in terms of people violating the law.

But this idea that we are going to flood America with people who can't add value to America, my colleagues, is contrary to what this bill is about.

If you come here under this bill, whether you are a future flow or you are with the 11 million, you will have to prove to us over time that you are worthy of staying here. You will have to earn your way into working in this country and staying in this country. You are not getting anything for free. As a matter of fact, the future flow people and the 11 million people are going to be asked to do more than any generation that has ever come to this country.

I think there is a point in time where we need to stop and try to have assimilation rules that bring about order, not chaos.

I hope that we will reject this attempt to change the bill in the eleventh hour because it will create political and economic chaos.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I yield to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I have great respect for the Senator from South Carolina. But when he says to the Senator from New Mexico that you think you are helping and you are not, I come down on the other side. I am one of those people who has not decided how I am going to vote on this final bill. But this will help make up my mind. If there are no caps, that would have significant bearing on how I might vote on final passage.

I have great respect for those who have managed this bill. I think this bill has been improved substantially since it came to the floor. We have actually gone through a legislative process for once around here. For the first time in a long time, we are actually legislating. This bill has been improved as a result.

The provisions to strengthen and protect the border have been dramatically improved.

The credibility of the plan to deal with the 11 million or 12 million illegal immigrants that are already here has been substantially improved. This bill is still very imperfect.

I want to conclude by saying that the Senator from New Mexico is I think casting a lifeline out to sponsors of this bill. If this bill has no caps, I think you will find a strong public reaction against this bill.

The PRESIDING OFFICER. Who seeks time?

Mr. BINGAMAN. Mr. President, I yield 2 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, once again Senator BINGAMAN is correct and has a very, very important amendment.

My staff was the first to alert the country to the huge numbers that are involved in this bill and the extraordinary increases in legal immigration that will occur. We ran the numbers also.

Senator BINGAMAN's previous amendment helps fix some of those problems. This one will further help.

Under current law for employment-based green cards, 140,000 people are allowed in the country each year, and spouses and children count against that 140,000. Under the bill that is on the floor today, that number goes to 450,000, and spouses and children do not count. Utilizing the numbers of the Congressional Research Service, as the

Senator said, 1.2 children and a spouse per worker coming in, that would total 990,000 under this simple provision alone. It goes from 140,000 to 990,000. It could be more that come in under the spouse and family provisions. Let's just say go to 650,000. That is about four times the current rate.

How reasonable is that? I have not seen any economist, I have not seen hearings in which we have ever had official testimony that increasing by fivefold or sixfold the amount of legal immigration in this country is the right approach to take. So we don't have a necessary basis to assert this.

There is not really a tenor here. It is not a question of evocative, emotional feelings. It is a question of what does this bill do. It is fatally flawed, and the Senator is correct.

I support his amendment.

The PRESIDING OFFICER. Who seeks time?

Mr. BINGAMAN. Mr. President, how much time remains on the two sides?

The PRESIDING OFFICER. The Senator from New Mexico has 1 minute 56 seconds, the Senator from Massachusetts has 7 minutes 20 seconds.

Mr. KENNEDY. Mr. President, just so that our colleagues and friends understand exactly what we have done over the course of the development of this legislation, we have increased dramatically opportunities for high-skilled people to come here to the United States, probably two or three times, and the best estimate is about 600,000. That has been increased dramatically.

Under the basic immigration law, the people who get the first crack at the green card—what is the green card? The green card is the path towards citizenship. That really is key in terms of their future and their family's future.

Under existing law, of all the green cards that are going to be available, 70 percent of those are going to go to the high skills and only 30 percent to what I call the low skills.

We have recognized in the development of the legislation the pressure that is on the border, people coming across the border illegally, the pressure that is on companies that need the unskilled individuals to work in American industry for jobs that virtually no Americans will take. So we set up the process. They have to go out and ask. Americans have to advertise for those jobs and indicate what the pay will be. If they can't get it, they are able to bring in a foreign worker.

In this legislation, since we have found that farm workers have been so exploited over the period of the past we have given the assurance that we are going to have a tamper-proof card. They will be able to come here and be able to be treated with respect, with decent wages and decent working conditions.

We have put into effect a program which will enable enforcement in the legislation for employers. We know that there are demands for these low-skill workers. That is what we have done. That is the pressure at the bor-

der—for people who want to come here and be part of the American dream and provide for their family.

We said to the lower-skilled individuals that we are going to treat you the same as the higher-skilled individuals because we believe in equity and fairness. We value the work of lower-skilled persons. We value the work of minimum-wage workers as we do the presidents of universities. That is an essential part of our country and our system. They provide indispensable work.

We said to them, Look, you come to the United States as a temporary worker; you work hard for 4 years. Then you have the opportunity to get a green card; 5 years later, if you pay your taxes and behave yourself, you can earn your citizenship. But they have to be able to earn the green card. With the numbers that have been increased over the course of the debate on McCain-Kennedy, the effect of this is going to eliminate the possibility also of those low-income people to be able to obtain a green card over the time that they are here in the 6-year period.

That is effectively capping what you do. We tried to work out with the Senator from New Mexico a way to kind of deal with this disparity so we could have a fair distribution. We haven't been able to do that. But what we have done effectively is a dramatic alteration and change in this bill. At the end of the day there will not be the opportunity nor will we be able to represent the guest workers when they come to the United States. After 6 years, you have no alternative but to return home.

I know that is not the intention of the Senator from New Mexico. But that is the effect of his amendment on this legislation.

As I said to the Senator from New Mexico, we tried over the course of yesterday to say, OK, I understand the appeal of trying to get a definitive number of people, including children. It always involves some give-and-take. Some families have larger numbers of children than others, and we have always tried to be responsive to these family needs. We were trying to work out a process so that would not happen.

The Senator from New Mexico points out that there is a difference in the underlying bill. Our underlying bill was changed both in the Judiciary Committee and on the floor. One of the principal reasons it changed on the floor is because we took the Martinez-Hagel amendment that said we are going to treat people who are here 5 years differently than we are going to treat the people that are here longer. Those who are going to be here only for 2 years are going to be deported. But they will know there is a guest worker program out there. If they want to go out and become a part of a guest worker program, they can find ways to be able to do it, play by the rules and be able to probably find a way to come back in and do it legally.

Those who are here between 2 and 5 years are going to have to be certain of the other requirements. They will have to go back to the port of entry and come back in—and they are treated differently.

I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged.

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

The clerk will call the roll.

The bill 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. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I regret being absent for part of this debate on the issue, but the Judiciary Committee has been meeting in a rather heated session to decide what to do about getting information from the telephone companies on the NSA program. I want to comment very briefly in opposition to the amendment by the Senator from New Mexico.

This amendment will substantially limit the ability of members of a family to accompany those who come into the United States and take jobs where they will be productive. I believe having family present is a very high value. This amendment, in putting a cap on, leaving no flexibility for family members to accompany the immigrant, is just basically a bad idea.

We have sufficient room to accommodate the immigrants who are permitted to come in under the guest worker program, and accommodating the guest worker ought to include their family. They ought not to be separated from their family. We ought not to have a statute on this important subject which has that very undesirable family result.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand all the time has expired. We ask for the yeas and nays on the Bingaman amendment.

The PRESIDING OFFICER. The Senator from New Mexico has 1 minute 54 seconds remaining.

Mr. KENNEDY. Excuse me. I apologize.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Thank you, Mr. President.

Let me respond to that point which was just made by the chairman of the Judiciary Committee. There is nothing in my amendment that limits the ability of families to accompany workers. All my amendment does is to say there should be a cap on the total number of workers with accompanying family, just as there is today, just as there was under the McCain-Kennedy proposal. We are saying there should be some limit. It should not be open-ended, as the current bill pending on the Senate floor provides.

We are saying this limit should be 650,000. Now, why did we choose that? Because that is what the Congressional Research Service says they estimated would actually be happening under Chairman SPECTER's proposed mark to the Judiciary Committee when they started. To do something other than what we are proposing in this amendment is to leave it totally unknown as to how many people we are going to have coming in under this employment-based legal permanent residency program, how many green cards we are going to be giving out. It could be 500,000. It could be 1 million. It could be 1.5 million. This is every year I am talking about. That is not an acceptable arrangement.

Now, I want to make clear this one point, which I said before; that is, this amendment in no way limits the number of people who can come in and become legal permanent residents under the family preference. That is 480,000. It does not affect the number of people who can have their situation, their status changed under the undocumented earned legalization provisions. That is 11 or 12 million. It is left alone. It does not affect the 1.5 million blue card agricultural workers. It does not affect the shortage occupation groups and other high-skilled workers. It does not affect the 141,000 visas that we are bringing back from the last 5 years.

This amendment will improve the bill. It is not an effort to undermine the bill. It is an effort to improve the bill. I urge my colleagues to support the amendment.

The PRESIDING OFFICER. All time has expired.

Mr. SPECTER. Mr. President, I ask unanimous consent that the Feingold amendment and debate precede the Sessions amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SPECTER. Mr. President, so that our colleagues will know the schedule, Senator BYRD has asked to speak to the body following this vote on his 69th wedding anniversary. He will be recognized for that purpose.

I yield the floor.

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

Mr. BYRD. Mr. President, I thank the distinguished Senator. I want to do that at a time that will accommodate him and the Senate. So if the Senator would let me know right now, if he might, when might be the best time to accommodate him and the Senate.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from West Virginia. We will see if we can find a more convenient time.

Mr. BYRD. I thank the Senator.

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

The question is on agreeing to the Bingaman amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 47, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—51

Alexander	Cornyn	Lincoln
Allard	Craig	Lott
Allen	Crapo	Mikulski
Baucus	DeMint	Nelson (FL)
Bayh	Dodd	Nelson (NE)
Biden	Dole	Pryor
Bingaman	Domenici	Reed
Bond	Dorgan	Roberts
Boxer	Ensign	Santorum
Bunning	Feinstein	Sessions
Burr	Grassley	Shelby
Byrd	Hutchison	Sununu
Carper	Inhofe	Talent
Chambless	Isakson	Thomas
Coburn	Jeffords	Thune
Cochran	Johnson	Vitter
Conrad	Kyl	Voinovich

NAYS—47

Akaka	Hagel	Menendez
Bennett	Harkin	Murkowski
Brownback	Hatch	Murray
Burns	Inouye	Obama
Cantwell	Kennedy	Reid
Chafee	Kerry	Salazar
Clinton	Kohl	Sarbanes
Coleman	Landrieu	Schumer
Collins	Lautenberg	Smith
Dayton	Leahy	Snowe
DeWine	Levin	Specter
Durbin	Lieberman	Stabenow
Feingold	Lugar	Stevens
Frist	Martinez	Warner
Graham	McCain	Wyden
Gregg	McConnell	

NOT VOTING—2

Enzi Rockefeller

The amendment (No. 4131) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, we are making progress. I see the Senator from Wisconsin on his feet. He has an amendment. We have two amendments following that. Then, hopefully, we will be ready for final passage. I understand we have an hour of time evenly divided.

Mr. FEINGOLD. Mr. President, I hope it will be shorter, but it depends on the response.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

AMENDMENT NO. 4083

Mr. FEINGOLD. Mr. President, I call up amendment No. 4083.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 4083.

Mr. FEINGOLD. 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 strike the provision prohibiting a court from staying the removal of an alien in certain circumstances)

On page 167, strike lines 17 through 20.

Mr. FEINGOLD. Mr. President, this amendment will ensure that asylum seekers, victims of trafficking, and other immigrants are able to secure meaningful judicial review of removal orders. It would strike from the bill a provision that would have the really absurd result of making it harder in many cases for an immigrant to get a temporary stay of removal pending appeal than to actually win on the merits of the case.

Before I go further, I thank Senator BROWBACK for cosponsoring this amendment. He has been tireless in his efforts to help asylum-seekers and trafficking victims, and I am very pleased that we could work together on a bipartisan basis on this effort.

Under section 227(c) of the bill, a court cannot grant a temporary stay of removal pending appeal to an asylum applicant or other individual unless the immigrant proves by clear and convincing evidence that the order is prohibited as a matter of law. That, as we all know, is an extremely difficult standard to satisfy, particularly in the preliminary stage of an appeal. It is so difficult that the Chicago Bar Association called this provision a "potentially devastating threat to due process."

This draconian provision could have a particularly harmful effect on asylum-seekers. It could effectively deny all judicial review to many asylum applicants who might otherwise have successful appeals by allowing them to be sent back to countries where they can face persecution or even death before a Federal court can even rule on their cases.

Section 227(c) would overturn the decisions of seven different courts of appeal that have determined that the Immigration and Nationality Act does not currently require immigrants to meet the very high "clear and convincing evidence" standard for temporary stays of removal pending appeal. I will explain in a bit more detail, as these courts already have, why this very stringent standard would be such bad policy.

First of all, as I have said, in many cases this provision would result in an immigrant having to meet a higher standard of review to get a temporary stay of removal than to prevail on the merits of it. Federal courts review legal issues in asylum and other immigration cases de novo, and they review issues, such as credibility questions in asylum cases, using a lower, "substantial evidence" standard. These standards are nowhere near as difficult to

satisfy as a “clear and convincing evidence” standard that the decision “prohibited as a matter of law.” Indeed, courts of appeal have pointed out that the only individuals who could satisfy such a high standard would be U.S. citizens and individuals who hold visas of “unquestioned validity.”

I will read a quick passage from a decision of the First Circuit Court of Appeals that I think goes right to the heart of the issue:

Perhaps most important, we recognize that extending [the] stringent clear and convincing evidence standard to stays pending appeal . . . would result in a peculiar situation in which adjudicating a stay request would necessitate full deliberation on the merits of the underlying case and, in the bargain, require the alien to carry a burden of proof higher than she would have to carry on the merits. This Kafkaesque design is counterintuitive.

Let’s pause for a moment to consider that—“this Kafkaesque design is counterintuitive.” A panel of the First Circuit Court of Appeals, in a decision written by a judge appointed by President Reagan, has called the very provision that is in the bill “Kafkaesque.” Surely, the Senate does not want to include such an extreme provision in this bill.

Even in situations where the issue on appeal is subject to a very deferential standard of review, it makes no sense to require an immigrant to meet the stringent “clear and convincing evidence” standard of review at such a preliminary stage of the case. As one court has pointed out, the appellant may not even have obtained a copy of the administrative record that early in the case. How can appellants prove by clear and convincing evidence that they will win their appeal when they may not even have a copy of the administrative record?

Kafkaesque, indeed.

This standard would also be out of line with analogous situations in other civil cases. Typically, when an appellant seeks temporary relief at the beginning of a case, the goal, as many of us know, is to preserve the factual situation for the duration of the appeal, and the goal of that is to ensure that the ultimate relief, if granted, will still be meaningful. That is why many courts of appeals reviewing removal orders rely on the same standard of review that applies to requests for temporary restraining orders in civil litigation. That test is well known to so many who have studied the law. They apply a four-part test that evaluates the likelihood of success on the merits: whether there will be irreparable injury if a stay is denied; whether there will be a substantial injury to the party opposing a stay if one is issued; and the fourth criterion, the public interest. This flexible standard allows a court to assess whether a stay is needed early in the case without having to delve into the detail required to determine the final outcome.

But if this provision were to become law, the entire case would have to be

litigated in full twice—once to meet the requirements for a stay of removal and then again on the merits. At least in some courts of appeals, that would mean the case would first have to be presented to a motions panel on the stay application and then again before the merits panel. As the American Bar Association has argued in urging the Senate to reject this provision, such a duplicative process would be a significant waste of resources, particularly at a time when the immigration caseload of the Federal courts is growing.

I wish to speak for a moment about the individuals who would most likely be harmed by this new provision, and they are, of course, asylum seekers.

As one Federal court has explained, imposing this new stringent standard “would mean that ‘thousands of asylum seekers who fled their native lands based on well-founded fears of persecution will be forced to return to that danger under the fiction that they will be safe while waiting the slow wheels of American justice to grind to a halt.’”

Similarly, Judge Easterbrook of the Seventh Circuit noted that stays pending appeal “remain vital when the alien seeks asylum or contends he would be subject to torture if returned. The ability to come back to the United States would not be worth much if the alien has been maimed or murdered in the interim. Yet under [the clear and convincing evidence standard] . . . an alien who is likely to prevail in this court, and likely to face serious injury or death if removed, is not entitled to remain in this Nation while the court resolves the dispute.” Just to give that example.

The stakes are high. This provision has the potential to be devastating for asylum seekers; so devastating, in fact, that the provision was rejected by Congress just last year when it was taken out of the REAL ID Act in the conference process, and it is not even included in the current House bill. I hope the Senate will support my amendment to strike this troubling provision from the bill.

Let me put a personal face on this debate. I received earlier this week a letter from the National Network to End Violence Against Immigrant Women. This is a very compelling letter, and I ask unanimous consent that it be printed in the RECORD.

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

MAY 22, 2006.

Re Comprehensive Immigration Reform Act of 2006 [Hagel-Martinez compromise] (S. 2611), Biden Amendment 4077 (amends section 403(a)(1)), and Feingold Amendment 4083 (amends section 227(c)).

DEAR SENATOR: On behalf of the National Network to End Violence Against Immigrant Women, we write to urge you to preserve access to longstanding, life-saving legal protections embodied in the Violence Against Women Act (“VAWA”) for immigrant victims of domestic abuse, sexual assault, or human trafficking. The National Network to End Violence Against Immigrant Women is

comprised of over 3,000 professionals nationwide including police, sheriffs, district attorneys, probation officers, prosecutors, health providers, churches, rape crisis centers, domestic violence shelters, mental health professionals, child protective services workers, and immigrant rights’ groups. The Network’s members are all joined by a common purpose—working towards the eradication of all forms of violence perpetrated against immigrant women and children including domestic abuse, sexual assault, human trafficking, and stalking.

The National Network to End Violence Against Immigrant Women urges you to support:

(1) Biden Amendment 4077 [amends section 403 (a)(1)]: preserves access to VAWA cancellation of removal (family violence), T visas (trafficking), and U visas (violent crimes); and

(2) Feingold Amendment 4083 [amends section 227(c)]: preserves access to judicial stays of removal for immigrants, including victims of violence or persecution, who are appealing their cases to the federal courts.

I. S. 2611, section 403(a)(1) endangers thousands of immigrant women and children by cutting off victims of domestic abuse, sexual assault, or human trafficking from the VAWA immigration remedies created by Congress in 1994 and 2000.

S. 2611, section 403(a)(1) adds a new subsection to the Immigration and Nationality Act (“INA”), 218A(i), which would bar individuals who enter or remain in the U.S. without authorization from obtaining cancellation of removal, voluntary departure, or nonimmigrant status for 10 years. Section 218A(i) does not contain an exception for victims of domestic abuse, sexual assault, or human trafficking who qualify for VAWA cancellation of removal (family violence), T visas (human trafficking), or V visas (violent crimes). Without a specific amendment to exempt these victims, section 403(a)(1) will undo over a decade of progress in fighting domestic abuse, sexual assault, and human trafficking started with the enactment of the Violence Against Women Act (“VAWA”) in 1994.

Since passing VAWA 1994, Congress has continually reaffirmed the nation’s commitment to granting special humanitarian relief to immigrant victims of domestic abuse, sexual assault, or human trafficking. In 2000 Congress created the T visa and V visa in the Victims of Trafficking and Violence Protection Act. As recently as last December, Congress expanded VAWA and trafficking immigration relief in the VAWA Reauthorization Act of 2005. If the Senate does not now carve out a limited exception to S. 2611, section 403(a)(1), it will be undercutting the very protections created by Congress in VAWA 1994 and 2000.

We, therefore, respectfully urge you to support Biden Amendment 4077 which would carve out a limited exception for victims of family violence, sexual assault, or human trafficking from S. 2611, section 403(a)(1) to ensure they have continued access to VAWA cancellation of removal, T visas, and U visas.

II. S. 2611, section 227(c) endangers immigrant women and children who will be deported into the hands of human traffickers, batterers, and persecutors, thereby facing certain harm and possible death.

S. 2611, section 227(c) would bar federal courts from staying the deportation of any immigrant with a final removal order unless she shows by “clear and convincing evidence” that deportation is prohibited as a matter of law. This heightened standard would make it virtually impossible for most victims of domestic abuse, sexual assault, or human trafficking to obtain stays of deportation while their cases are on appeal to the

federal courts. Section 227(c) poses grave risks to many immigrant women and children who, in the absence of a stay of removal, will be deported and delivered into the hands of human traffickers, batterers, and persecutors.

Why is preserving access to temporary judicial stays of removal critical for immigrant victims of violence or persecution? Because it is not uncommon for the federal courts to reverse illegal deportation/removal orders that were issued by immigration judges and subsequently affirmed by the Board of Immigration Appeals ("BIA"). For many immigrant women and children, the federal courts are the ultimate protectors of justice, and it is not until their case reaches the federal courts that they are given due process, as required by the Constitution. All immigrants, but especially victims of violence or persecution, need to have continued access to request judicial stays of removal/deportation while their cases are being reviewed by the federal courts. A temporary judicial stay of removal does not allow an immigrant to remain indefinitely in the U.S.; it merely prevents the Department of Homeland Security from deporting her while the federal court reviews her case.

Real-life immigrant women who obtained judicial stays of removal during the pendency of their appeals and were ultimately granted immigration relief by the federal courts:

Laura Luisa Hernandez endured years of brutal violence at the hands of her husband. He slammed her head against the wall, smashed a fan on her head, savagely beat her, attacked her with a knife, and denied her access to medical care for her injuries. Ms. Hernandez applied for VAWA suspension of deportation, a special form of relief for abused spouses and children that Congress created in VAWA 1994. An immigration judge denied Ms. Hernandez's VAWA suspension of deportation application and ordered her deported. The BIA affirmed the immigration judge's denial of VAWA suspension of application. Ms. Hernandez then appealed the BIA decision to the U.S. Court of Appeals and obtained a temporary stay of deportation while her appeal was being reviewed by the U.S. Court of Appeals. The U.S. Court of Appeals eventually reversed the BIA decision and concluded that she qualified for VAWA suspension of deportation. *See Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003).

Lioudmila Krotova and her children Anastasia and Aleksandra fled Russia after they were assaulted by skinheads and their synagogue was stormed. Ms. Krotova reported both attacks to the police, but the police failed to take any meaningful action. After the Krotovas fled Russia, skinheads beat a close family friend to death, and also beat the Krotovas' relative so brutally that they broke his hip. After entering the U.S., Ms. Krotova applied for asylum. An immigration judge denied her application, and the BIA affirmed the judge's decision. Ms. Krotova then appealed to the U.S. Court of Appeals and obtained a temporary stay of removal. The U.S. Court of Appeals eventually reversed the BIA decision and concluded that the harassment, discrimination, and violence experienced by Ms. Krotova on account of her being Jewish compelled the finding that she suffered past persecution. *See Krotova v. Gonzales*, 416 F.3d 1080 (9th Cir. 2005).

Ralitsa Nedkova, a Roma (gypsy) woman from Bulgaria, was brutalized by the police for many years. She was repeatedly arrested, detained, beaten, and threatened with rape by the police for doing nothing wrong other than being Roma. She suffered numerous injuries including cracked ribs as a result of police brutality. She was also brutalized by her ethnic Bulgarian husband who savagely

beat her while screaming "Whore! Gypsy!" When she was pregnant, he beat and kicked her in the stomach yelling, "Gypsies don't have a right to have children!" He beat her so violently that she miscarried in her second trimester. Ms. Nedkova eventually fled for her life and attempted to enter the U.S. She was arrested by immigration authorities and remained in detention for years. While in detention, she applied for withholding of removal. An immigration judge denied her application, and the BIA affirmed the decision. Ms. Nedkova appealed her case to the U.S. Court of Appeals and obtained a temporary stay of removal during the pendency of her appeal. The U.S. Court of Appeals reversed the BIA decision, and Ms. Nedkova was eventually granted withholding of removal. *See Nedkova v. Ashcroft*, 83 Fed. Appx. 909 (9th Cir. 2003).

Juanita Saucedo was ordered removed by an immigration court while her husband was fighting in the Middle East with the Texas National Guard. Together they have several U.S. citizen children. Ms. Saucedo was ordered removed, despite the fact that she was eligible to immigrate based on her husband's petition as well as her mother's petition. Ms. Saucedo appealed her removal order to the BIA which affirmed the immigration court's decision. She then appealed her case to the U.S. Court of Appeals for the Fifth Circuit and obtained a judicial stay of removal during the pendency of her appeal. Because she was granted a stay of removal, she was able to continue caring for her U.S. citizen children while their father fought in the Middle East. If she had been denied a judicial stay of removal, she would have been deported during the pendency of her appeal, and her U.S. citizen children would have been abandoned in the U.S., with no parent to care for them. *See Saucedo v. Gonzales* (5th Cir. 2005).

These real-life cases illustrate why all immigrant women and children, especially victims of violence or persecution, need to have continued access to judicial stays of removal while their cases are being reviewed by federal courts. We, therefore, respectfully urge you to support Feingold Amendment 4083 which would preserve access to judicial stays of removal, thereby ensuring that victims are not illegally deported into the hands of human traffickers, batterers, and rapists.

Sincerely,

JOANNE LIN,
Legal Momentum Immigrant Women Program.

GAIL PENDLETON,
ASISTA.

LENI MARIN,
Family Violence Prevention Fund.

Mr. FEINGOLD. Mr. President, I would like to read from this letter to give my colleagues a better understanding of whom this provision of the bill will affect. According to this letter:

Section 227(c) poses grave risks to many immigrant women and children who, in the absence of a stay of removal, will be deported and delivered into the hands of human traffickers, batterers, and persecutors.

Let me read one example the National Network provided in its letter of a case in which the availability of a stay of removal was essential. Let me tell you about Lioudmila, Anastasia, and Aleksandra Krotova. According to the letter:

Lioudmila Krotova and her children Anastasia and Aleksandra fled Russia after

they were assaulted by skinheads and their synagogue was stormed. Ms. Krotova reported both attacks to the police, but the police failed to take any meaningful action. After the Krotovas fled Russia, skinheads beat a close family friend to death and also beat the Krotovas' relative so brutally that they broke his hip.

After entering the U.S., Ms. Krotova applied for asylum. An immigration judge denied her application, and the [Board of Immigration Appeals] affirmed the judge's decision. Ms. Krotova then appealed to the U.S. Court of Appeals and obtained a temporary stay of removal. The U.S. Court of Appeals eventually reversed the BIA decision and concluded that the harassment, discrimination and violence experienced by Ms. Krotova on account of her being Jewish compelled the finding that she suffered past persecution.

This is just one example.

The letter also talks about a woman who was ordered removed while her husband was serving overseas in the Texas National Guard and whose deportation would have left her U.S. citizen children no parent to care for them. And there are others.

If my amendment is not adopted, these are the types of people who will be affected, who will be sent back to countries where they could be killed or torn from their families.

I assume those who support this provision want to ensure immigrants cannot file frivolous appeals in order to delay their deportation, and I wholeheartedly agree with that goal. But this provision is not necessary to accomplish that worthy goal. The Federal courts do not grant stays of removal when immigrants have little likelihood of success. In fact, several of the appellate decisions that have rejected the clear and convincing evidence standard at issue here have gone on to apply the four-part test I discussed earlier and denied stays of removal pending appeals. Nonetheless, they have denied these stays in some cases because the immigrants had little likelihood of success or because the immigrant could safely return to their home countries and await the outcome. So this provision is really just a solution in search of a problem.

This amendment is about basic due process and fairness. It is about giving individuals who have been turned down at the administrative level the opportunity to seek meaningful judicial review. And it is about making sure that those who seek asylum in this country and who have meritorious claims are not returned to persecution or even murder in their home countries before they can present their case to a Federal court.

That is why a long list of organizations have come out in support of this amendment, including the U.S. Conference of Catholic Bishops, World Relief, the Leadership Conference on Civil Rights, the National Council of La Raza, and more than 50 others.

Mr. President, I ask unanimous consent that a full list of the organizations that support this amendment be printed in the RECORD immediately following my statement.

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

(See exhibit 1.)

Mr. FEINGOLD. Mr. President, everybody in this Chamber, I hope, will consider supporting this amendment. I urge its adoption.

I reserve the remainder of my time.

EXHIBIT 1

LIST OF ORGANIZATIONS THAT SUPPORT
FEINGOLD-BROWNBACK AMENDMENT NO. 4083

American Bar Association
American Civil Liberties Union
American Immigration Lawyers Association
American Jewish Committee
Amnesty International
Asian American Justice Center
Asian Pacific American Legal Center, Los Angeles, CA
Bernardo Kohler Center, Inc., Austin, Texas
Casa de Esperanza, Bound Brook, New Jersey
Catholic Charities USA
Center for Gender and Refugee Studies, Univ. of California, Hastings College of the Law
Center for National Security Studies
Chicago Bar Association
Church World Service Immigration and Refugee Program
Episcopal Church
Episcopal Migration Ministries
Families for Freedom, Brooklyn, NY
Hebrew Immigrant Aid Society
Hispanic National Bar Association
Human Rights First
Human Rights Watch
Immigrant Law Center, St. Paul, MN
Immigrant Legal Advocacy Project, Portland, ME
Immigrant Legal Resource Center
Immigration Unit of Greater Boston Legal Services
Institute of the Sisters of Mercy of America
Jubilee Campaign USA, Inc.
Leadership Conference on Civil Rights
Legal Momentum
Mexican American Legal Defense and Education Fund
National Advocacy Center of the Sisters of the Good Shepherd
National Council of La Raza
National Immigration Forum
National Immigration Law Center
National Immigration Project
National Network to End Violence Against Immigrant Women
New York State Defenders Association Immigrant Defense Project
Open Society Policy Center
Opening Doors Immigration Services, Denton, TX
Presbyterian Church (USA), Washington Office
Refugee Resource Project
Service Employees International Union
Sisters of Mercy of the Americas
Sikh American Legal Defense and Education Fund
Sikh Coalition
South Asian American Leaders of Tomorrow
Tahirih Justice Center
Union for Reform Judaism
United Methodist Church, General Board of Church and Society
Unitarian Universalist Service Committee
U.S. Committee for Refugees and Immigrants
U.S. Conference of Catholic Bishops
Washington Defenders Association Immigrant Defense Project, Seattle, WA
World Relief, the humanitarian arm of the National Association of Evangelicals USA

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have been advised that the objection to setting aside amendments has been withdrawn, so we will be able to stack the votes on the remainder of the amendments.

While I have recognition, I would like to comment briefly in support of the amendment offered by the Senator from Wisconsin. The standard of clear and convincing evidence, unless prohibited as a matter of law, is a very tough standard and I don't think ought to be imposed here. It is preferable to use the regular four-part standard, which includes a requirement that the petitioner is likely to succeed on the merits.

This particular matter has been commented on by a number of very distinguished jurists. Judge Frank Easterbrook, appointed by President Reagan, said that the interpretation in the current bill—the interpretation that this amendment is designed to change—could require removal of an alien who was both likely to prevail in court and likely to face serious injury or death if deported.

Judge Bruce Selya from the First Circuit, appointed by President Reagan, said that the very situation the current bill would create is, in his words, “absurd” and “Kafkaesque.”

Judge Jerry Smith, another Reagan appointee on the Fifth Circuit Court of Appeals, said that the situation the bill would create is “peculiar, at best.”

I believe the interest of justice would be promoted by allowing the courts to utilize the current standards for granting stays and not imposing this extraordinary standard.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am deeply grateful to the chairman, especially for his support of this amendment but also for his leadership on this legislation. It is extremely important to this country. I know he worked so hard in committee to come up with a good package that I am able to support. I particularly thank him for his support of the amendment.

I yield such time as the Senator from Kansas requires. I thank him for his tremendous help on this amendment.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I thank my colleague from Wisconsin for bringing forward this amendment and for highlighting the issue. I hope we can get a strong vote from all of our colleagues on the amendment.

We heard about the issue of clear and convincing evidence that one has to meet to keep from being sent home even though the standard is lower for one to actually win the case. I don't know anywhere else in the law where one has to meet a higher standard at that point in the system than one would on final adjudication. This is really backward in that particular situation.

I don't want to talk about that in particular, as I do the specific situations that can arise and we can see easily enough happen. I have been to one of the detention facilities in New York, a place called Wackenhut—an incredible name for a detention facility. I have been to detention facilities on the border. I met with people who sought asylum.

I recognize the problem a number of people are targeting on this issue—and I think it is a legitimate concern to raise—that too many people are claiming asylum status who are not legitimate asylees, and they are not going to win in the system and are flooding the system with requests. That is a legitimate concern. One can go into some of these detention facilities and find a lot of people who are saying they are seeking asylum and asylum status, and on its face one can question whether it is a legitimate case. That is a proper issue to raise, and I think the people who put forward this amendment are targeting a correct issue.

Having said that, I have also worked with a number of people who, if you take them in this situation and say: You can't meet clear and convincing on the initial status, you are going home and wait there before you can come here for asylum status, and we send them home, they are going to prison or they are likely to disappear. They are likely to disappear in that situation. I say disappear as in being killed in those host countries to which they would go back. We can think of some pretty easy ones. I had six refugees from North Korea in my office last week. If they go home, they are in the Gulag and probably will not survive.

What about Iran? What happens if someone from Iran comes to this country and seeks asylum status, and we say it doesn't look clear and convincing to us? How about Zimbabwe under Mugabe? That could happen in this situation. If you are in a family that has been opposed to his leadership in that country, and we say: Well, I don't know, and you are saying it is an uncle who caused a situation about which Mugabe is concerned, and we say: I don't know, did the uncle do much; we don't have a factual record on this—he doesn't have a factual record at all because they didn't let him leave with any factual record; you are going on his testimony, and he has to meet clear and convincing evidence—it would be very logical for a judge to say: You don't meet clear and convincing evidence. It is your word on this. We don't have a factual record. We can't get to a factual record. You are going back to Zimbabwe. And if he goes back to Zimbabwe, it is highly likely he will disappear, as in being killed. This guy isn't going to make it, isn't going to survive.

In that situation, we should have the standard the same on the stay as on the final injunction, particularly at this early stage in the process and particularly when somebody's physical life is in jeopardy.

I am afraid to say there are quite a few places in this world today where there are dictatorships or narrow one-party rule where if somebody is sent back and they have been opposed or now even perceived as opposed, now that they have traveled outside the United States and tried to get away, or if someone is sent back to Syria or somewhere else, there is a high likelihood they are going to disappear, they are going to be killed. They not going to be seen again in their home country. In this particular case, while I think the people who propose the base portion of this text are accurate in seeing a problem that has grown wide in this litigation, the narrow impact of this and the backwardness of the adjudication process, having the final order being a lower standard than this initial one, and the likelihood of physical harm, if not death, to the individual being sent home, we shouldn't be doing that. We shouldn't be allowing that to happen. I would hope that we could pass this amendment to change that standard so the final order and the temporary order are the same adjudication status and we don't get people killed inadvertently because we have put in a different status. This is important, and I think lives are at stake with this one.

In far too many places around the world that I have been, you can think and you can articulate a number of them that would come forward, be it the case in Burma, or be it the case in a number of countries that are dictatorships throughout Africa. You could look at Turkmenistan. I met yesterday with some human rights activists from Turkmenistan; a real question there is what happens to you. China, some real questions in that country, particularly if you are a member of Falun Gong and you come here, or you are a student activist or knew somebody who was a student activist. Again, most of it is on your word at this point in time and you can't meet the clear and convincing steps.

So I would hope we could pass this amendment. I am fearful that if we don't, we are going to see people sent back, sent back to death, and I don't want to see us doing something like that.

I thank my colleague for proposing this amendment. I appreciate those who are dealing with this issue. I do think this would be a good amendment for us to pass.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, months ago in the Judiciary Committee markup I offered an amendment that codified the process of expedited removal and extended it to include criminal aliens. We have to remember, this is about criminal aliens. What we do know from one of the Judiciary Committee hearings is somewhere between 6 and 8 percent of the people coming

across our southern border have a criminal history.

There are valid points to the questions that have been raised by the Senator from Wisconsin, who I have the utmost respect for, but I think this is a question about what could happen versus what is getting ready to happen. What is getting ready to happen is instead of 28 percent of our Federal prisons today being filled with illegal aliens, it is going to become 45 and 50 percent, because they are going to stay here. We are going to give them 27 months. They are going to use stays to stay here, and what we are trying to do is have a balance.

Is it possible that somebody could be denied entry into this country and have a negative consequence? Yes. But it is far more likely there is going to be a tremendous negative consequence to us in costs and to our children as we allow this system to continue to go on and be perpetuated the way that it is.

I also remind my colleagues that current law under what we call expedited removal is law, and it is being carried out. What this amendment does will get rid of the expedited and ultimately will get rid of the removal, and what we are going to see on criminal aliens is we are going to see our prisons not having 28 percent illegal aliens who are criminals, but we are going to have 50 percent. The cost right now is \$7 billion a year to our country, and \$1.7 billion of that is associated with Federal prison costs for illegal immigrants. So we are talking about expedited removal.

The other thing to remember that we are talking about is this is only going to be applied to people who have been here less than 14 days and within 100 miles of the border.

The administration opposes this amendment, and for good reason. The Feingold amendment would allow aliens to remain in the United States and would perpetuate the incentive for aliens to pursue even the most meritless appeals. That is what happens when we allow this. I am not a lawyer, but I know that the obligation for clear and convincing evidence is a high standard, and that is a difficult thing. But we have to measure it against all the other consequences of not having that standard.

The arguments that the Senator from Wisconsin makes are real. They are true. But he doesn't talk about what the downside is, and the costs and the lost opportunity and actually human grief that comes from having that process for those who are going to bear the cost of it.

The section that the Senator from Wisconsin focused on in his amendment is already law. It is already U.S. Code, Section 242(f) 28 USC 1252(f2). All my amendment did to this section of the Code was to add the judicial injunction being amended to include stays. What is happening is that 90 percent of these stays are overturned right now. Ninety percent of them are overturned at the appellate division. So what we are

doing is comparing what could happen to what is happening and what is the cost of that.

The heart of the Senator from Wisconsin is good. The heart of the Senator from Kansas is good. The question is, How do we balance that with the human costs of carrying out this sacrifice of not being 100 percent? We could be 100 percent. What we would do is not allow anybody to return to their country until we know that they are going to be adequately clothed and adequately fed. Forget abused and incarcerated. What about the standard of making sure they have the same opportunities that people in America have. We are not applying that standard to these people, the 90 percent where the stays are denied.

So I don't challenge what could happen to somebody who was denied the basis of asylum. What I ask is, where is the common sense on how we handle these thousands and thousands and thousands of cases that allow somebody 27 months here, who uses the claim of asylum, which, in fact, has nothing to do with why they are here, but allows them to stay another 27 months? It also raises a tremendous cost for us, because they not only have to be held, they have to be defended, and we are paying for that as well.

As to the points made by the Senators from Kansas and Wisconsin on the possibilities of what could happen, it is true; they could. But it doesn't consider what is going to happen if we continue to allow this abuse of the system where an injunction is forbidden by Federal law and a stay is issued because they can't offer an injunction, because it is illegal to do so.

So is it a difficult issue? Yes. Do I see the problem of abuse of this much greater than they? Yes. Do I balance the scales differently? Yes. Because the undetermined cost and the undetermined consequence of the way that we are doing it now is just as dangerous in the long-range measure of humanity as of the potential dangers of one person—even if it is one—if only one person was denied asylum, if it is just one, should we go even further? The fact is we can't be perfect. Even without clear and convincing evidence, we are not perfect. Even 90 percent of those that are—the stays are overturned. Some of those we decided wrongly. So it is not as clear-cut as the Senator would make it seem. And it is not just the issue of some people who might be interested, because some are going back now after a denial of the stay, using a better standard of evidence.

So I would hope that we would keep this in the bill. It is not in the House bill. It may not stay in the complete bill. But it is certainly something that will turn resources that are today wasted tremendously and turn those resources to help those people who get here and have gotten asylum to have a better life.

Mr. President, with that, I yield the floor.

Mr. FEINGOLD. Mr. President, how much time remains?

The PRESIDING OFFICER. Eleven and a half minutes.

Mr. FEINGOLD. I would like to use the time to respond to the Senator from Oklahoma, whom I greatly respect. He is right, we can't be perfect about this. This is a complicated situation. He is also right that our goal here should be to achieve the right balance, and that is the challenge before us.

My amendment certainly doesn't strike all the changes that are made in the bill; it just tries to address one particular mistake that was made that I think was almost borderline unintended. The bill as it now reads greatly expands expedited removal. I am not objecting to that, and I am not suggesting that we should not do so. I want to do exactly what the Senator from Oklahoma has suggested, which is to introduce another element of common sense and balance into this. So I want to respond to a couple of things he said.

He began his remarks by saying this is about expedited removal; we wouldn't have a problem here if we were only talking about expedited removal.

That is not the point. As I understand this provision, it goes well beyond expedited removal to all removals. So that is the problem. In fact, we even suggested at the staff level on the floor in recent days, we wouldn't have a problem if this change was honed and limited to expedited removals. So it is simply incorrect—and I want the record corrected on this—to suggest that this somehow deals with expedited removals.

Secondly, the Senator says, Well, all we are doing here is broadening the concept and expanding it to stays. That is a big deal. It is not a minor thing. What we are talking about here, and Senator BROWNBACK and I gave real, human examples of what we are talking about, is situations where if somebody can't get a stay so they can stay in this country and not be rushed to a situation where they may be harmed, that stay may be definitive for them in the form of death or serious injury or persecution. What we are talking about here is what is the standard for that temporary stay so that they get the opportunity to make their substantive case on whether they should stay here on the merits.

Finally, the Senator suggested that this would lead to approvals of meritless claims. Our judges know how to handle this sort of thing. Under the current system, they don't just hand out injunctions on no basis. As I read the standard for injunctions, they evaluate four factors: No. 1, the likelihood of success on the merits; No. 2, whether there will be irreparable injury if the stay is denied; No. 3, whether there will be a substantial injury to the party opposing a stay if the stay is issued; and No. 4, the public interest. If those standards aren't met, these

judges don't just hand out stays. It is based on a long-standing tradition in the law in this area. So the idea that somehow this change would lead to meritless or automatic granting of stays is simply incorrect under the law.

So I hope that responds to the points that my friend from Oklahoma made, and I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged equally to both sides.

Mr. KYL. Mr. President, I rise in opposition to this amendment. This amendment is not just some little amendment that is seeking to cure some outlying kind of case. It amends existing law, as well as to strike a provision that was added in the Judiciary Committee. It is opposed by the administration. The reason is because the administration today is using the part of the law that would be stricken here to remove, in an expedited fashion, illegal immigrants who come here, and—using the figures that are more current—over 10 percent of whom, by the way, are criminals, to their home country, the other-than-Mexican illegal immigrant. Last year, there were over 135,000 of these people who were apprehended, and they were from countries all over the world, including a lot of countries that won't take them back, especially won't take them back very quickly.

So the question becomes, What happens? If they are from Mexico, of course, you can simply put them back on the bus and take them to the border. But if they are from China or Russia or Vietnam or some other country, you can't do that. First of all, you have to work with the other country to ensure they can be removed to the other country, and then you have to keep them in custody until they can be removed. In the meantime, if they want to make a case for asylum, they may do so, and the only standard is the usual standard of credible fear.

So let's not labor under the assumption that this outlying case, this person who will be subject to abuse if the person is returned home, can't make an asylum claim. You can, and it is resolved just like the other asylum claims are resolved: If you can establish a credible fear so that you are put in a separate category over here, and you are not removed to your home country.

But what about those who do not? Today there aren't sufficient detention spaces for these individuals, and so many of them are simply asked to report back in a few days and they don't show up, obviously. So they melt into our society.

It was to solve this problem that Secretary Chertoff invoked the expedited removal plan, which originally just applied to two of the sections on the border and now will apply to all of the border. The people are detained until they can be removed and the period for removal is reduced from about a month

down to about 2 weeks, so detention space is adequate.

What happens if the Feingold amendment passes? Secretary Chertoff's promise to us that he would invoke expedited removal and be able to remove these people from the country—those who can't make a credible asylum claim—will be destroyed, because every one of them can file an appeal.

The law that currently exists says that you can't get an injunction. The reason is clear. We passed this because it is obvious that everybody simply files an appeal, gets an injunction, and they stay. It is years before you get them out—if you can ever re-contact them after they have been released. You can't keep them in detention for that period of time, so they are released and the chances are they never show up. That is the experience we had.

Congress decided we can't do that, that it is just a free pass to be illegal. So we said, once you made your claim for asylum and it is denied, and you have a final order for removal, and that can be made by an immigration judge—actually, it can go all the way through the Immigration Board of Appeals or, in certain cases, it can be by an immigration official, but once that order is final you are on your way and you cannot appeal and enjoy your removal.

The ninth circuit decided in its wisdom that “enjoined” didn't include “stay.” So they said Congress may have said we can't enjoin the removal, but we can stay it. As the Senator from Wisconsin pointed out, it is pretty much the same thing. So the ninth circuit got around congressional intent. Nonetheless, the Secretary of Homeland Security believes that he can use expedited removal to remove most of these illegal immigrants, many with criminal records, from the United States.

What the amendment does is to strike both the injunction language in the existing law and the stay language in the amendment by the Senator from Oklahoma, which was intended to overturn that ninth circuit decision and get back to the original intent of Congress. But the net result is not to speak with a fine sieve or filter here, but to enable everybody against whom a final order of removal has been made to appeal and get injunctive relief from the final order of removal.

In the effort to solve a few outlier cases which could be solved by other means—and certainly the motivations of the Senator from Wisconsin and the Senator from Kansas who spoke with respect to that are important, and I think we would all agree with those motivations, but there is a better way to solve that outlier problem than to simply say, for all of the people who come here illegally and get an order of final removal, they don't have to go; they can appeal, and they can enjoin the order of removal.

I am not sure if the Senator from Wisconsin would agree to this, but one of the ways that you could begin to

limit the application of this, not to destroy Secretary Chertoff's program of expedited removal, would be to ensure that the amendment of the Senator did not apply to expedited removal. I am not sure whether the Senator would be willing to do that, but that would be one start.

The Senator says it is not just expedited removal we are talking about here, and that is very true. But we are also talking about expedited removal and that is something we need to move forward with and not stop dead in its tracks. The problem is that the experience with absconders is significant.

Mr. President, 90 percent of these appeals, when there are appeals, are resolved against the person making the appeal. So most of these are not outlier cases. They are cases that were brought for the purpose of delaying, to allow the individual to stay in the country longer and, in many cases, to simply forget the judicial process once the injunction has been granted or the stay has been granted, so that the individual did simply meld into our society and never show up again. That is the concern that we have, and this amendment sweeps with too broad a brush here.

To deal with the outlier situation we do not have to remove the remedy of the final order of removal for the hundreds of thousands of people who came here illegally and need to be expeditiously removed.

I urge my colleagues to understand that this amendment is serious. It is far-reaching. It is overly broad. It strikes existing law. It is opposed by the administration and it is unnecessary with respect to the underlying purposes of the immigration problem that we are trying to resolve today. My colleagues should defeat this amendment.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I would like to use a couple of minutes of my time to respond to my friend from Arizona. I want to be clear there is no intention here to get in the way at all of the expedited removal cases or Secretary Chertoff's program. That is exactly what I was saying a few minutes ago. Were this limited to expedited removal, I probably would not be offering this amendment. In fact, we tried at staff level to suggest that this kind of change be made. It was rejected. We were forced to do this, which I do not think involves, as the Senator from Arizona suggests, outlier cases. These are dramatic, serious matters that could involve life-or-death situations for people all over the world who have come to this country and fear returning to their own countries or the countries where they may be persecuted—which the Senator from Kansas and I illustrated.

The Senator began his remarks by suggesting his position was existing law. Obviously, it couldn't be existing

law if you had to propose it in committee. More important, he neglected to mention it wasn't just the ninth circuit, which of course is frequently held up as somehow a court we should not listen to—it is not just the ninth circuit that agrees with my interpretation of this, it is the first, second, third, fifth, sixth, seventh and ninth circuit that have all said this standard should not apply to stays.

This is not some renegade court. It is an amazing array of courts of appeals around the United States. Only one circuit has taken the other position, and here is why.

The Senator suggests that somehow these courts have inappropriately interpreted the statute. But there is absolutely nothing in the legislative history that suggests that this was supposed to apply to stays. So let's talk about what existing law is. The vast majority of circuits in the country have done a proper job of interpreting the statute. It was not supposed to apply to stays. So I again urge my colleagues to support my amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KYL. Mr. President, I wonder if the Senator from Wisconsin would answer a question that I have regarding his amendment.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KYL. It is my understanding that current law—this is the Immigration Nationality Act—states:

No court shall enjoin the removal of any alien pursuant to final order unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

Is that provision of existing law impacted by the amendment of the Senator from Wisconsin?

Mr. FEINGOLD. I don't believe that is impacted because that refers to the actual proceeding. It does not, according to the interpretation of the circuits, apply to the standard for stays. That is what the circuits have all said, except for one. That language, of course, applies to the main cases but does not apply in the case of stays. There is nothing in the legislative history that supports the notion that it would apply to stays, and that is how the circuits have come down.

Mr. KYL. Mr. President, in view of that answer, which is greatly confusing to me, it is clear that the effort is not simply to eliminate the stay language that Senator COBURN was successful in inserting in the Judiciary Committee, but also the injunction language that is in the existing statute. I don't know that you can read it any other way. If the Senator from Wisconsin would like to clarify, I will certainly stand to be corrected.

Mr. FEINGOLD. There is no intention to remove the language, or the requirement of the injunction standard. I said repeatedly here that I believe, on the stays, the person who is trying to

avoid removal and trying to get the stay has to meet the standard for injunction. That is not the intent of the amendment.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Eleven minutes remain on the Senator's side.

Mr. SESSIONS. Mr. President, this is a very real problem in the American court system today. In fact, one of our Senators wants us to add 9 new Federal district judges as a result of immigration, and we are having surges of cases involving immigration appeals to the courts of appeals, where people can take their appeals directly if they are unhappy with the system that has been set up where administrative judges, through the immigration department, make adjudications within their sphere of influence as to whether someone is here in this country legally or not.

We are a great Nation. We are a nation of laws. Our strength is that we provide a good legal system. That is why a lot of people come here, because they are tired of being abused in their home country. They know they will be fairly treated here in our legal system. It is a key to our growth and prosperity and liberty.

These appeals are increasing in large, large numbers. Under this amendment it would have the possibility of accelerating those increases of appeals, a great deal of it.

I want to say a couple of things. A person who comes to our country, to any country, comes at that country's sufferance. They are here subject to the pleasure of that country and can only stay here according to the laws of our country. The laws of our country give adjudicative immigration courts the power and responsibility to adjudicate those questions about whether or not a person can stay here or has to be removed because they violated some law.

One of the things that is wrong with immigration today is we have so muddled and so complicated and so confused our thinking that we don't understand what has happened. So a person is here. They are here illegally—or at least on appeal and a second appeal and a trial and appeal with the immigration courts they have been adjudicated as not being here legally. What should happen then, I ask you? They have a right to appeal to the U.S. court of appeals—not even a Federal district judge, the court of appeals of Federal judges, where we have had a number of appointments recently, and it is one step below the U.S. Supreme Court.

They get a right to have that, but they do not get the right to remain here unless that court of appeals allows them to. In fact, the law is clear. In the vast, vast majority of the cases, they ought not remain here. They have no constitutional right to remain here after the adjudicative branch of the Government has concluded they are

not supposed to be here. Their appeal can continue. They are not denied the right to continue their appeal. But they are allowed to go back home to their home country and to pursue their appeal otherwise through their lawyers in the appropriate way.

They say this focuses on asylum. I would say asylum represents the best argument that can be made against the provisions of the bill that is now before us, but it does not apply just to asylum cases. It applies to all cases. Any immigrant who can maintain an appeal can get to stay in the country. We had testimony in the Judiciary Committee from the second circuit, a fine circuit court of appeals, that it takes them on average 27 months to decide one of these cases. What happens to that person during the 27 months, may I ask you? Two things happen. We have to take extremely precious bed space and leave them in custody for 27 months—remember, these could be people with terrorist connections or other connections—or we have to allow them out on bail. We have one area in our country where it was reported that 95 percent of the people who were released on bail pending an immigration decision absconded.

That means they will go on, decide their appeal and some adjudication, and order that he is supposed to leave. Where has he been? He broke into the country, presumably illegally. Is he waiting around? Is he now going to show up so they can deport this person? They have already melded into the community in an illegal fashion. It is part of the problem that we deal with and which is making our system ineffective.

We have to simply understand that there is no right to be here after a final adjudication has occurred while your case is on appeal in the court of appeals. But we allow them to. We give them a right, if they can show sufficient evidence under the standards that the Senator mentioned, that a court can approve that and allow them to stay if they think they have, according to the law, convincing evidence that they are rightly here. The court of appeals can override the adjudicating authority of the Immigration Service and allow the person to stay if they choose. We have had an abuse of that. We have had 10,000 such cases. With this amendment, we are going to see even more such cases.

I suggest that we must get serious about immigration. The more we create appellate possibilities, the more we can confuse the law. The more we create exception after exception after exception, the more unable we are to operate a system effectively and fairly.

The fair principle is, if you are adjudicated not to be here, you have no right to be here. But we give you a generous right to appeal to a court one step below the U.S. Supreme Court, but you have to go home until that court decision. If they override it, he can come back.

I think that is preciously generous. I think that is fair and right, and it also provides that court, in narrow areas, to extend and allow a person to stay if they feel it is necessary to do so.

I think this is a good amendment. The Department of Justice, I think, understands it.

Senator COBURN offered a good provision to the bill which was adopted in the Judiciary Committee. It should not be overturned here on the floor.

We can be sure that those who have a good case to stay will be able to stay. But overwhelmingly, if you have been found not to be here legitimately, you are not entitled to stay, you should go home. This amendment undermines that principle.

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

Mr. LEAHY. Mr. President, I applaud Senators FEINGOLD and BROWNBACK for proposing an amendment to correct a seriously flawed provision that remains in the immigration bill that we are likely to pass. Under section 227(c) of the bill, Federal courts of appeals would be prohibited from granting an asylum seeker a temporary stay of deportation unless the alien could prove by clear and convincing evidence that the order of deportation is unlawful. In many cases, this is the same or an even a higher standard than an alien would be required to meet in order to win his or her case on the merits. This result has been described by one Federal court as “Kafkaesque.” It is also fundamentally unfair.

Judicial review is the failsafe that guarantees the rights of men and women when the law is interpreted incorrectly or when human emotion or bias overcomes impartiality. Judicial review helps define our constitutional democracy and is a value that is deeply embedded in our system of government. It would be a grave mistake for us to accept the provision in section 227(c) and to ignore the wisdom of the distinguished Federal judges who oppose this curtailment of their authority to decide these difficult cases with care and consistent with the traditional practices of the Federal judiciary.

A number of Federal courts of appeal are in agreement that the standard contained in section 227(c) is inequitable and unworkable. The Second Circuit has said that requiring this standard “would lead to the anomalous result that . . . an alien would have to make a more persuasive showing to obtain a stay than is required to prevail on the merits, thereby permitting the removal of some aliens with meritorious claims against removal.” The Seventh Circuit has said that “[t]he ability to come back to the United States would not be worth much if the alien has been maimed or murdered in the interim. Yet under the [clear and convincing evidence standard] an alien who is likely to prevail in this court, and likely to face serious injury or death if removed, is not entitled to re-

main in this nation while the court resolves the dispute.”

Some will argue that this provision will prevent aliens from abusing the system by filing frivolous appeals simply to gain the stay of deportation. But it is unwise for us to sweep aside decent and humanitarian treatment for many meritorious petitioners to prevent a few from abusing the system. I think we need to consider very carefully whether we want to mandate that our Federal courts get into the business of remanding even one potentially meritorious petitioner back to certain torture or death before his or her appeal is finally decided. I hope others share my faith in the integrity with which our Federal judges carry out their duties and that these men and women are eminently capable of identifying and rejecting fraudulent or abusive cases without the need for the restrictive provision contained in the bill.

We cannot live up to our American values, which abhor torture and human rights abuses, and at the same time allow this provision to remain in this bill. I urge my fellow Senators to join me in supporting the amendment Senators FEINGOLD and BROWNBACK propose.

Mr. FEINGOLD. Mr. President, if the Senator is agreeable, I would be willing to yield all time. I yield my time.

Mr. SESSIONS. I yield our time.

The PRESIDING OFFICER. All time is yielded.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that this amendment be set aside and be voted on later.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. SESSIONS. Mr. President, what is the time agreement at this point? How much time do I have remaining on this issue?

The PRESIDING OFFICER. Once the amendment is called up, the unanimous consent agreement states that there will be 1 hour equally divided.

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

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

AMENDMENT NO. 4108

Mr. SESSIONS. Mr. President, I call up amendment No. 4108 on the earned income tax credit.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes an amendment numbered 4108.

Mr. SESSIONS. 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:

(Purpose: To limit the application of the Earned Income Tax Credit)

On page 364, line 22, after "an" insert the following—

"alien who is unlawfully present in the United States, or an alien receiving adjustment of status under section 408(h) of this Act who was illegally present in the United States prior to January 7, 2004, section 601 of this Act, or section 613(c) of this Act, shall not be eligible the Earned Income Tax Credit. With respect to benefits other than the Earned Income Tax Credit, an alien".

Mr. SESSIONS. Mr. President, before I get into that, I would like to take one brief moment to note that in an election which took place last night the winner got 63 million votes, more than anybody who has ever run for President. The winner is a fine Alabaman, Taylor Hicks, who was crowned "American Idol" winner last night. I have to tell you I am proud of him. We watched it closely and with enthusiasm. If my wife were voting in a normal election, she would be in jail because she voted more than once for him, I can tell you. And we are thrilled. Taylor is Alabama's third finalist in the show, and after last night's finale, he became the second person from Birmingham to be crowned "American Idol." Of course, that followed Rubin Studdard's victory 2 years ago, and Bo Bice as a runner up last year. We are proud of that fact and we are proud of Taylor Hicks being crowned "American Idol."

Mr. President, I am also pleased that the sponsors of the immigration bill we are debating accepted my preemption amendment that I originally offered in committee. That provision, which was included in the current bill, relates to day labor centers and is included in title III. My amendment makes clear that the provisions of title III which regulate the recruiting, referring and hiring of undocumented aliens, preempt any State or local laws. The laws it preempts are those that require business entities, as a condition of conducting, continuing or expanding a business, to provide, build, fund or maintain a shelter, structure or designated area for use by day laborers at or near their place of business or take other steps that facilitate the employment of day laborers by others. Language identical to this preemption provision in the current Senate bill was included in H.R. 4437, the bill passed by the House of Representatives.

Empirical research proves that day laborers in the United States are used overwhelmingly by undocumented migrants. I would like to enter into the RECORD along with this statement, an

extensive January 2006 study of the day labor issue in this country entitled: "On the Corner: Day Labor in the United States," by Abel Valenzuela Jr. and Ana Luz Gonzalez of the UCLA Center for the Study of Urban Poverty; Nik Theodore of the University of Illinois at Chicago, Center for Urban and Economic Development; and Edwin Melendez of the New School University, Milano Graduate School of Management and Urban Policy. The findings in the study are based on a national survey of day laborers drawn from 264 hiring sites in 139 municipalities in 20 states and the District of Columbia. A critical finding of this national survey, page 17, is that three-quarters of the day labor work force is comprised of undocumented migrants.

The scope of title III goes beyond the prohibition of the direct hiring of an unauthorized worker or the requirement that employers electronically verify the validity of the work authorization documents they are provided by applicants. It also prohibits persons from recruiting and referring undocumented workers and facilitating the employment of undocumented workers. A number of local governments have taken actions or sought to impose ordinances that facilitate the employment of day laborers, many of whom are not authorized to work in this country. Local governments have done this by providing public funding of day laborer centers that act as gathering places where employers can hire day laborers, and by requiring, as a condition of conducting their businesses, that business entities build and maintain day laborer centers on or near their property to facilitate the employment of day laborers by customers or contractors.

In some instances, these local governments even force employers, as condition of doing business, to hand out to day laborers a written description of their employment rights under the law. There is no doubt that these local governments are directly or indirectly forcing these businesses to attract and recruit these day laborers to their property and facilitate their employment by customers and contractors. They are forcing these businesses to create what amounts to hiring halls in the form of day labor shelters. These ordinances or proposed ordinances expose these businesses to liability under the employer sanctions provisions of title III by forcing them, as a condition of conducting business, to act as agents of the day laborers in facilitating their employment. While these businesses may not hire the day laborers, they are forced to be parties to the hiring process, for which they face potential exposure to liability under section 205 and title III of the Senate bill, and the harboring provisions of section 274 of the Immigration and Nationality Act.

These local ordinances and practices put businesses in an untenable position. Businesses oppose ordinances that provide for the accommodation of day laborers on their property, particularly

when these laborers are undocumented workers. Some local governments deny licensing essential to expand or maintain their business if they do not. It is a no win situation that Congress must address consistent with the overall purpose of this legislation.

Without the preemption provisions I have offered to this bill, there would be a gaping hole that would allow public entities to foster the employment of day laborers, whom the recent study I have cited shows to be largely undocumented workers, and force, through their regulatory and licensing authority, businesses to be their agents in this process. This flies in the face of the overall intent of this bill, which is to control our borders and eliminate the job magnet for undocumented workers to enter this country. Through the preemption language that I have added to title III, we have exercised the uniquely federal role given to the Congress under the Constitution to regulate illegal immigration into the U.S. and to prohibit State and local governments through local regulatory authority to thwart the intent of Congress to prohibit the hiring and facilitation of hiring of undocumented workers.

Mr. President, let me share a couple of thoughts fundamentally about the immigration bill that is now before us.

The question of immigration is clearly one of the most important issues of our time. This vote will be one of the most momentous of our decade. The American people know that. That is why they are engaged in this debate. That is why they are watching it. That is why your phones are ringing in your offices and mail is pouring in. They care about it. They are focused on it, and they want something done.

A lot of people say, Well, they are angry at immigrants, they are mad at immigrants, they want to punish them, and they are not fair and generous. That is not so.

You know who the American people are mad at. I will tell you who they have a right to be mad at, and that is the governmental officials they sent to Washington who refuse to create a lawful system of immigration to enforce the laws that have been passed by this Congress. That is what they are mad about. They have every right to be mad about it.

They were angry in 1986. What did we do? We passed an amnesty bill that promised enforcement in the future. It was utterly not so. The amnesty took place immediately, and the enforcement never occurred. They have been asking, What is going on?

In 1986, we found that there were 3 million people who came forward to claim amnesty, and now they tell us 20 years later that there are 11 million people here illegally. Why shouldn't they be frustrated? They are not against immigration. The American people are not against immigration. They are worried about a system that is lawless, unprincipled, and indeed makes a mockery of law. And they

have every right to be so. They should not be forgiving if we try to pull another fast one by passing a deeply flawed bill. I don't think they will be forgiving. The problem is, this is a deeply flawed bill. It is not going to accomplish what the goals are for immigration in America. That is a plain fact.

It is amusing now to see the sponsors of the bill when confronted with the problems, and those who say they are going to vote for it, and say they do not like it, a lot of them, but they are going to vote for it. Do you know why they say they are going to vote for it? Because maybe the House will save us in conference.

What a weak argument, that the great Senate of the United States, dealing with one of the most important issues of our time, is reduced to saying, We know this bill is flawed, we know we have problems, maybe somebody in the House can fix it, but I am going to sign my name and I am going to cast my vote to pass it. First of all, immigration will not end if this bill is not passed. There is not going to be mass deportation of people from America if this bill is not passed.

We should do what I suggested several months ago when they tried to run this bill through. Remember, about a month ago, they tried to move this bill through this Senate without any amendments. HARRY REID, the Democratic leader, said we are not going to have any amendments. They tried to move it through, just slide it through, so the American people did not know about it. Senator FRIST finally said, no, we will pull the bill, and they reached an agreement that we would have some amendments. But the bill that hit the floor, as I said at the time, was so deeply flawed, it would never be able to be fixed by the amendments we could bring up. I know Members care about this issue, as do I. They want immigration to continue, and so do I. I can support an increase in legal immigration.

What I am saying is we are voting on a bill, not some vague picture, not some emotional deal. We have legislation before the Senate. Will it do what we tell the American people we are going to do? Will we be honest and faithful with the American people when we say this piece of legislation is a comprehensive fix of immigration problems in America? I submit not.

As time has gone by, more and more people have seen this is a totally flawed bill. People are getting more and more worried. They had no idea and I am not sure the sponsors knew of a lot of the weaknesses and problems with the legislation. Some have been changed by amendment but, trust me, there are many more.

Briefly, I will mention the fundamental flaws in the legislation. These are fundamental. What I am going to talk about today is not some nitpicking over the error of a draftsman. I am talking about fundamental

flaws in the bill that make it unpassable, legitimately, in my view. It should not be passed. That is why I have said it should never, ever become law.

First, the people now here illegally, the 11 to perhaps 20 million people here illegally, will be given, over a period of years, every single benefit this Nation can bestow on its citizens. That is amnesty. In my mind, that is amnesty. I have tried not to use the word "amnesty" in the sense that is automatically disqualifying. What I have tried to say is we should not give those who violate our laws to get here every single right we give the people who wait in line and come lawfully. That is a very important moral and legal principle.

In 1986, those who opposed that amnesty, warned that if we do so, more people will come and they, too, will expect amnesty. We will have increased numbers in our country, and we will be forced to grant more amnesties in the future. That is exactly what they said. Go back and read the debate. Who proved correct? The other side said it is a one-time amnesty, we will enforce the law in the future, and the result was 3 million people were given amnesty. The laws were not enforced. Twenty years later, we have 11 million people here, and we are talking about another amnesty. We should not do that. Whatever word you want to use, amnesty or not, we should not do that.

Second, the border is not secured by this legislation. We have not worked out the difficulties on the border. T.J. Bonner of the Border Patrol Agents Association, as reported in the paper on Monday in the Washington Times, said the House bill will not work and the Senate bill is ineffective. Why should we pass a bill the experts say will not work?

Now, under our procedures, we can authorize fencing. My amendment to add some fencing passed. We can authorize electronic equipment. We can authorize more agents. We can authorize more bed spaces. But will we fund it? Will we maintain a determination in the years to come to make this system work?

I submit that without the Isakson amendment, which simply says that until the Congress fulfills its authorization requirements under the bill, the amnesty cannot take effect. When it was voted down in this Senate, every American had to know right then there was no commitment to make this system work. If not, why didn't they vote for it? All it said was if we fulfill the things we authorize, amnesty can be given, if they choose to do amnesty, which remains in the bill.

The US-VISIT system is not working. The agents and beds and fences are not up. What about the workplace? That is a critical component in our legal system. The workplace verification system is not in place. There is only a pilot system. We have not worked out the Social Security

number problem. It is not fixed. We voted down an amendment so weak in dealing with that. We have not fixed that problem. So the workplace is not fixed.

They say it is a temporary guest worker program, but it is not. The bill does not have temporary guest workers. People come into this country, and they ask for a green card as soon as they get here. We vastly increased the number of green cards that can be issued. And everyone comes in under the rubric, the big print in the bill that says "temporary guest worker" and will be able to file for a green card through their employer the first day they get here. Soon they will get that green card unless they get in some sort of trouble, and that entitles them to legal, permanent residence. Within 5 years of that, they can become a citizen.

This idea that it is a temporary guest worker program is as phony as a three-dollar bill. I hope we never hear that word mentioned in the Senate anymore. We should have one. That is what the President says he wants. The American people understand that and would be more supportive of that. That is precisely what we need: a good, temporary guest worker program and another program to allow people to come into the country to citizenship. But we do not have that. They sold this as a "temporary worker program" when it is not.

The bill will increase immigration legally by at least three times the current level. We have had no study which justifies that. Three times the current level? Has anyone heard a national discussion or discussion in the Senate about that? No.

We have conducted no official study of the huge adverse financial impact this bill will have in the outyears. Any legislative body serious about this issue would have known of this problem long ago. Even before the bill was drafted, they should have known we would have these consequences. The Heritage Foundation has estimated that in the 10th, 11th year, through the next 20 years, this bill will cost \$50 billion a year. That is more than the budget of Homeland Security. It has tremendous financial costs. We will have some increased taxes, yes, but in the outyears it will not compensate for this. The reason is, the people who will be given amnesty, a certain high percent of them, unfortunately, do not have a high school diploma. Once they become a legal permanent resident, once they become a citizen, they are entitled to all the panoply of welfare and social benefits our country has.

We have taken no steps to ensure this country's immigration policies reflect our Nation's needs. Canada, England, Australia, France, Switzerland, and the Netherlands are working on that. Canada has a point system. They evaluate people based on what they can contribute to the Canadian economy, and then they decide whether to let them in. We have nothing like that.

We know, from my analysis of the bill, it will allow in three times as many people, legally, as we allow in today, and that 70 percent of those will be admitted without regard to what skills, education, or English language capabilities they have. That is not a good principle. That is not what Canada does. Is Canada a backward nation? I submit they are smarter.

There are a number of reasons we need to vote down this bill. One of them is the huge financial cost. I will talk about one of the most dramatic costs this bill will impose on the American taxpayer.

I offer an amendment to deal with the extraordinary financial impact that will accrue to the American taxpayers as a result of the legalization of 11 million people here today. I asked the CBO, the Congressional Budget Office, what the score would be with regard to earned income tax credits. They scored that over 10 years. It would cost the taxpayers of this country, this single program alone, \$29 billion. As soon as we allow people into our country who are here illegally now, to convert to legal status under the language of this bill, they will immediately become eligible for the earned income tax credit. Most of these are low-skilled workers. They are not high school graduates. They are making the lower wages. They will qualify for that.

Hold your hat. The average person who receives an earned income tax credit check from the Federal Government receives \$1,700 a year. The maximum amount you can receive under it is \$4,700 a year. These are huge welfare payments designed to help working families, American working families. It started in the 1970s. It cost about \$1 billion then. The figure today is closer to \$39 billion, one of our largest welfare programs. It has a lot of fraud, a lot of criticism, but it was designed with good intent, and it remains a good part of how we assist lower income people in America. These people will immediately become eligible for that benefit.

When they become citizens, they are entitled to all the benefits. If they go through this process and we provide a path to citizenship, they will get that, and we cannot prohibit that. I would not want to prohibit that. I don't intend to prohibit that. We would not want to. But prior to that time, they are not entitled to it.

Let me state why. As a matter of law and as a matter of fairness, we should not reward them with this. People who come to the country illegally want to work here, we are told. They do not want to be on welfare. They are not asking for anything special. They just want to be able to work in our country. We have allowed them to do that. They have not asked for, in my view, welfare; they are not asking for it and are not entitled to it. So what happens when they convert to a legal status? Are they then entitled to this gratuitous, generous program of the United

States of America that was designed to help American families who have workers trying to get ahead, they get a little extra money each year? Should they be able to participate in that program? I say no. I say there is no moral or legal reason that requires us to provide this benefit as a reward and an inducement for those who have come here in violation of our laws. It is just not required of us. And it is not smart of us.

People ask: How are we going to afford the fences and the several billions for the cost to enforce the border? They cannot find the money for it. I can tell you where we can find the money. They say that if you built a fence all the way across the border, 2,000 miles—our bill has 370 miles of fences—it would cost \$4 billion or \$6 billion. You have heard them say that.

This legislation, under the earned income tax credit alone over 10 years, will increase, according to the Congressional Budget Office, our outlays by \$29 billion.

We can pay for the whole enforcement system on our border by not giving this gratuitous benefit to people who come here in violation of the law. They will be able to stay. They will be able to work. They will have medical care. They will have education for their children. They will have all those things provided to them free from the Federal Government or State governments, if need be. They get all those things, but they are not entitled and should not be provided the earned-income tax credit, in my view.

They say: Well, they will pay taxes in the future. OK. Well, how long have they been here not paying taxes? It is just not possible for us to do everything. And this Government ought to ask: Why should we—out of fidelity to the taxpayers of our country, who already see that we are spending recklessly, and already have a major deficit—why should we provide this benefit? I do not think we should.

The entire concept of earned legalization is muddled in this bill, in my view. But that aside, what should we do about the cost and the benefit that could be given to these people? Do we need to provide them an extra welfare benefit that they have no expectation of ever getting?

By the way, I told you earlier, that the amount of money this benefit would cost over the next ten years was projected to be \$29 billion by CBO. That was based on their estimate a few days ago that we would have 6 million to 7 million people who would be given amnesty under this bill. Just yesterday, we received a letter from them that said those numbers were wrong. They are now estimating it would be 11 million people coming in. So I would submit, if you take that increased number and you apply it to the \$29 billion estimate we have, we are talking about at least a \$40 billion outlay over the next 10 years. But \$29 billion, \$40 billion, \$39 billion, whatever the figure is, it is very large.

It is not necessary we provide this transfer payment, this outlay from our Treasury, directly to people who have come here illegally, and reward them in that fashion. What we should do is proceed forward. And if they move their way on to the path of citizenship, they would be entitled to it.

I thank the Chair and retain the remainder of my time.

The PRESIDING OFFICER. Who yields the time?

Mr. MCCAIN. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, here we go again. We have before us another amendment that says legal workers under this bill must play by our rules—by our laws—but they will not be allowed to live by those same rules.

I know that my colleagues know that illegal immigrants are ineligible for the earned-income tax credit. The legislation before us does not change that fact. But this amendment incredibly—incredibly—would deny the earned-income tax credit to taxpayers who will be working in this country legally as a result of this legislation. Remarkable.

I want to point out again, it would deny an important tax credit to some low-income workers who have legal status who are playing by the rules, meeting all the requirements of the legislation, who might otherwise be eligible for the earned-income tax credit.

Some things are within a certain area that I can probably understand the rationale behind it and legitimately respect and argue against. But what is the rationale behind saying people who have attained a legal status here, who are living by all our other laws and rules and are paying taxes—sales taxes, Social Security, et cetera, every other tax—are going to be denied a tax credit that is available to all other persons? We are not saying in the legislation that anyone who is here illegally would make themselves available to that. We are only talking about people who are here in a legal status.

The legislation is designed, rightly, to ensure that legalized workers and new guest workers would largely be taxed in the same manner as U.S. citizens. If they have attained a legal status, then clearly they should pay the taxes. They would pay payroll taxes, income taxes, excise taxes. They would pay back taxes for the period of time they had been working in this country prior to the enactment of this bill. Payment of back taxes is a very important part of this bill.

The CBO and Joint Tax Committee estimate that bringing these legal immigrants into the Federal tax system would substantially increase Federal revenue collections overall. It is patently unfair to make them abide by our tax rules yet deny any legal workers equal treatment under these same rules.

I am having a hard time understanding amendments as this which

would really impose an indefensible double standard on legalized workers. What is next? Are we going to say work-authorized immigrants have to ride in the back of the bus? Some of these amendments are sending a very troubling message to the American public about what direction we want our country to go. We need to be going forward and not backward.

I wonder, do some of my colleagues really think there is an underground movement afoot plotting and scheming plans for how foreign workers can gain legal work status solely so they can freeloader off of the taxpayers? These people are here to work, and they are doing jobs that most of us do not have the will to do. These are workers. They are not risking their lives to come into this country with the goal of freeloading off of us. They are here to earn a wage for the betterment of themselves and their families, the same reason our forebears came here to this country. They aren't looking for a handout. They are looking for a chance, a chance for a better life. And they are willing to work harder than most of us to have just a few of the opportunities most of us take for granted.

This amendment, if adopted, would result in highly inconsistent treatment of legal workers—legal workers. On the one hand, they would be subject to income and payroll taxes in the same manner as other workers, but on the other, they would be denied the use of a key element of the U.S. Tax Code that can mean the difference of whether or not food gets put on a child's table.

About 98 percent of the earned-income tax credit goes to working families with children. Census data shows that the EITC lifts more children out of poverty than any other Federal program. This amendment to deny the EITC to legalized workers would harm children, including many children who are U.S. citizens. Many of the children in these low-income families are citizens who live in families that experience hunger and other hardships.

This amendment, if adopted, would mean that a large number of children would be thrust into, or deeper into, poverty. An Urban Institute study found that 56 percent of young, low-income children of immigrant parents live in families that experience hunger or other food-related problems. It seems to me there is an issue of humanity here on this issue.

We have spent a week and a half debating amendments to this bill. Most of the amendments that were designed to alter substantially the comprehensive approach to immigration reform have failed. But they were debated on and voted on. I think that has been a good showing for the Senate. I think we have shown we can debate honestly and openly and reach conclusions. Some of these issues have been complex and some fairly simple. We have been conducting business the way the place is meant to have it conducted.

I hope that after all this effort, we will not now adopt such a questionable amendment to a bill that provides a comprehensive solution to our broken immigration system—a solution that is based on sound judgment, honesty, common sense, and compassion.

Mr. President, I really, on this one, would like to see not just victory in this vote but a significant signal that we would not engage in this kind of treatment of people who have come to this country and are in a legal status.

I urge my colleagues to defeat this amendment.

I reserve the remainder of my time for Senator SPECTER.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I anticipate this amendment will not require too much longer. Our final amendment in the sequence is the Ensign amendment. So I alert our colleagues to the fact that we should be starting on that amendment fairly soon.

Senator SESSIONS has, I believe, 7 minutes left. Senator KENNEDY and I will take just a few minutes in opposition to the amendment and then yield the remainder of the time back.

Mr. President, it seems to me this is a fairly fundamental issue. We have the earned-income tax credit designed to provide tax relief for low-income families and individuals. And if you qualify for it, as a taxpayer, it seems to me, when you are obligated to pay the taxes and bear the burdens of the tax system, you ought to be entitled to the tax credit, and the fact that they are undocumented immigrants should not impose a penalty on them.

We are dealing here with people of very limited means. We are dealing with people who ordinarily may—probably do—have large families. They are fighting rising costs of living and fighting to maintain their sustenance, and they are at the bottom end of the economic ladder.

So if they are in line to get a modest earned-income tax credit, which, as the language says, they have earned, it is a tax credit that is an income tax credit they have earned. Just as they have to pay their taxes, they ought to get the benefits from the tax system. Therefore, I oppose the amendment.

Mr. President, I yield the floor.

Mr. BINGAMAN. Mr. President, I rise today in strong opposition to the amendment being offered by my colleague from Alabama, Senator SESSIONS. As drafted amendment would prevent legalized workers and guest workers from receiving the earned-income tax credit even though these same workers are required to pay both income and payroll taxes. I remind my colleagues that, under current law, illegal workers are not entitled to the earned-income tax credit and S. 2611 does not change that. Instead, this amendment denies people who are paying both income and payroll taxes a tax credit that other similarly situated

taxpayers receive simply because these people are legalized workers and guest workers and not naturalized citizens. This is distinction that should have no relevance for purposes of receiving the earned-income tax credit. To deny these legalized taxpayers the right to the earned-income tax credit is unjustified and grossly inequitable.

It is my understanding that CBO recently estimated that the workers affected by this amendment will be paying more than \$62 billion in taxes over the next 10 years. This will result in a net of more than \$33 billion in revenue after the costs associated with all refundable credits are taken into account. Mr. President, we haven't seen a \$33 billion revenue raiser in this Chamber in quite some time.

Earlier this month, we passed a tax cut that provides a significant tax cut to the wealthiest in our country. The reconciliation bill was passed in spite of the fact that it provides little to no tax relief to the majority of the families in our country while raising our Nation's debt by roughly \$70 billion. The proponents of this legislation were quick to defend this bill even though it employed a series of budget gimmicks that would make Enron proud. Those of us who spoke out in opposition of this bill were repeatedly told that allowing the capital gains and dividends tax cuts to expire amounted to a tax increase—one that would surely cripple our economy if not passed this year even though the provisions didn't expire until the end of 2008. I find it truly astonishing that a few short weeks later, we are debating an amendment that denies hardworking taxpayers a tax break that they so desperately need and are entitled to under current law. Clearly those who argued that allowing the capital gains and dividends tax cuts to expire is essentially the equivalent of raising someone's taxes, have to agree that taking away the earned-income tax credit from a working taxpayer is a tax increase. Unfortunately, the target of this tax increase is on hard working, lower income families—people who truly need this tax break to get by.

The earned-income tax credit is one of the few remaining tax provisions in our code that provide significant tax relief to working families. As my colleagues know, it is one of the greatest tools we have to fight poverty and allow working families to have a roof over their head and food on their table. It is a way to ensure that those earning minimum wage jobs are able to put clothes and shoes on their children so that they can go to school. This is not a hand out. In order to get the earned-income tax credit, you have to work. Pure and simple. To deny this credit to legalized workers and guest workers who pay income and payroll taxes is not what this country is all about. It is certainly not in keeping with the bipartisan way this Chamber has defended the earned-income tax credit and its recipients from misguided attacks.

I hope that all of my colleagues will join me in defeating this amendment.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I will just take a few minutes. I know the Senator from South Carolina wants a few minutes. And then we will be prepared to move ahead.

Mr. President, as has been pointed out during this debate, all of the men and women who would become legal residents of the United States under the terms of this legislation are required to pay income tax, like every other worker in America.

What the Sessions amendment would do, is really quite extraordinary and grossly unfair. It would arbitrarily deny those immigrants who have become legal residents one of the tax benefits available to every taxpayer under the Internal Revenue Code. That provision is the earned-income tax credit, a provision designed to reduce the tax burden on low-income families with children.

It is fundamentally wrong to subject immigrant workers to a different, harsher Tax Code than the one that applies to everyone else in the country. An immigrant worker should pay exactly the same income tax that every other worker earning the same pay and supporting the same size family pays—no less, no more. We should not be designing a special punitive Tax Code for immigrants that makes them pay more than everyone else. Yet that is exactly what the Sessions amendment seeks to do.

The Sessions amendment would result in highly inconsistent treatment of legal immigrant residents and would drastically increase the amount of tax that many of these families had to pay. They would be subject to income and payroll taxes in the same manner as other workers, but would be denied the use of a key element of the Tax Code that is intended to offset the relatively heavy tax burdens that low-income working families, especially those with children, otherwise would face.

Most of the EITC is simply a tax credit for the payment of other taxes, especially regressive payroll taxes. The EITC was specifically designed to offset the payroll tax burden on low-income working parents. The Treasury Department has estimated that a large majority of the EITC merely compensates for a portion of the Federal income, payroll, and excise taxes paid by the low-income tax filers who qualify to receive it.

The earned-income tax credit is not welfare; it is an earned benefit in the Tax Code that is available to all tax paying, low-income working families with children.

Immigrant families who are legal residents are subject to the same tax as other workers in America. They have the same tax burdens, the same tax benefit as everyone else under current law. The Sessions amendment would change that, depriving legal immigrant

families of one of the primary tax benefits for low-income families with children in the Tax Code. To do so would be terribly unjust. I urge my colleagues to reject the amendment.

I yield 4 minutes to the Senator from South Carolina.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from South Carolina.

Mr. GRAHAM. This amendment is important in this regard. When is it enough? When does the punishment fit the crime and when does it go too far? What role should tax policy play in punishing a violation of the law, whether it be a misdemeanor or a felony? I can tell you the role the Tax Code plays when it comes to felonies. If you are a drug dealer and you have been convicted and you are on probation or in jail, once you get out or off probation, you are not denied the earned-income tax credit. If you are a convicted child molester, the Tax Code doesn't change because of your crime.

I would argue that for the crime we are dealing with, coming across the border illegally, jumping in line, a non-violent offense, we need to have some reasonable punishment and not go too far. If we change the Tax Code because they violated our law, then how do we look people in the eye in the category of illegal immigrants and tell them that they are being punished through the Tax Code in a way a rapist, murderer, or drug dealer is not? That is not proportional.

It is a misdemeanor under our law to cross the border illegally with no specified crime, a maximum of 6 months in prison. I have been a prosecutor. Senator SESSIONS has been a prosecutor. I can assure you, there are people who do really bad things that don't have to go through what the illegal immigrants are going to go through to earn their way back into our good graces. They have to pay a fine consistent with a misdemeanor offense. They have to learn English. If you have committed a felony outside of immigration law, you are not eligible to get in the program. If you have committed three misdemeanors outside of immigration violations, you are not eligible to get in the program. If you fail the English test, if you are out of work for over 45 days, you are subject to being deported.

What is left will be hard-working people who are trying to pay their debt back to society and, on top of all that, have to pay all of our taxes. And they should. It would be great if everybody working in America paid their fair share of taxes. It would be unfair, after you try to pay your debt to society by making it right after violating the immigration laws, which is a misdemeanor, to throw on top of that Tax Code treatment that no other felon would get.

There is a point in time here where we are going to not just punish people for a violation of the law but declare war on who they are. I don't want to cross that line as a nation.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 14 minutes remaining, and there is 7 and a half minutes remaining for the Senator from Alabama.

Mr. KENNEDY. I yield 5 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair. I thank Senator KENNEDY.

Mr. President, I rise respectfully to oppose this amendment. Under it, workers who are in this country legally, as a result of the underlying reform bill before us, would be prohibited from receiving the Federal earned income tax credit. Yet these same workers would be required to pay both income and payroll taxes. That seems unfair. In other words, we are going to bring them out of the shadows. We are going to get them to pay taxes. But we will not allow them access to the EITC.

Once they have earned legal status, these workers would be no different from citizens or other legal residents who pay the same taxes and, if they have low incomes, qualify for the EITC.

Some have expressed concern that the underlying bill would increase Federal spending for programs such as EITC. It would. But you have to consider the pluses and minuses. In fact, the Congressional Budget Office recently completed a cost estimate of S. 2611, the underlying bill, and found that the legislation as a whole would raise Federal tax revenues. New tax filers, people who come out of the shadows and become tax-paying citizens, are required by this proposal, as part of their path to citizenship—I call it probation, not amnesty—are projected to pay more than \$60 billion in payroll and income taxes over the next 10 years. Once you factor in the cost of refundable credits provided to these workers, such as the child tax credit and the EITC, the net increase in revenues is still a significant \$33 billion over the next 10 years. It would be unreasonable for us to force these new workers, who are legal and many of whom will be in the process of becoming American citizens, to pay all these taxes and not be allowed to claim the earned-income tax credit.

As has been acknowledged, undocumented immigrants are already ineligible for the EITC. If you are here illegally, you can't qualify for the EITC. We should not deny this tax credit to low-income taxpayers who are working in this country legally.

One particularly troublesome effect of this amendment, I fear, were it to be enacted into law, is that it would further impoverish some of our Nation's poorest children. Because the fact is, 98 percent of earned income tax credit payments go to working families with children.

Let me briefly recite the history of this remarkable program. The earned-income tax credit was first proposed by President Richard M. Nixon. It was signed into law by President Ford. Since then, it has been expanded, because it has worked, by Presidents Reagan, Clinton, and Bush. These Presidents saw the program as a way to help promote work and offset regressive payroll tax burdens on low-wage workers. That is the point. We know that on so many average, lower-income, middle-income workers, the great increase in Federal taxes has not been the income tax. It has been the payroll tax deductions. The EITC was created to help even that out.

It also has an effect on wages or effective wages. The Federal minimum wage has not been raised in more than 8 years. By one standard, the minimum wage is valued at its lowest level since the Truman administration. Many of the immigrants who earn legal residency under the Senate bill will have earnings around the minimum wage. I hope we will act to raise the minimum wage this year. But in the interim, particularly if we don't, we certainly should not adopt legislation that will condemn large numbers of low-wage legal workers to work effectively below the poverty level, even though they are getting the minimum wage.

This Senate bill does not create an immediate path to citizenship. Because of that, the amendment before us would subject millions of low-income workers to a regressive tax burden for as much as 11 years before they become eligible to receive the EITC. It is probably a minimum of 11 years.

I urge my colleagues to consider the administrative burden this amendment would impose on the IRS which would have to determine the immigrant status of many tax filers. The IRS is not currently equipped to make such determinations; that is, to determine the immigrant status of tax filers. It would be costly to implement new procedures. The amendment would probably add to the heavy paperwork burden already faced by those who file for the EITC.

The point of this comprehensive immigration reform is to bring people out of the shadows, to end the exploitation that some of them have lived under, to make them part of the American economy and give them the ability to compete fairly at prevailing wage rates with American workers, to offer them the equal protection of the law—I stress that, the equal protection of the law—requiring them to live by the law, requiring them to pay taxes, but also promising them that they will receive the equal protection of the law. That must include our tax laws, including the EITC. I urge my colleagues to vote against this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I think we are prepared to yield back the remaining time on this amendment.

Mr. SESSIONS. I would like to speak further.

Mr. KENNEDY. Then I will withhold. The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, let's talk about the question of whether these "legal" workers have followed the rules and are entitled to this benefit. Those granted amnesty under this bill entered the country illegally, and have not followed the rules. At this very moment, the law says they are illegal and subject to deportation from the United States. Many of them have filed false Social Security numbers and committed crimes of that kind. We are not going to deport them. We are going to allow them to stay here. We are going to be generous to them. We are going to figure out a way that under this bill the vast majority of them will be on a path to full citizenship. Anybody that becomes a full naturalized citizen would be entitled to the earned income tax credit.

My colleagues have said we are punishing these individuals by giving them amnesty. They don't say we are punishing them by saying they have to pay a penalty. They are not saying we are punishing them by saying they have to pay taxes if they owe them. One said we are declaring war on who they are.

Those kinds of words and phrases indicate the bankruptcy of the argument that is being put forth. Under current law, they are not eligible for the earned income tax credit. Under current law, they should not be here. They are here illegally. We are now going to pass a law that is going to allow them to stay here, that will give them free medical care, that will give free education for their children, and allow them to utilize all the services this Nation has put together through the taxpayers of America. Then we are prepared, under this bill, to give these illegal aliens, prior to the time they become a citizen when we change the rules, \$40 billion of the taxpayers' money. What offsets do we have? What efforts or plans have been made to pay for that over the next 10 years?

Let me ask my colleagues: If we change the rules and we say we are not going to enforce the criminal laws against you or the immigration laws, why can't we say: you can stay here and, for the overwhelming majority under this bill, you are on a path to citizenship, but you do not get to claim the tax credit? This is a transfer payment. It is classified as an outlay by the U.S. Treasury.

I was disappointed to hear a Senator try to compare this to having to go to the back of the bus. I introduced and was pleased to see passed a resolution that gave the Congressional Gold Medal to Rosa Parks. It was given to her in the rotunda of the Capitol before she died. She is from Montgomery, AL. She was mistreated simply because of the color of her skin, and she was required to go to the back of the bus because of the color of her skin. I don't

appreciate the suggestion that this amendment is against civil rights. These people broke the law by entering the country illegally, and should not be able to take advantage of this tax credit. This is a fair response of the American people. Let me ask this question: What about Rosa Parks' descendants who are paying taxes today? Their wages may be reduced this very day because of a large surge of illegal immigrants. This bill would increase that by threefold. Who cares about their wages perhaps being reduced as a result? And it is their money that will be paid to fund this \$40 billion transfer payment to people who come here illegally. We are simply not required to give that benefit.

Now, what about taxes? They say they pay taxes. The truth is that lower-wage people—and most of these are lower-wage people—don't pay income taxes. They pay Social Security taxes, but they will get Social Security under this proposal. They don't pay income taxes because they are low-wage. If they have children, they don't pay. Most of the people that get the earned income tax credit don't pay any federal income taxes. At the end of the year when they file a tax return they get, on average, \$1,700 per person. Some get as much as \$4,700. It is not just families that are eligible for this credit. Single people get it, too, though not as much. It is an income tax credit. It is a payment to them.

I suggest that this is an important issue and that we think about our responsibility. We could pay for the entire enforcement mechanism for the border of the U.S. by simply not rewarding those who have come here illegally, who never expected to receive this benefit, with \$40 billion in transfer payments. That is not punishing them. They are free. They are able to go back if they choose. They are able to work if they choose. They are able to carry on their own activities and make choices. But they are not entitled because we give them the benefit of legal status to receive this transfer payment that is provided for our people under current law.

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

Mr. MCCAIN. Mr. President, I ask the Senator for 3 minutes.

Mr. SPECTER. Yes, I yield 3 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, as I understand the remarks of the Senator from Alabama, these people are not mistreated, as others in our society have been mistreated. Wouldn't an objective observer view mistreatment as giving someone legal status in the United States, forcing them to earn citizenship, a whole program to bring people out of the shadows, and yet say you are ineligible for perhaps the most important tax incentive for the poorest of Americans, called the earned income tax credit? I call that mistreatment,

Mr. President. I would call that mistreatment.

We are going to make you pay a fine, we are going to do a background check, we are going to make you work for 6 years before you can get a green card and, yet, while you are doing that—and most of you are low-income people—we are going to deprive you of the benefit that was absolutely designed to help low-income families. That is what it was all about. If you have a lot of children, I am sorry, but this benefit that was specifically designed for low-income people, which is the majority of the people we are talking about, just as all of our forefathers who came here were usually at the lowest wrung of the ladder, and we are going to say you cannot have that benefit.

Why? Why is that? Then what we are really saying is that we are going to give you legal status, but not really, because under a Republican administration, a way to try to help low-income families was designed, instead of a handout to give them a credit, instead of welfare to give them some extra income, but we are not going to give that to you. We may cause your children to go hungry because you are low-income people. I don't get it.

It is mistreatment by any objective view. It is mistreatment. As the Senator from Alabama said, this is an important issue. Maybe for the first time since we have debated this on the floor I agree with him. I totally agree that this is an important issue. It has a lot to do with what kind of country we are.

I reserve the remainder of my time.

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

Mr. President, the CBO and Joint Tax Committee estimates show that the increase in refundable credits resulting from S. 2611 would be more than offset by the income and payroll taxes new filers would pay. The net effect of the increased costs and revenues would be a gain of more than \$30 billion between 2007 and 2016. So their estimate is that the new legal residents would pay over \$62 billion in income and payroll taxes, while the costs of refundable tax credit, the EITC, and the child tax credit would only be \$29 billion.

Thus, the Federal Treasury would clearly benefit from these immigrant workers becoming legal residents by about \$30 billion. So only legal residents are eligible for the EITC. Undocumented workers are not eligible for the EITC today and will not be under the terms of this legislation. However, when they become legal residents, under the process created by S. 2611, they will be eligible for the EITC going forward under the same terms of all other legal workers.

The Sessions amendment would deny these legal immigrant families with children the same rights to this tax credit as other low-income families with children, and it is wrong and unfair. I hope it will be defeated.

I withhold the balance of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I had originally thought I was going to have 5 minutes to speak. As I understand it, we are kind of running behind. I wondered if there is a 5-minute window that I could have perhaps after Senator ENSIGN speaks or at some point in this debate. Would 5 minutes be OK now?

Mr. KENNEDY. Mr. President, I think we are just about to vote on the Sessions amendment and the Ensign amendment. That concludes the amendments. Then we are going to have final passage. I think Senator BYRD wanted to speak and others wanted to speak, too. I think the leaders said they hoped we would be able to move forward on these amendments. So that is what we have been doing.

Mrs. HUTCHISON. Would there be any time between now and the vote?

Mr. McCAIN. Perhaps the Senator from Alabama would grant the Senator some time.

The PRESIDING OFFICER. The Senator from Alabama has 1 minute 27 seconds. The Senator from Massachusetts has 3 minutes.

Mr. SESSIONS. I think I need that time.

Mrs. HUTCHISON. I will not ask for that time. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I will wrap up. Although it is my amendment, I suppose I will give my colleagues the chance to have a final word. This bill would not prohibit those who come here legally in the future from being entitled to the earned income tax credit even before they become a citizen. It would say, with regard to those who came here illegally and have no entitlement whatsoever to this outlay payment from the U.S. Treasury, that they should not be able to get it until they become a naturalized citizen. That is not a punishment to them. We are rewarding them with legality in our country. We are rewarding them with the health care benefits of our country and educational benefits of our country, and it is not required that we spend, I believe, what is a fair estimate of \$40 billion over the next 10 years to fund this program. That money alone would be enough to fund almost the entire immigration enforcement system we need to put into place. Maybe it would fund all of the one-time costs and much of the continuing costs of that program.

Why would we want to get into this argument that suggests that somehow we are discriminating against people because we don't give them a benefit to which they are clearly not entitled? We are giving them a number of benefits. We simply do not have to give this benefit. It has huge implications for our Treasury. Any way you spin it, our deficit would be \$40 billion higher than if we don't adopt my amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Massachusetts has 3 minutes remaining.

Mr. KENNEDY. Mr. President, I am prepared to yield that time back.

Mr. SPECTER. We yield back our time as well, so now we can go to the amendment by the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. I yield myself 5 minutes.

The PRESIDING OFFICER. Would the Senator call up the amendment?

AMENDMENT NO. 4136

Mr. ENSIGN. Mr. President, I call up amendment 4136.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. ENSIGN) proposes an amendment numbered 4136.

Mr. ENSIGN. 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:

(To ensure the integrity of the Earned Income Tax Credit program by reducing the potential for fraud and to ensure that aliens who receive an adjustment of this status under this bill meet their obligation to pay back taxes without creating a burden on the American public)

On page 351, line 13, strike "The alien" through "which taxes are owed." on page 351, line 22, and insert the following:

"(i) IN GENERAL.—The alien may satisfy such requirement by establishing that—

(I) no such tax liability exists;

(II) all outstanding liabilities have been met; or

(III) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service and with the department of revenue of each State to which taxes are owed.

(ii) LIMITATION.—*Provided further*, That an alien required to pay taxes under this subparagraph, or who otherwise satisfies the requirements of clause (i), shall not be allowed to collect any tax refund for any taxable year prior to 2006, or to file any claim for the Earned Income Tax Credit, or any other tax credit otherwise allowable under the tax code, prior to such taxable year."

Mr. ENSIGN. Mr. President, I will speak very briefly on this amendment. It is different than Senator SESSIONS' amendment. It does deal with some of the very same programs, including the earned income tax credit. Senator SESSIONS' amendment addresses the tax credit prospectively. In other words, when somebody is given legal status under this bill they would be prohibited for the first 5 years from benefiting from the earned income tax credit.

My amendment is different. It looks back. When people have worked here illegally, many used a stolen or a false Social Security number. That is a felony. Our amendment says that under those circumstances, someone would

not be able to qualify for the earned income tax credit. So my amendment is looking retrospectively instead of prospectively. My amendment would also disallow other tax credits that are meant for low-income American citizens and legal residents.

Mr. President, I believe that I need to explain why this issue is important. During this debate, the American people have heard, again and again, that people are going to earn citizenship. The supporters of this bill reminded us of that every day. One of the things that they have consistently talked about is the requirement to pay a \$2,000 fine and they are also going to pay back taxes.

During the debate on my Social Security amendment, several people stated that immigrants have paid into the system. Most people who are here illegally—and I think the statistics bear this out—are low-income folks. Under our taxation system, most low-income people will qualify for the earned income tax credit. Which is a way to supplement a person's income, like welfare, but through the tax code. With the earned income tax credit, a family that makes up to \$36,000 a year can qualify for EITC. In 2005, they could be paid about \$4,400 and in 2006 a refundable tax credit of \$4,500. So if we are making these folks pay a "penalty"—in other words, they have to pay back taxes—these folks will qualify for this tax credit. In fact, many will get a refund instead of paying their back taxes. So what will happen is that the U.S. taxpayers will actually write them a check.

This amendment will stop that from happening. It will stop people from receiving a retroactive tax refund while they were here working illegally. Senator SESSIONS does it prospectively. Mine does it retrospectively. I think it is only right, especially for those folks who are here and have stolen an American identity and ruined someone's credit history.

Last week, I spoke about Audra, a woman whose identity was stolen. She had 218 illegal immigrants fraudulently using her identity. The IRS sent her a bill for a million dollars in back taxes. She cannot get a job. Her financial future is ruined. But what happens to the perpetrators of these crimes? Under this bill, those same 218 illegal immigrants will not only qualify for Social Security, because our amendment failed by 1 vote, but they could collect tax benefits too. If this amendment is not adopted, they will be able to qualify for the earned income tax credit, up to \$4,500 per year, for years when they were, at the same time, ruining somebody else's credit and identity.

So, Mr. President, I think this is an amendment that should be adopted. It is a commonsense amendment. Even if one cannot support Senator SESSIONS's amendment, I think we should all at least be able to support this amendment.

Mr. President, does the other side want to go first?

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. There is 15 minutes remaining.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, the Ensign amendment does more than prohibit the immigrants from claiming the EITC when they file tax returns for the years in which they were undocumented. The amendment would prohibit immigrant workers from receiving refunds of their own money when more of their wages were withheld than they owe in taxes—do my colleagues understand? But under the Ensign amendment, when more is withheld than they owe, they cannot recover the money.

What could be more unfair? The IRS is holding their money. It was withheld from their wages and sent to the Government by their employer. So these immigrant workers have now filed tax returns, like millions of American workers each year. They have overpaid, and are entitled to refunds. The Ensign amendment would prohibit them from receiving these refunds. They cannot get their money back under the Ensign amendment. The Government arbitrarily decides to keep it.

Beyond that—listen to this, Mr. President—on page 2 "or any other tax credit otherwise allowable under the Tax Code." What could that be? The child tax credit. This amendment also prohibits immigrant workers from receiving the child tax credit. The Tax Code permits families to take a \$1,000 tax credit for each minor child. This is one of the most important provisions in the entire Internal Revenue Code for working families. It recognizes how expensive it is to raise children today, and it reduces a family's tax liability by \$1,000 for each child. It allows these families to pay less income tax so that the money can be used to help them meet the child's basic needs. But the Ensign amendment says to immigrant families struggling on meager wages, trying to provide a better life for their children: You can't use the child tax credit to reduce your tax liability, even though every other family can. It does not matter that in many cases your children were born in the United States and are American citizens. Your children still cannot receive the benefit of the child tax credit because you were an undocumented worker.

As a result, an immigrant family with two youth children, maybe American citizens, will have to pay \$2,000 more in taxes each year than any other family in America who has the same income, same number of dependent children.

That is an incredibly harsh penalty to impose on these families. The Ensign amendment would impose a spe-

cial punitive Tax Code on immigrants who were once undocumented, making them pay higher taxes than anyone else with comparable incomes, denying them the basic right to a refund of their own money when the employer withholds more than they owe.

I urge my colleagues to look closely at this unjust amendment and reject it.

I reserve the remainder of my time.

Mr. ENSIGN. Mr. President, I yield the Senator from South Carolina 4 minutes.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. DEMINT. Mr. President, I rise in support of Senator ENSIGN's amendment. I very much appreciate him offering it on behalf of the American people. I also appreciate the efforts of all my colleagues who I know have worked in good faith to try to create a better immigration system that works for Americans and our heritage of welcoming immigrants.

As we have gone through this process, I think it has been a good, civil, and constructive debate, but some of us are just coming down on different sides.

My hope was as we went through this debate that we would recognize the urgent sense that Americans have what we need to secure our borders and that we need to stop illegal immigration before we expand legal immigration or increase benefits to those who are here illegally.

I had hoped that when Senator ISAKSON offered his amendment that included comprehensive reform but created a commonsense sequence, that we in America would see that we need to control our borders before we add additional legal immigrants. But when that amendment failed, I think it discouraged a lot of us, that perhaps everyone wasn't working in a way that would be constructive for America's future.

We also saw when Senator ENSIGN offered an amendment that had some commonsense ideas if someone had come here illegally and stolen someone's Social Security number, certainly they should not be rewarded by receiving Social Security benefits for the time they were using a stolen Social Security number. I think most of us thought that commonsense amendment would have been adopted overwhelmingly. Unfortunately, it failed, which discouraged many of us who wanted to work as part of a team toward comprehensive reform.

Now we see with this amendment a recognition that we don't need to continue to add reward on top of reward for those who have been working here illegally. While we need to struggle to find a system that works for America, we should not use taxpayer dollars, American taxpayer dollars to give tax credits to folks who have been working here illegally. This does not make sense.

Again, I encourage my colleagues to consider this because it is not only unjust to Americans, I think it is unfair

to immigrants. This bill is ultimately going to create such a level of resentment for our immigrants. Once Americans see that this bill creates rewards for those who have come here illegally, not just Social Security benefits but tax credits, citizenships, wages that in many cases are better than Americans', guaranteed wages, Americans are going to see this as unfair and resent the immigrants, and I think it will hurt our heritage of immigration in this country.

I appreciate Senator ENSIGN offering this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I believe the immigrants who are here 5 years or more ought to be treated like everybody else. It raises very similar considerations to the arguments which I raised on the amendment by Senator SESSIONS.

Where they have overpaid in taxes, like any other taxpayer, they ought to be able to get it back. Where they have children who are entitled to the child tax credit, children born in the United States would be excluded under the Ensign amendment. They ought to be treated like anyone else.

When Senator DEMINT talks about resentment and fairness, I believe there would be a lot of resentment and a lot of questioning of the fairness of treating the immigrants who have been here for more than 5 years in a discriminatory fashion, not giving them back money they overpaid in taxes, or not according their children the child tax credit.

I yield the Senator from Texas 5 minutes on my time.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, we have been debating for the last 2 weeks a bill that is going to change the course of our country. The debate has been good. We have had the ability to offer amendments. Yet, the bill has not changed to the degree it needs to change, to do the job that we must do to assure that we secure our borders. This bill has not yet changed to ensure that we have a temporary worker program that works, that does not discriminate against American workers, and that is fair. If this bill had gone through that process, we could then start dealing with the people who are here in a fair and responsible way.

Mr. President, we have benefitted from the immigrants in our country for hundreds of years—people who come here legally and work hard. They make better lives for themselves and their families, and they contribute to our country in the process. They have assimilated into America the "E Pluribus Unum" motto: Out of many, one. That has been the factor that has brought us together for all of these years.

In the last 10 years, we have watched as millions have ignored our laws. They have come into our country ille-

gally, leaving those who have waited their turn, who have waited for the legal process to work, to wonder if, in fact, they would ever be rewarded for their correct behavior.

After 9/11, we all knew that our security was at risk. We have been forced to reexamine the laws of our country as they relate to our borders. Yet nearly 5 years after our country was attacked by people who came in through a porous border, we still have a porous border. We need immigration reform, and we must do it right.

There are some good points in this bill. Securing our borders is a part of this bill. I voted against the Budget Act point of order yesterday because I want to spend the money on border security, and it is going to cost money. But that is not the only part of this bill. The rest of the bill has caused an imbalance that cannot stand if we are to look at the big picture for our country.

Edwin Meese, the former Attorney General of the United States, warned in a New York Times editorial op-ed that we are in danger of repeating the mistakes of 20 years ago when Congress passed the Immigration Reform and Control Act of 1986, granting amnesty to those who were in this country. We are in danger of making the same mistake today.

Temporary workers are very important for our country. They provide U.S. companies with labor that keeps our economy thriving, and the workers have the opportunity to make better lives for themselves. We also need to make sure that we have some path for people who want to work in this country, but do not want to be citizens. It is important that we balance the rights of American workers' as we take this major step.

The Hagel-Martinez guest worker program does grant amnesty, and it forces guest workers into a citizenship track after 6 years, even if that is not what the worker wants or what they intended. In the polls that I have seen, most of the people coming to this country to work do not want to give up allegiance to their home countries, and they still love America. They don't have hostility toward America because they are not citizens. The arguments that I have heard indicating that we want every temporary worker to be a citizen so that they will be loyal to our country, I believe does not hold water. You can be friendly to our country, appreciate and respect our country but not have to go into the citizenship track to do that. People have been doing it for a long time.

We do not have the capability in this bill that I tried to put in it yesterday with my amendment that would allow another choice—a choice for people who do want to work in our country, go home, and who do not want the citizenship track.

Mr. President, I will not be able to vote for the bill before us today, but I do hope I can vote for a bill that comes

out of conference committee, one that will be balanced and one that represents the interests of the American people, as well as treating fairly the foreign workers who come to our country.

I thank the Senator from Pennsylvania.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada.

Mr. ENSIGN. I yield myself 3 minutes.

Mr. President, the 1996 historic welfare reform bill signed into law by President Clinton clearly stated illegal immigrants, people who were unlawfully in this country, would not be able to receive the benefits of the earned-income tax credit and would not be able to benefit from any of the other tax credits the law provides. That is right and that is fair. We should reserve those benefits for citizens and permanent residents.

This bill undoes that. The bill says: We know what the law says, but now we forgive you and, therefore, go ahead and claim those credits retroactively. Without my amendment, that is exactly what will happen in this bill.

The idea of stealing somebody's identity, stealing their Social Security number, ruining their credit, ruining everything that many folks have worked so hard to achieve, and then rewarding the person who stole the identity seems to me to be unfair, it seems wrong. If you have fraudulently used someone's social security number that—by the way—is a felony. We are forgiving that felony under this bill. So we are giving amnesty for that felony. It would seem to me that amnesty should be enough. We shouldn't, at the same time, allow the person who committed a felony to collect Social Security benefits and to claim the earned-income tax credit.

I want to put up a chart here because people have been talking about the earned-income tax credit. Senator COBURN earlier this year had a hearing on the earned-income tax credit. This program—and this is pretty consistent with what I have seen over the years—has somewhere between a 23 percent and 28 percent error or fraud rate. That is the error rate that currently exists each year without regard to persons affected by this bill. That fraud—according to best estimates—costs us over \$10 billion a year. Just in errors and fraud. Now we want people who are here illegally to be able to go back and claim a tax credit adding more burden to the U.S. taxpayer, adding more to the deficit.

It was said by some that our amendment doesn't allow people to get refunds. That is absolutely true. If they paid into the system, and they overpaid, you are correct, we do not allow tax refunds. One of the reasons for this provision is because it is impossible to determine whether people using multiple social security numbers, as is the case with so many illegal immigrants, have overpaid. In that regard, there

would be no way to match a W-2 with the person who earned the wages on that document. This bill places a huge burden on the IRS, forcing the service to prove if someone has used 13 different Social Security numbers. Sorting out who actually messed up the system. Having to prove what someone owes and if they have overpaid, if they have overclaimed or overdeducted, it is a huge burden. By the way, we are not solely placing the burden on the IRS; we are also placing a huge burden on the American taxpayer. How? The American taxpayers have to fund the IRS. So it will be very difficult to prove whether someone has overpaid or not, and whether they are due a refund. We take care of all of that. We say, No, you don't get a refund and you cannot claim the tax credits that I believe are due for American citizens, and they certainly weren't due for people who are here illegally.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time do I have remaining?

The PRESIDING OFFICER. Five minutes and 36 seconds.

Mr. KENNEDY. Mr. President, I yield to the Senator from South Carolina.

Mr. GRAHAM. Mr. President, I thank the Senator for yielding. I don't know how to say it other than just to say it. We are beginning to take tax policy focusing on one group of people and tying it to criminal behavior disproportionate to the crime, and we are beginning to set the stage for a different kind of America. Not only is it ill-conceived, it is dangerous. You can rape someone, you can murder someone, you can be a convicted child molester, and our tax laws allow you to get a refund.

What kind of crime are we talking about here? Coming across the border illegally, breaking in line to try to get ahead, because here you can do really well and on the other side of the border you do really poorly. I am sorry people did that. They need to pay for their crime of coming across the border, which is a misdemeanor with no specific fine set, with a 6-month cap on punishment.

But what are we going to do to those people who come here and we have allowed them to sit here—not sit here, work here, for our benefit, doing things we don't want to do for years—we are going to say to the children who are American citizens, You are an American citizen as much as I am, but when it comes to your parents who came across that border for you and your future, we are not going to just punish them, we are going to take the whole Tax Code and turn it upside down and do to your parents what we don't do to a drug dealer or a rapist or a murderer.

To my good friend from Nevada: Enough is enough. You have gone way too far. We need to get a grip on who we are as people. Punishment, yes. Revenge, no.

You want to talk about fairness? I have been a prosecutor, I have been a defense attorney, and I know you have to pay your debt, but this is a place where you can start over—at least it used to be. It is a place where you have a chance to right your wrongs. Under this bill, you do pay a fine; you do go through a very long process to earn your way back into our good graces. It is a misdemeanor. You pay a fine. You have to learn English. If you are out of work for over 45 days, off you go. If you commit a felony or misdemeanor unrelated to immigration, off you go. We need the workers. We don't need bad people. We need good people.

Every now and then, good people do bad things. At least I have found it to be so. Count me in that category. I hope you will forgive me if I do a bad thing, because I have done plenty of bad things. It is because people have seen the good in me, allowed me to start over and do right. That is why I am in the Senate today, because people saw in me some things I didn't deserve to have seen. So yes, let's give them punishment, make them do right, make them learn our language, make them pay taxes and pay a fine, make sure they don't commit crimes. But once you pay taxes, let's don't turn the Tax Code upside down just to kick you around after you have done what we have asked you to do.

Please vote no. I yield back.

EARNED INCOME CREDIT

Mr. GRASSLEY. Mr. President, Senator ENSIGN has proposed amendment No. 4136 to this immigration bill.

Mr. ENSIGN. My amendment is designed to accomplish two purposes: one, deny the earned income credit, EIC, to undocumented workers; and two, to ensure that applicants under section 601 are not manipulating their tax attributes to generate refunds that would not otherwise be due.

Mr. GRASSLEY. I agree with the objectives of Senator ENSIGN's amendment. I note that the Finance Committee report welfare reform bill, known as the PRIDE Act, contains a technical correction to ensure that Senator ENSIGN's and my objective with respect to the EIC is met.

Secondly, I will work with Senator ENSIGN and other interested members of the conference to achieve our second objective. We recognize this amendment is our first attempt to make sure the applicants are fully compliant with our Nation's tax law. As such, the underlying bill's provisions and Senator ENSIGN's amendment will need to be further examined in conference.

Mr. ENSIGN. I thank the chairman and look forward to working with him in conference.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, I yield myself the remaining time.

The Senator from South Carolina just talked about how coming across the border illegally is a misdemeanor. What he didn't address was that steal-

ing somebody's Social Security number is a felony. In this bill, we forgive that felony. We forgive it.

What we are saying is, if somebody who has operated under false pretenses—the 1996 welfare reform bill signed by President Clinton said that they would not qualify for earned-income tax credits or any other tax credits that we have for the low-income folks in this country—this bill will reward them and reverse the welfare act. They will be able to go back and say, Well, here is where I worked, and present some W-2 forms, maybe falsified, but they can go back and try to claim that, and then qualify for the earned-income tax credit. I fundamentally think that is wrong. We are already forgiving a felony; I think that is enough.

All of the things that the Senator from South Carolina said about people coming here and working—and I am a big supporter of immigration—I think it is the strength of our country: The diversity that it brings, the hard-working people who make us appreciate America. I am as pro-immigration as anybody in this Chamber. What I want, though, is folks who, when they are coming here, are coming here for the right reasons. They are coming here to work hard. They are coming here to do the things that make America great. I think that is wonderful. They are saying in this bill that people will pay restitution, to earn legal status by paying back taxes. I don't know how many times I have heard those words from the people who are supporting this bill. In fact, under this bill, when immigrants go back to pay back taxes, to pay restitution, many actually get money from the federal government solely because of the earned-income tax credit.

America is a compassionate country. We want to embrace people who are coming—we always have—from around the world. But I don't think it is right to ask the American people, OK, forgive them for the felony of stealing Social Security numbers, we are going to give you amnesty as far as citizenship and things like that, and on top of that, we are going to write you a check. We are going to write you a check courtesy of the American taxpayers. Yes, some may pay a fine and back taxes, but the EITC and other tax credits will actually operate so that the American people are going to write the illegal immigrant a check. Without my amendment, that is exactly what can happen to financially reward millions of the folks who are going to be legalized under this bill.

Mr. President, is there any time remaining?

The PRESIDING OFFICER. Forty-two seconds.

Mr. ENSIGN. I yield back my time.

Ms. MIKULSKI. Mr. President, there has been a lot of talk over the last 2 weeks about immigration and the need for immigration reform. I agree our immigration system is broken. We

need to secure our borders, protect American jobs and make sure those immigrants in this country are treated with dignity. I rise today to talk about two provisions that I fought hard to include in the immigration bill.

First, the H-2B visa program, which rewards those immigrants who play by the rules while protecting American jobs. And second, the Kendell Frederick Citizenship Act. This act rights a wrong and corrects a terrible injustice. It makes sure those who are not U.S. citizens but who are fighting to protect this country and have a green card can be a U.S. citizen quickly and easily.

My H-2B visa provision protects our borders by rewarding immigrants and employers who play by the rules. We are talking about workers who come here on a seasonal basis but return to their families when they are finished with their job. Workers who honor their legal commitment to come here, work legally at a job and return home when finished with their work.

This provision protects American workers by requiring employers to recruit American workers before hiring immigrant workers. It makes sure small business can continue to operate and pay their U.S. workers 12 months out of the year. It keeps small and seasonal businesses open for business and guarantees the labor supply small businesses need during their peak seasons when they can't find American workers to take the jobs.

This provision does not raise the cap. It allows employers who hire good guy workers, workers who have played by the rules and returned home after the work was done. These workers can be hired for another 3 years and not count against the annual cap of 66,000 H-2B visas. It provides a helping hand to businesses by letting them apply for workers they have already trained to come back again, year after year and return home after the work is done. And it only applies to those who have already successfully participated in the H-2B visa program—immigrants who have received a visa and have returned home to their families after their employment with a U.S. company.

Small businesses across this country count on the H-2B visa program to keep their businesses afloat when they cannot find local American workers to fill their seasonal needs. They can then turn to the H-2B visa program. Without being able to get the seasonal workers they need, these businesses would not survive. These businesses try to hire American workers. They would love to hire American workers. Under the law, they are required to hire American workers. These businesses have to prove that they have vigorously tried to recruit American workers. They have to advertise for American workers and give American workers a chance to apply. They have to prove to the Department of Labor that there are no American workers available. Only then are they allowed to fill their vacancies with seasonal workers.

The workers these businesses bring in participate in the H-2B visa program year after year, often working for the same companies. This has been the experience of the Maryland seafood industry. Yet they cannot and do not stay in the United States. They play by the rules, and return to their home countries, to their families. After the worker goes home, the U.S. employer must go through the whole visa process again the next year to get them back. That means an employer must prove again to the Department of Labor that they cannot get U.S. workers. The program also requires that the employers pay these workers the prevailing industry wage.

This is not just a Maryland issue. This is not even a coastal issue. It is an issue that affects everyone. Every State uses H-2B workers, from ski resorts out West and in the Northeast to quarries in Colorado, from landscapers who hire most of their workers in spring and summer to shrimpers in Texas and Louisiana. And of course the seafood industry on both coasts.

Being able to hire seasonal workers is critical to the State of Maryland. We have a lot of summer seasonal businesses in Maryland, on the Eastern Shore, in Ocean City or working the Chesapeake Bay. Many of our businesses use the program year after year. First, they hire all the American workers they can find, but they need additional help to meet seasonal demands. Without this program they can't meet their needs and many will be forced to limit services, lay off permanent U.S. workers or, worse yet, close their doors. These are family businesses and small businesses in Maryland. Take for example J. M. Clayton. What they do is a way of life. Started over a century ago and run by the great grandsons of the founder, J.M. Clayton works the waters of the Chesapeake Bay, supplying crabs, crabmeat and other seafood, including Maryland's famous oysters, to restaurants, markets, and wholesalers all over the Nation. It is the oldest working crab processing plant in the world. By employing 65 H-2B workers, the company can retain over 30 full time American workers.

But it is not just seafood companies that have a long history on the Eastern Shore. It is also S.E.W. Friel Cannery, which began its business over 100 years ago. Friel's is the last corn cannery left from 300 that used to operate on the shore. Ten years ago, when the cannery could not find local workers, it turned to the new H-2B visa program. Since then, many workers come each season and then go home year after year. They have helped this country maintain its American workforce and have paved the way for local workers to return to the cannery. Friel's now employs 75 full-time and 190 seasonal workers, along with 70 farmers and additional suppliers.

Last summer, I went over to the Eastern Shore after the victory of getting an extension to the H-2B visa pro-

gram to meet with Latina women who come to Maryland every year under this program. I asked them "What does this program mean to you?" They told me that coming here year after year is hard work, but it means they can provide for their families. They come in April and stay until late September when the crab pots are packed up until the next season. During one summer here, they earn more than they could earn in their home countries in 5 years. They take this money back to their families and children who have been waiting for them and build a well in their native village or build a home or even pool their money to build a community center. Each year these women come back to Maryland because they know the shore and they know Clayton, they know Phillips; and they know they will have a place to live, a bus that will take them to church, access to translators and in some places they are even able to learn English. First, it is one sister and then another sister coming to the Eastern Shore for a few months a year to make money so they can take care of their families and communities back home.

Some of you may ask, "why do we need this extension since the bill has a temporary guest worker program?" We need to make sure we do not forget the needs of small and seasonal businesses in this immigration debate. I welcome the guest worker program that is before the Senate. Once the program is up and running, it will help augment the H-2B program. But that is going to take time. We need to make sure that there is no interruption so that companies can meet their hiring needs. When American workers don't apply for the job, the lack of workers could mean a missed season. That doesn't just mean a loss of profit. It means a loss of a family business, because these businesses will be forced to close their doors.

Again this year, we have already reached the cap on the H-2B visa program. The first half of the cap—33,000 visas—was reached less than 3 months after employers could begin applying. These businesses relied on the exemption of returning workers to fill vacancies that were open after trying to recruit American workers. We know how important it is to protect our borders, protect American workers and make sure small and seasonal businesses continue to operate. I don't need to tell you how important our seasonal industries are to our State economies and our local communities. This provision in the immigration bill does all of this. Every Member of Senate who has heard from their constituents, whether they are seafood processors, landscapers, resorts, timber companies, fisheries, pool companies or carnivals knows the need for this H-2B program to continue.

I also want to talk about another provision in the immigration bill meant to fix a broken bureaucracy and help noncitizens who are serving in our military become citizens of the United

States. There are over 40,000 non-U.S. citizens serving in the U.S. military today. Many want to become U.S. citizens but are caught up in red tape and paperwork, bureaucratic run-a-rounds and backlogs. And that is wrong.

Many of these young people are on the front lines in Iraq, Afghanistan and throughout the world fighting terrorists. They are focused on fighting the enemy, they shouldn't also have to fight the bureaucracy just to become a citizen of the country they are fighting for. This provision in the immigration bill makes sure that it is easier and quicker for non-U.S. citizens serving in our military to become citizens.

This provision was inspired by a young man from Maryland who was in the Army serving our country. Though not a citizen, he had a green card and was killed in Iraq on October 19, 2005. He was 21 years old. Kendell Frederick was killed by a road side bomb on his way to be fingerprinted to become a U.S. citizen. But he was also killed by the botched bureaucracy of the U.S. government, by their incompetence, by their indifference, by their ineptitude. This is inexcusable.

Every military death in Iraq is a tragedy, but this one did not need to happen. A Trinidad citizen, but fighting for America, Kendell Frederick was a terrific young man who came to this country when he was 15 years old. He joined his mother here in the U.S. and wanted so much to be a part of this country. He wanted to serve this country and joined the ROTC while at Randallstown High School. After graduation, he joined the Army and went off to serve this country. In the Army, he was a generator mechanic assigned to a heavy combat battalion. His job was to keep all of the generators running, which kept his battalion running. Kendell wanted to become an American citizen, yet a series of bureaucratic screw ups and unnecessary hurdles prevented that.

Kendell had been trying for over a year to become a U.S. citizen. He started working on it when he joined the Army. While he was training and learning how to become a soldier, Kendell sent his citizenship application in and checked the wrong box. Specialist Frederick was busy training for war, packing to go to Iraq, saying good bye to his mother, his brother, his two sisters—all the while worrying which box to check to become a U.S. citizen.

After that, his application was derailed by Immigration three times. First, after his mother checked the correct box saying Kendell was in the military, the Citizenship and Immigration Service, CIS, sent the application to the wrong office, not the office that handles military applications. Second, CIS rejected the fingerprints he had submitted—with no explanation. Kendell had his fingerprints taken when he joined the military. He had an FBI background check for the military. We have high standards to be in the U.S. military. But there was no expla-

nation. His mother did not know why the fingerprints had been rejected. Third, and finally, Kendell was told to get his fingerprints retaken in Maryland. But he was in Iraq fighting a war. His mother called 1-800-Immigration—that's supposed to be the HELP line. She told them—my boy is in Baghdad, he can't come to Baltimore to get fingerprinted. She would have loved for son to come to Baltimore, but he was fighting in a war, fighting for America. And CIS told her there was nothing they could do. They were wrong. That was the wrong information. They were no help.

Finally, an arrangement was made. Kendell's staff sergeant made arrangements for him to be fingerprinted at a nearby air base so he could complete his application. On October 19, SPC Kendell Frederick was traveling in a convoy to a base to get fingerprinted. He did not usually go on convoys, but that day he was in the convoy to get his fingerprints to become an American citizen and he was killed by a roadside bomb. Kendell was granted his U.S. citizenship a week after he died. He was buried in Arlington National Cemetery.

Kendell was trying to do the right thing, yet he was given wrong information. He got the run-a-round. His staff sergeant tried to help, but he didn't know all the rules, it was not his job to know the rules—he was fighting a war. His mother did the right thing. She tried to cut through the bureaucracy, making phone calls, sending letters, she was diligent and relentless. The system failed—again and again. And a wonderful young man lost his life.

Kendell's mother—Michelle Murphy—could have just sat there, could have boiled in her rage. She wanted to do something with her grief. When I spoke with her, she told me she didn't want any mother to have to go through what she went through, what her son went through. Servicemembers and their mothers should not be worrying about what box to check on a citizenship application, which of many addresses is the right address to mail it to, where to get fingerprints taken when the servicemember is fighting for America. Mothers have enough to worry about. Servicemembers have enough to worry about.

It took me introducing a bill to get Immigration's attention about the problems servicemembers and their families face. The Department of Homeland Security is working with me and Kendell's mother to try and make sure this does not happen again. They are working to get rid of the red tape. This provision will make sure that no mother has to go through what Mrs. Murphy went through.

The Kendell Frederick Citizenship Act that is part of the immigration bill makes it easier for military servicemembers to become citizens. The provisions of the legislation cut through the red tape. First, the act requires CIS to use the fingerprints the military

takes when a person enlists in the military, so a servicemember doesn't have to keep getting new fingerprints. Second, it requires the creation of a military citizenship advocate to inform the servicemembers about the citizenship process and help with the application. Third, this legislation requires CIS to set up a customer service hotline dedicated to serving military members and their families. And fourth, it requires the Government Accountability Office to conduct an investigation into what is wrong with immigration services for our military.

No one should ever again have to go through what Kendell and his mother went through. The Kendell Frederick bill will make sure that anyone in the military who wants to be a U.S. citizen will be able to do so, quickly and easily. If you are willing to fight and die for America, you should be able to become an American.

Mr. BUNNING. Mr. President, I rise to speak about why I will vote against the immigration reform bill now before the Senate.

This is the worst piece of legislation that I have seen in my 20 years in Congress. It grants amnesty to 11 million or more illegal immigrants. It puts American workers at risk. It does little to enforce our immigration laws in the interior of the country, and worst of all, it does not even secure our border. It ignores the will of the majority of the American people. I cannot vote for such a dangerous bill.

In 1986, the year before I first joined the House of Representatives, Congress passed the immigration reform bill that got us into the situation we are in now. Ed Meese, who was President Reagan's Attorney General at the time, called it what it was—an amnesty for 3 million illegal aliens. Unfortunately, after that amnesty little attention was paid to securing our borders and interior enforcement, and the illegal immigrant population grew to over 11 million.

The 1986 amnesty was a signal to illegal immigrants that if they came here and kept their heads down, eventually they would have their crimes forgiven. The amnesty told them there was no reason to wait in line, no reason to follow our laws, just sneak into the United States, do not get caught, and eventually Congress would make them a citizen.

Well, that is exactly what happened. Earlier this week, former Attorney General Meese pointed out that Congress did not learn the lesson of 1986 and we are poised to repeat that mistake by passing a new amnesty. I suspect that 20 years from now a future Congress will talk about yet another amnesty.

A few weeks ago I came to the floor to talk about what kind of immigration reform I support. I support, first and foremost, securing our borders. If we cannot control our borders, we might as well give up on stopping the next terrorist attack.

I support strong enforcement of our immigration laws inside the country. That means punishing employers who hire illegal immigrants. We must provide employers the tools they need to make sure workers are legal and hold them responsible when they turn a blind eye to who they are hiring.

I support an immigration reform bill that protects American workers. That means a temporary worker program for when we need more workers, such as in our current rapidly expanding economy. But any worker program must make sure Americans are not being denied jobs in favor of cheap foreign labor. If there is a real need we should fill it, but foreign labor should never be a substitute for American workers.

Finally, I support continuing our long tradition of welcoming new immigrants to America. Within reasonable limits, we should continue to welcome people from around the world who want to become Americans. We should not lock the doors to new immigrants, but anyone who wants to become an American must learn our language and assimilate into our society.

Because this bill does not follow those principles, I will not support it. The bill will not secure our border. It ties the hands of law enforcement inside the country to catch illegal immigrants. It is an amnesty for illegal immigrants that not only puts them ahead of the millions who are already waiting in line, but in some ways it also treats them better than American workers. Finally, the bill does not protect American jobs, instead it encourages businesses to use cheap foreign labor.

I have heard a lot of talk the last few weeks from my colleagues supporting this bill that say we must choose from either blanket amnesty or mass deportation. That is wrong. If we passed a real border security bill with tough interior enforcement, the illegal population would shrink through attrition; in other words, the illegal immigrants would deport themselves. After we secure our borders, we can put in place a temporary worker program that protects American workers.

But that is not the path the Senate will choose today. I hope my colleagues in the House of Representatives will stay strong with their bill when we get to conference. The other body passed a strong bill that would make this country safer. That bill is not an amnesty bill. It will make sure we get our border under control before opening the door to millions of temporary workers.

Again, Mr. President, I cannot support this bill. It is the worst legislation I have ever had to vote on, and I will vote against it when the roll is called. I put securing our borders ahead of amnesty, and I am confident the American people do too.

Mr. SANTORUM. Mr. President, the Senate is scheduled to vote today on a comprehensive immigration reform bill. With thousands of illegal immigrants rushing across our borders every

day, straining every sector of our society, congressional attention to this issue is appropriate and overdue. Unfortunately, S. 2611 is not the right way to reform our immigration system.

As the son of an Italian immigrant who came to the United States in 1930, I understand the important and valuable contributions immigrants have made and continue to make to our country. I have great respect for those who have legally come to our Nation seeking a better life for their families, just as my grandfather and father did.

However, as the Senate comes to a vote on S. 2611, I firmly believe that the rule of law and our safety and security must be given by importance. Who is traveling across our borders and why they are doing so is as important as any issue we currently face. It is a complicated issue, with far-reaching implications that will impact our national security, our economy, and our culture.

Securing our borders is and must be our first priority. It is a basic responsibility of a sovereign nation. An immigration policy that does not control who is entering our Nation is not an immigration policy at all. The best way we can do this is by strengthening and supporting our Border Patrol, both through greater numbers and technological advancements. To this end, I cosponsored and voted for a successful amendment that authorizes the Department of Homeland Security to construct 370 miles of triple-layer fence and 500 miles of vehicle barriers at strategic locations along our southern border.

I also cosponsored the Ensign amendment which provides reimbursement for the temporary use of the National Guard to secure the southern border of the United States. With the approval of the Secretary of Defense, the Governor of any State may order the use of the National Guard for not more than 21 days in a year to provide "command, control and continuity of support" such as ground and airborne reconnaissance, logistical, tactical, and administrative support, communications services, and emergency medical services. I was pleased to see both of these amendments pass as they are solid first steps towards border security.

But the reason I voted against cloture and why I simply cannot vote for this bill is that it gives amnesty to the immigrants who came to this country illegally. I believe those who have entered this country illegally must return to their native land and move through the legal process just like everyone else. The idea that those who have been here illegally for an arbitrary number of years—a number that is, frankly, undeterminable as their time here is by nature undocumented—should be able to stay in America simply by paying back taxes is an insult to all those who have waited, patiently and lawfully, for their chance to come here and pursue the American dream.

There were many opportunities to fix this throughout Senate debate, but I

am afraid many of my colleagues have not truly heard the call of their constituents to oppose amnesty. I was disappointed that 58 of my colleagues rejected a reasonable amendment offered by Senators KYL and CORNYN to ensure that the temporary worker program was actually temporary and not a shortcut to legalization or citizenship. I also voted against the Feinstein amendment earlier this week which would have given all illegal immigrants in the United States a path to citizenship without having to leave the country.

I cannot support an amnesty proposal now because amnesty has failed in the past. In 1986, Congress attempted to address this same issue, though on a much smaller scale. Estimates of the size of the illegal-immigrant population in the United States in 1986 placed the total number close to 1 million; today we are dealing with around 12 million. If providing amnesty to 1 million illegal immigrants yielded 12 million over the course of 20 years, with how many additional millions will we be burdened in 2026 by offering amnesty now?

But this is not the only way S. 2611 rewards illegal immigrants. I cosponsored an amendment offered by Senator JOHN ENSIGN that would ensure illegal immigrants have a valid Social Security number before they can accumulate credit to qualify for Social Security. This amendment was intended to reduce document fraud, prevent identity theft, and preserve the integrity of the Social Security system by ensuring that persons who receive an adjustment of status under this bill are not able to receive Social Security benefits as a result of unlawful activity. In other words, this prevents illegal immigrants from getting Social Security benefits based on their illegal work history, often with an invalid number. Unfortunately, a majority of my colleagues voted to kill this amendment. By doing so, the Senate has rewarded illegal immigrants by putting our current elderly beneficiaries, who paid into the Social Security system for decades in order to collect the benefits they receive today, further at risk in an already stretched system.

I would like to speak briefly on an amendment offered by Senator SESSIONS that would prohibit aliens unlawfully present in the United States with a green card from the H-2C visa program from claiming the earned income tax credit, EITC, when filing annual tax returns. This amendment has good intentions, but I reluctantly must oppose it. The cost of EITC for the illegal-turned-legal population is steep. However, this amendment goes further than I am comfortable with by treating these resident aliens different from others. In my mind, a better option is another amendment offered by Senator ENSIGN that would limit illegal aliens from any kind of tax refund or an EITC claim on back taxes for the time that they were here illegally. I believe this amendment strikes the right balance.

America is a nation of immigrants, a nation that derives much of our strength from those who come here to live the American dream. But the immigrants who have contributed so much to the character of our Nation came here legally. We devalue their sacrifices and hardships if we fail to ask the same of today's immigrants. This bill does not do that. It rewards illegal behavior, threatens our social welfare system, devalues the legal immigration process, and provides amnesty to illegal immigrants. I will vote against S. 2611, and I urge my colleagues to do the same.

Mr. DOMENICI. Mr. President, I rise today to express my dismay that my amendment No. 4022 to S. 2611 is not part of the bill the Senate will vote on.

At first glance, the immigration bill we are considering takes into account that if we put more border patrol agents and immigration personnel on the border, other Federal agencies that deal with immigration will need more resources. The bill adds new Department of Homeland Security and Department of Justice attorneys, public defenders, and immigration judges. But the bill fails to account for that fact that while immigration cases typically go before immigration judges, repeat offenders can be charged with felonies and tried in Federal district court.

As part of this bill, we should have considered the increased federal criminal immigration caseload we will have as a result of increased border security and immigration enforcement, and we should have added new District judges to hear those cases.

Specifically, my amendment would implement the recommendations of the 2005 Judicial Conference for U.S. district courts that have immigration caseloads totaling more than 50 percent of their total criminal filings. There are four districts that have such caseloads; unsurprisingly, all of them are on the Southwest border. Those courts' immigration caseloads vastly outweigh the immigration caseloads of northern border district courts that the 2005 Judicial Conference recommended new judgeships for.

For example, in the Southern District of Texas there were 5,599 criminal filings in fiscal year 2004, and 3,688 of them were immigration cases. By comparison, the Western District of Washington had only 539 criminal filings, and only 78 of those were immigration cases. Similarly, in the District Court for Arizona there were 4,007 criminal filings in fiscal year 2004; 2,404 of them were immigration cases. But in Idaho, there were only 213 criminal filings, and only 71 of those were immigration cases. In fiscal year 2004, the Southern District of California had 3,400 criminal filings, and 2,206 of them were immigration cases. On the northern border, in the Western District of New York, there were only 497 criminal filings; only 35 of those were immigration cases. Lastly, in the District of New Mexico, there were 2,497 criminal fil-

ings in fiscal year 2004, and 1,502 of them were immigration cases. In the District of Minnesota, there were 431 criminal filings, and only 15 of them were immigration cases.

With so many figures, the significance of those numbers may be lost, so let me sum those numbers up. In fiscal year 2004, my home state of New Mexico, which shares a border with Mexico, had 100 times more Federal criminal immigration cases than a state that shares a border with Canada.

The Albuquerque Tribune wrote an article about this issue in March. That article, "Judges See Ripple Effect of Policy on Immigration," said:

U.S. District Chief Judge Martha Vazquez of Santa Fe oversees a court that faces a rising caseload from illegal border crossings and related crime. And help from Washington is by no means certain. . . . Most typical immigration cases go before an immigration judge, and the subjects are deported. But people deported once and caught crossing illegally again can be charged with a felony. And that brings the defendant into federal district court. Those are the cases driving up New Mexico's caseload. . . . Some days as many as 90 defendants crowd the courtroom in Las Cruces, said Vazquez. . . . The same problems are afflicting federal border courts in Arizona, California, and Texas.

Mr. President, I will ask that this April 17, 2006 article be printed in the RECORD.

I would also like to read portions of a letter written to me earlier this month by the New Mexico District's Chief Judge, Martha Vazquez. About the Senate's immigration bill, Judge Vazquez wrote:

As with past legislation aimed at improving border security, this bill will significantly increase the number of felony immigration and drug cases in the federal courts in districts on the southwest border. The bill, in recognition of this fact, provides funding for at least 20 additional full-time Administrative Immigration Judges. The bill, however, inexplicably fails to provide funding for additional Article III judges despite the fact that Article III judges will be as burdened, if not more, by the increased caseload that will result from the bill's implementation. . . . In fiscal year 1997, there were 240 immigration felony filings in the District of New Mexico. By fiscal year 2005, the number of immigration filings increased to 1,826, which is an increase of 661 percent. . . . Increasing the number of immigration judges will do nothing to reduce the increasing caseload in the border states' federal courts.

Judge Vazquez was appointed to the Federal bench by President Clinton. Clearly this is not a partisan issue, as Judge Vazquez and I agree that the Senate's failure to address the needs of our border district courts is inexplicable. I will ask that this May 16, 2006, letter from Chief Judge Vazquez be printed in the RECORD.

Lastly, I would like to quote an article written this week. On May 23, 2006, Reuters posted an article titled "Bush Border Patrol Plan to Pressure Courts: Sources." That article said:

President George W. Bush's plan to send thousands of National Guard troops to the U.S.-Mexico border could spark a surge in

immigration cases and U.S. courts are ill prepared to handle them, according to congressional and courts sources. . . . Even without the stepped-up security at the border, federal courts in southern California, Arizona, New Mexico and Texas have been overburdened. Carelli [a spokesman for U.S. federal courts] said those five judicial districts, out of 94 nationwide, account for 34 percent of all criminal cases moving through U.S. courts. . . . Most immigrants caught crossing illegally are ordered out of the country without prosecution. But that still leaves a growing pile of cases involving illegals who are being prosecuted after being caught multiple times or those accused of other crimes. . . . Nationwide, each U.S. judge handles an average of 87 cases a year. But along the southern border, even before Bush's plan moves forward, the average is around 300 per judge, Carelli said.

Clearly, there is already a crisis regarding our Southwest border district courts' immigration caseload. As we worked on S. 2611 to provide more resources to the Departments of Homeland Security and Justice, we should have also addressed the related needs of our U.S. district courts. Senators KYL, CORNYN, and HUTCHISON understood that, and I thank them for their cosponsorship and strong support of my amendment.

Unfortunately, our other colleagues were unwilling to recognize this problem or address this need. I was told that this amendment, with an annual cost of \$11 million, was too expensive. But this bill authorizes billions of new spending for homeland security and judiciary resources. I was informed that every State needs new judges. But not every State has thousands of immigration cases filed each year.

I am disheartened that the Senate did not act on amendment 4022. I am disappointed that my colleagues were unwilling to address the judicial crisis along the Southwest border. I am dismayed that this body is turning a blind eye towards the need of our U.S. district courts. As a result of such action, my State, and other States on the southwest border, will not be able to enforce the border security and immigration enforcement provisions in the Comprehensive Immigration Reform Act because we will not have the necessary resources to prosecute immigration cases.

Mr. President, I ask unanimous consent that the aforementioned materials be printed in the RECORD.

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

[From Scripps Howard News Service, April 17, 2006]

JUDGES SEE RIPPLE EFFECT OF POLICY ON IMMIGRATION

(By James W. Brosnan)

WASHINGTON.—A rising number of immigration cases has New Mexico's top federal judge keeping an anxious eye on Congress' attempts to deal with border issues.

U.S. District Chief Judge Martha Vazquez of Santa Fe oversees a court that faces a rising caseload from illegal border crossings and related crime. And help from Washington is by no means certain.

Left in limbo when the Senate adjourned April 7 was a pending amendment to the

stalled immigration bill that would authorize one new permanent federal judge for New Mexico and another temporary judge.

Sen. Pete Domenici, Albuquerque Republican, plans to renew the effort for his amendment when and if the Senate takes up the bill again.

"As it stands now, we won't see any needed comprehensive border security improvements in our state," Domenici said in a recent statement. "Our law enforcement won't get any new and sustained help. We won't be adding any new federal judges in New Mexico to take on the immigration cases that are overwhelming our courts."

New Mexico now has seven full-time district judges and three judges on "senior status" who are supposed to hear cases only occasionally.

But Vazquez said those three judges, James Parker, C. LeRoy Hansen and John Conway, all in their 60s, still travel to courthouses in Albuquerque, Las Cruces, Roswell and Santa Fe and take a full load of cases.

"We would be dying without them," said Vazquez.

From Sept. 30, 1999, to Sept. 30, 2004 (the end of the federal fiscal year), the caseload in the New Mexico federal district court increased 57.5 percent, from 2,804 to 4,416.

In the 2004 fiscal year alone, 2,126 felony cases were heard, almost half of all cases in the entire 10th Circuit, which includes Colorado, Kansas, Oklahoma, Utah and Wyoming. Most typical immigration cases go before an immigration judge, and the subjects are deported.

But people deported once and caught crossing illegally again can be charged with a felony. And that brings the defendant into federal district court.

Those are the cases driving up New Mexico's caseload, along with smuggling and drug cases, said Vazquez.

Some days as many as 90 defendants crowd the courtroom in Las Cruces, said Vazquez. Pre-sentence reports have to be prepared by district probation officers for every defendant.

Federal taxpayers also bear the cost of housing the prisoners in jails and transporting them to the courthouse, as well as the travel and pay of their lawyers.

The same problems are afflicting federal border courts in Arizona, California and Texas. Last summer, the federal judges from those courts met and then appealed for help to their senators.

The result is the amendment Domenici is sponsoring with other border-state senators that would add nine permanent and two temporary federal judgeships in the Southwest border states.

Domenici also is sponsoring amendments to authorize \$585 million to improve the infrastructure for security on the border and to add 250 deputy United States marshals.

But the burden on the federal court system could grow dramatically if Congress decides to make it a crime to be in the United States without proper documentation.

People caught crossing the border illegally face a misdemeanor and are deported only if it is a first offense.

An illegal immigrant caught inside the United States has committed a civil offense and is deported unless he or she has committed another crime.

(An estimated 40 percent of illegal immigrants are people who overstayed the limit on a legal visa, not border jumpers.)

Last year, the House voted to make illegal presence in the United States a felony, potentially creating 11 million to 12 million new. The bill pending in the Senate has no criminal penalty.

Last week, House Speaker Dennis Hastert, an Illinois Republican, and Senate Majority

Leader Bill Frist, a Tennessee Republican, said they would ensure the final legislation reduced the felony charge to a misdemeanor.

Ever a misdemeanor charge can carry up to a six-month jail sentence, which would require the appointment of a taxpayer-funded lawyer for the indigent, unless the prosecutor waived any possibility of jail time, said Jeanne Butterfield, executive director of the American Immigration Lawyers Association.

"What's the point? Deport them," said Butterfield.

Federal courts processed only 9,343 misdemeanors in fiscal year 2004 compared with 53,441 felonies.

Said Vazquez, "Any time we criminalize behavior we have to consider the consequences all the way down to additional jail cells."

Making illegal presence a misdemeanor also would conflict with a bipartisan compromise in the Senate that would allow 80 percent of illegal immigrants—those here more than two years—to obtain a visa.

A Frist aide, Elie Teichman, said any undocumented worker who qualifies for a guest-worker program would be excluded from the illegal presence provisions.

U.S. DISTRICT COURT,
DISTRICT OF NEW MEXICO,
Santa Fe, NM, May 16, 2006.

Sen. PETE V. DOMENICI,
Washington, DC.

DEAR SENATOR DOMENICI: I understand that this week the Senate will be debating the Border Security and Immigration Reform Bill. As with past legislation aimed at improving border security, this bill will significantly increase the number of felony immigration and drug cases in the federal courts in districts on the southwest border. The bill, in recognition of this fact, provides funding for at least 20 additional full-time Administrative Immigration Judges. The bill, however, inexplicably fails to provide funding for additional Article III Judges despite the fact that Article III Judges will be as burdened, if not more, by the increased caseload that will result from the bill's implementation. The bill's failure to provide for critical resources is greatly concerning to those involved in the administration of justice in these districts.

The Judicial Conference of the United States determines the need for new judgeships and has established the standard of 430 weighted filings per judgeship. As of September 30, 2005 the weighted filing per judgeship in the District of New Mexico is 586. That figure is 36 percent higher than the established standard and justifies a minimum of two additional Article III judgeships. The Judicial Conference does not use projected filings when requesting additional judgeships from Congress. Without question, the expected increase in filings that will result from the pending legislation will only further burden the Article III Judges in this District.

As it is, the burden on Article III Judges in this District is considerable. This District ranks first among all districts in criminal filings per judgeship: 405 criminal filings compared to the national average of 87. As in all federal districts along the southwest border, the majority of cases filed in this District relate to immigration offenses under United States Code, Title 8 and drug offenses arising under Title 21. Immigration and drug cases account for 85 percent of the caseload in the District of New Mexico. And the numbers of filings have increased exponentially in recent years. In fiscal year 1997, there were 240 immigration felony filings in the District of New Mexico. By fiscal year 2005, the number of immigration felony filings in-

creased to 1,826, which is an increase of 661 percent. During this same period drug cases have increased by 87 percent (298 to 558). Since 1997, the overall felony filings in the District of New Mexico has increased by 287 percent. Of course, the court cannot control the volume of cases that are filed. The United States Attorney is responsible for bringing criminal cases to federal court.

Administrative Immigration Judges and Article III Judges perform entirely different tasks in the process of adjudicating immigration cases. Immigration Judges decide civil immigration questions. Article III Judges, on the other hand, are responsible for the trials and sentencing of those who are accused or convicted of immigration and border security offenses. Article III Judges oversee an extensive background check on every felony defendant who appears before them on immigration charges to insure that the defendant does not pose a national security threat. This critically important task requires time and great deal of resources. Increasing the number of Immigration Judges will do nothing to reduce the increasing caseload in the border states' federal courts. The consequences of failing to add more Article III Judges will create an even greater burden in this District, cause a backlog and imperil the court's ability to fulfill the "Speedy Trial Act."

Further frustrating the District's ability to handle its criminal docket is the fact that, even as the District recently added to Magistrate Judges in Las Cruces, other court related resources have remained static, or worse, have declined. While law enforcement resources have increased, there has been no corresponding increase in the number of defense attorneys, Assistant United States Attorneys, Deputy United States Marshals, Probation and Pretrial officers, interpreters, or courtroom space. Simply put, the District of New Mexico desperately needs increased resources—across the board—to enable it to keep pace with increasing border-related demands.

I truly appreciate all you have done and continue to do for the District of New Mexico. If you have any questions, please do not hesitate to contact me or my staff at (505) 988-6330.

Sincerely,

MARTHA VÁZQUEZ,
Chief Judge.

[From Reuters, May 23, 2006]

BUSH BORDER PATROL PLAN TO PRESSURE
COURTS: SOURCES

(By Richard Cowan)

President George W. Bush's plan to send thousands of National Guard troops to the U.S.-Mexico border could spark a surge in immigration cases and U.S. courts are ill prepared to handle them, according to congressional and court sources.

The administration failed to plan for the surge in court cases and did not consult the judicial branch on the impact more arrests would have on federal courts in the region, said Dick Carelli, a spokesman for U.S. Federal courts.

Bush asked for \$1.9 billion in emergency funds for the border plan, including \$20 million to help the Justice Department deal with its increased caseload, but that did not include the courts.

"We were left out of the process," Carelli said. He added that since Bush unveiled his proposal to increase border patrols, federal judiciary officials have had to quickly cobble together a proposal to Congress for \$20.3 million in emergency funds to hire three full-time judges and about 240 support staff for the Southwest.

Even without the stepped-up security at the border, federal courts in southern California, Arizona, New Mexico and Texas have

been overburdened. Carelli said those five judicial districts, out of 94 nationwide, account for 34 percent of all criminal cases moving through U.S. courts.

"It's irresponsible to think that you can take care of the border security problem without also addressing the justice enforcement problem, which federal courts are indispensable in," said a congressional aide.

Most immigrants caught crossing illegally are ordered out of the country without prosecution. But that still leaves a growing pile of cases involving illegals who are being prosecuted after being caught multiple times or those accused of other crimes.

Public defenders, pretrial services and probation officers are all provided by the federal courts. "And obviously, those hearings have to take place in federal courts. The border courts and the judiciary are just being swamped," the congressional aide said.

A Bush administration official said that emergency funds requested for the Justice Department will help hire immigration attorneys and other support staff. "By increasing the Department of Justice's ability to hear and process immigration-related cases, the belief is that the impact on the judicial branch will be mitigated," the official said.

Just five months before congressional elections, public opinion polls show immigration concerns are at the top of voters' list of worries.

The U.S. Senate is trying to pass a bill this week that would further tighten border security and give some illegals already in America a route toward citizenship.

But it is unclear whether the House of Representatives, which has passed a tougher border security bill, will work out a compromise with the Senate.

Congress and the White House have been arguing over whether Bush's plan for more border guards is the best short-term fix or whether the limited amount of emergency funds should be dedicated to buying vehicles, aircraft and other supplies for existing patrols.

Nationwide, each U.S. judge handles an average of 87 cases a year. But along the southern border, even before Bush's plan moves forward, the average is around 300 per judge, Carelli said. He added that the two federal judges in Laredo, Texas now carry 1,400 cases apiece.

Mr. LIEBERMAN. Mr. President, I rise to speak on behalf of the Senate's historic accomplishment, our imminent passage of bipartisan immigration reform legislation.

The immigration reform legislation we are about to pass enhances our national security, promotes our economic well being and creates a fair and compassionate path to citizenship for those who came here to work hard, pay taxes, respect the law and learn English.

The legislation addresses serious problems that have festered for years. Our immigration system has been broken far too long. Some thought it was broken beyond repair, but it is not. This Senate reform bill stands for the principle that we in government can work together, on a bipartisan basis, to craft detailed and pragmatic solutions, and that we can avoid strident rhetoric that ultimately gets us nowhere.

There are difficult realities we must face. Despite huge increases in spending on border security since 1993, the numbers of undocumented immigrants living in the United States has more

than doubled, and now stands at an estimated 11 million. That number increases significantly every year as more people come here looking for work.

We must continue to improve border security. That will require more Border Patrol officers, better technologies, more effective border security strategies, and greater expenditures. The bill we are passing ensures that all of those things will happen. But the flow of illegal migration into the country would continue indefinitely, if our only solution was to continue to increase border security spending.

Immigration enforcement is also an essential component of a reform package. Unscrupulous employers who continue to hire and exploit undocumented workers must be punished. Once adequate verification systems are in place, employers will have no excuse for hiring undocumented workers. The Senate legislation will implement an effective verification system, and it will result in the hiring of additional immigration enforcement officers and funding for thousands of additional detention beds.

But enforcement alone will not solve the major challenges we face. Last December the House of Representatives passed a punitive and unworkable bill. Their legislation would criminalize the 11 million undocumented immigrants living in the U.S., pushing deeper into the darkness those who already live in the shadows and turning Samaritans who offer humanitarian aid into outlaws. Such draconian measures would create a class of people within our own borders who would live and work without the protection of law and would be open to exploitation and crime. They would be forced to suffer in silence or risk being imprisoned if they came forward.

How would that solve the problem? We could never imprison or deport more than a tiny fraction of these millions of people—people who have laid down roots in our communities. If we were to even try, the cost would be prohibitive and would turn our society into something approaching a police state.

Virtually all of the undocumented immigrants living in this country came here to work hard and support their families. They pay taxes and they respect our laws. They would like nothing better than to become members of our society, on an equal footing, and pursue the American dream like so many immigrants before them. The alternative is keeping millions of families in the shadows, where they can be preyed upon and exploited. And by welcoming those hard working and law abiding people, we free up resources we need to seal our borders and pursue the real dangers of terrorists, drug traffickers, and other criminals.

Undocumented immigrants will not get a free pass to legal residency and citizenship. They must earn it. Under the bill, undocumented immigrants who have been present in the U.S. for

at least 5 years will be able to apply for a work visa lasting 6 years. They would have to pay thousands of dollars in fines, clear background checks and then must remain gainfully employed and law abiding. After 6 years of working in the U.S. on a temporary visa, an immigrant could apply for permanent residency a process that takes 5 years provided he or she paid an additional fee, proved payment of taxes and could show a knowledge of English and United States civics. Only after a combined period of 11 years could the immigrant apply for U.S. citizenship. Those who have been here between 2 to 5 years would have to apply through a stricter guest worker program, and would have to wait even longer before they could win legal residency.

None of these undocumented immigrants would earn legal residency before we cleared the backlog of people waiting to receive visas to enter the U.S. Immigrants living in the U.S. legally have been waiting far too long to be reunited with their spouses and young children. This bill will clear those family reunification backlogs, and undocumented immigrants will have to get in the back of the line.

Each component of the plan depends on the others for any of them to be effective, and the new guestworker program that the bill creates is an essential component. Even with the provisions I have already outlined, we would still face the prospect of future illegal immigration. Currently hundreds of thousands enter the country illegally. This illegal migration has fueled a lucrative and extremely dangerous market for human smugglers. These smuggling rings war violently against each other, on both sides of the border, and they indulge in other illicit traffic. They prey on their human cargo. This has to stop.

We are accomplishing nothing if our legislation does not contain provisions addressing future migration flows. The guestworker program will channel future flows through legal avenues. People who want to come here to work will first be screened to ensure that they have committed no crimes. They can only come if they have legitimate jobs waiting for them.

If we don't include a guestworker program, we will continue to see high rates of illegal immigration in the future. We will have temporarily addressed the large numbers of undocumented immigrants in the U.S., only to see that problem resurface again over time. But with the verification and enforcement provisions I have already described, opportunities for undocumented workers will dry up. People will have no incentive to illegally enter the U.S. if they know that working here will not be a viable option.

Let me address concerns about American workers. I would not support any bill that undercuts American workers, and the Senate legislation contains safeguards to protect American workers. Temporary workers will not replace U.S. workers. Employers may

only hire temporary workers after they spend 60 days attempting to recruit U.S. workers at the prevailing wage being offered. Temporary workers must be paid at prevailing wages, as defined by the Davis-Bacon Act, the Service Contract Act, or collective bargaining agreements. The bill contains strong protections to make sure that guestworkers are not exploited by labor contractors.

These provisions, as well as the wage and working condition protections, are backed up by strong complaint procedures and whistle-blower protections. Temporary workers will not be hired in the midst of a labor dispute and will not be recruited in areas where unemployment rates are high. Finally, these protections will be backed up by the authorization of 2,000 new Department of Labor inspectors charged with enforcing them.

This legislation is far from perfect. The underlying legislation already contained unnecessarily punitive provisions, provisions that have been retained. During Senate consideration of the bill our bipartisan majority successfully beat back many measures that would have gutted the bill or unfairly punished immigrants, although I was disappointed by several of the votes on the Senate floor. One example was the adoption of an amendment offered by Senator INHOFE which would undermine efforts to provide services for non-English speakers in a wide variety of essential governmental functions.

I was also disappointed by a setback Senator BROWNBACK and I suffered in our attempt to improve our nation's treatment of asylum seekers. In February of 2005, the congressionally established U.S. Commission on International Religious Freedom issued a report that raised serious concerns about insufficient protections for asylum seekers arriving in this country.

The problems raised by the Commission's report should shock us, given our nation's historic mission as a bastion for those fleeing persecution in their home country. The Commission found an unacceptable risk that genuine asylum seekers were being returned to their home countries where they faced repression and worse. This was occurring because aliens stopped at our airports and borders were not properly questioned about the dangers they would face if they were sent back. This failure to follow procedures required by law resulted in the inability of asylum seekers to plead their case.

The Commission also found that while asylum seekers are having their applications considered, they were often detained for months in maximum-security prisons and jails, without ever having a chance to appear before an immigration judge to request bail. While being held, some were subjected to mistreatment or arbitrary punishments, including solitary confinement and the denial of basic medical needs.

This kind of treatment of people trying to escape war, oppression—even torture—is unacceptable in America. The U.N. High Commissioner for Refugees has repeatedly criticized our detention of asylum seekers as inconsistent with U.S. treaty obligations.

Since the Commission's report was issued more than a year ago, I have routinely asked officials from the Department of Homeland Security what is being done about the problems the Commission identified. For more than a year, I have been assured that the Department was reviewing the report's findings. But in that time the Department did not act to address these shortcomings, nor did it respond to the recommendations as I had requested on so many occasions.

Because of that long period of inaction, Senator BROWNBACK and I introduced an amendment that would have implemented the Commission's most important recommendations. It called for sensible reforms that would have safeguarded the nation's security while ensuring that people fleeing persecution are treated in accordance with this nation's most basic values.

Unfortunately, moments before we were to begin debate on our amendment, the Department of Homeland Security disseminated a position paper objecting to our amendment. The Department claimed that implementing the Commission's recommendations would have adverse repercussions on its operational capabilities. These were claims that I had never heard previously, despite my repeated inquiries to the highest Department officials, and they were claims that I believe are not supported by the facts. Nevertheless, we entered into days of negotiations, in which we attempted to address all of the Department's concerns. The negotiations were unavailing.

Although unsuccessful on this occasion, Senator BROWNBACK and I intend to introduce our amendment as freestanding legislation, so that we can continue to fight to ensure that people who flee oppression and seek freedom in America are treated in accordance with our cherished values. After all, we often say that we are a nation built by immigrants, and that is true, but in many ways we are also a nation founded by refugees.

As we pass this historic legislation it is essential that we remember that we are a nation of immigrants and refugees. Throughout the decades new waves of immigrants have arrived. They came from many cultures and countries, they came speaking many different languages, and as they settled here they enriched the nation. All four of my grandparents came to this country to pursue a better life, as did the family of my wife Hadassah, who was born in Czechoslovakia and arrived here as an infant. The recent immigrants about whom we have been debating these last two weeks have come to our country for the same reason that my grandparents came for free-

dom, opportunity, and a better life for their children.

This legislation we pass today will enhance our border security, improve our ability to enforce our immigration laws, and fuel economic growth. But beyond these reasons, it is also fully in keeping with our history as a nation of immigrants.

Mr. LEAHY. Mr. President, when the Senate resumed its consideration of comprehensive immigration reform last week, I began by expressing my hope that we would finish the job the Judiciary Committee started in March and the Senate began in April. We need to fix the broken immigration system with tough reforms that secure our borders and with reforms that will bring millions of undocumented immigrants out of the shadows. I have said all along that Democratic Senators cannot pass a fair and comprehensive bill alone. Over the last 2 weeks we finally got some help. I would like to especially thank Senators KENNEDY and MCCAIN, as well as Chairman SPECTER and the Democratic leader, for their tireless work on this bill.

We got some words of encouragement from President Bush last week when he began speaking out more forcefully and in more specific terms about all of the components needed for comprehensive legislation. For the first time, he expressly endorsed a pathway to earned citizenship for the millions of undocumented workers now here. I thank him for joining in this effort. But his work is far from done. We will need his influence with the recalcitrant members of his party here in the House if we are ultimately to be successful in our legislative effort. Without effective intervention of the President, this effort is unlikely to be successful and the prospects for securing our borders and dealing with the hopes of millions who now live in the shadows of our society will be destroyed. Those who have peacefully demonstrated their dedication to justice and comprehensive immigration reform should not be relegated back into the shadows.

Yesterday we were able to begin to draw to a close the Republican filibuster against comprehensive immigration reform. When Republicans filibustered two cloture votes last month, including one on a motion by the Republican leader, I was disappointed. I had hoped we would recognize the lawful, heartfelt protests of millions against the harsh House-passed criminalization measures. While they waved American flags, some of those fueling anti-immigrant feelings burned flags of other countries. I am encouraged that through the course of this debate we have been able to convince enough Senate Republicans to join us in our efforts and to appreciate the contributions of immigrants to our economy and our Nation.

This bill is not all that it should be in my view. By incorporating the Hagel-Martinez formulation, we have compromised from the initial compromise. I have made no secret that I

preferred the better outline of the Judiciary Committee bill. The bill the Senate is now considering is a further compromise. Debate and amendments have added some improvements as well as some significant steps in the wrong direction. I thank Senators BINGAMAN, KERRY, OBAMA, SALAZAR, and others for their important and constructive amendments. I was delighted that after some initial opposition, working with Senator STEVENS and others, we were able to add flexibility to the Western Hemisphere Travel Initiative by extending its deadline another year and one-half through our amendment.

The Senate unwisely rejected efforts by some of us to make it more flexible for those persecuted around the world. This country has had a history of being welcoming to refugees and those seeking asylum from persecution. The Senate turned its back on that history by refusing to allow the Secretary of State the flexibility needed after restrictive language was added to our laws by the REAL ID Act. I remain hopeful that Senators will reconsider these issues with more open minds and hearts and a fully understanding of the lives being affected. Sadly, too many were spooked by false arguments.

Besides the Senate's failure to read-just asylum provisions to take into account the realities of oppressive forces in many parts of the world, I was most disappointed that the Senate appeared to be so anti-Hispanic in its adoption of the Inhofe English language amendment.

Senator SALAZAR and I wrote to the President following up on this provision and the comments of the Attorney General last week and weekend. We asked whether the President will continue to implement the language outreach policies of President Clinton's Executive Order 13166. A prompt and straightforward affirmative answer can go a long way toward rendering the Inhofe English amendment a symbolic stain rather than a serious impediment to immigrants and Americans for whom English at this moment in their lives is a second language.

I deeply regret that the Senate took such a divisive act. Over my strong objection and that of the Democratic leader, Senator SALAZAR, and others, a modified version of the Inhofe amendment was adopted. I understand why this amendment provoked a reaction from the Latino community as exemplified by the May 19 letter from the League of United Latin American Citizens, the Mexican American Legal Defense and Educational Fund, the National Association of Latino Elected Officials Educational Fund, the National Council of La Raza, the National Puerto Rican Coalition, and from a larger coalition of interested parties from 96 national and local organizations.

Until this week, in our previous 230 years we have not found it necessary or wise to adopt English as our official or national language. I believe it was in

the Commonwealth of Pennsylvania that the State legislature shortly after the Revolutionary War authorized official publication of Pennsylvania's laws in German as well as English to serve the German-speaking population of that State. We have been a confident Nation unafraid to hear expressions in a variety of languages and willing to reach out to all within our borders. That tradition is reflected in President Clinton's Executive Order 13166.

We demean our history and our welcoming tradition when we disparage Spanish and those who come to us speaking Spanish. I have spoken about our including Latin phrases on our official seal and the many States that include mottos and phrases in Latin, French, and Spanish on their State flags. We need not fear other languages. We would do better to do more to encourage and assist those who wish to be citizens to learn English, but we should recognize English, as Senator SALAZAR's amendment suggested, as our common and unifying language.

Yesterday, once we had overcome the previous Republican filibuster, we were faced with a budget point of order supported by some Senators who oppose the bill and who added significantly to the costs of the bill through their amendments. Rather than continue their efforts to delay or derail Senate action on comprehensive immigration reform, I had hoped that they would join with us in a constructive way to enact comprehensive immigration reform. We do not need more divisiveness, derision, and obstruction.

This bill is not the bill I would have designed. It includes many features I do not support and fails to include many that I do. The bill that won the bipartisan support of a majority of the Judiciary Committee was a compromise that contained the essential components that are required for comprehensive immigration reform. Before the last recess I was willing to support a further compromise that incorporated the principles of the Hagel-Martinez bill because it was proposed by the majority leader as a "break-through" that would allow us to pass immigration reform.

I want to express my appreciation to the Democratic leader, Senator REID. He was right to insist that the original version of the Kyl-Cornyn amendment and the Isakson amendment not be rushed through the Senate to score political points. As the significantly revised version of the Kyl-Cornyn amendment attests, the Democratic leader was right. With a little time, and thanks to a lot of hard work, the amendment has been significantly changed, narrowed, and accepted. With a little time and bipartisan commitment the Isakson amendment was defeated.

We have proceeded to consider dozens of amendments. Most have been offered by Republican Senators. Some have been approved; some have been tabled or rejected. The Senate has worked its will.

Immigration reform must be comprehensive if it is to lead to real security and real reform. Enforcement-only measures may sound tough, but they are insufficient. The Senate has a responsibility to pass a bill that addresses our broken system with comprehensive reform and puts the pieces in place to secure the Nation.

Just a few weeks ago, I went to the White House with a bipartisan delegation of Senators to speak with the President. The need for a fair and comprehensive immigration bill was the consensus at that meeting, and I believe the President was sincere when he told us that we had his support. I trust that he will urge comprehensive immigration reform on the Republican House leadership who has yet to endorse our bipartisan comprehensive approach. Without the President following through on his words with actions, the effort for comprehensive immigration reform is unlikely to be successful.

Last week the Senate made progress. We made progress because Democratic and Republican Senators working together rejected the most strident attacks on the comprehensive bill. We joined together in a bipartisan coalition in the Judiciary Committee when we reported the Judiciary Committee bill. Democratic Senators were ready to join together in April and supported the Republican leader's motion that would have resulted in incorporating features from the Hagel-Martinez bill, but Republicans balked at that time and continued to filibuster action. Last week, Republicans joined with us to defend the core provisions of that bill, and we defeated efforts by Senators KYL and CORNYN to gut the guest worker provisions and to undermine the pathway to earned citizenship. Instead, we adopted the Bingaman amendment to cap the annual guest worker program at 200,000 and the Obama amendment regarding prevailing wages in order to better protect the opportunities and wages of American workers.

I spoke last week about the need to strengthen our border security after more than 5 years of neglect and failure by the Bush-Cheney administration. A recent report concluded that the number of people apprehended at our borders for illegal entry fell 31 percent on President Bush's watch, from a yearly average of 1.52 million between 1996 and 2000, to 1.05 million between 2001 and 2004. The number of illegal immigrants apprehended while in the interior of the country declined 36 percent, from a yearly average of roughly 40,000 between 1996 and 2000, to 25,901 between 2001 and 2004. Audits and fines against employers of illegal immigrants have also fallen significantly since President Bush took office. Given the vast increases in the number of Border Patrol agents, the decline in enforcement can only be explained by a failure of leadership.

Meanwhile, once again the administration is turning to the fine men and

women of National Guard. After our intervention turned sour in Iraq, the Pentagon turned to the Guard. After the Government-wide failure in responding to Hurricane Katrina, we turned to the Guard. Now, the administration's longstanding lack of focus on our porous southern border and failure to develop a comprehensive immigration policy has prompted the administration to turn once again to the Guard. I remain puzzled that this administration, which seems so ready to take advantage of the Guard, fights so vigorously against providing this essential force with adequate equipment, a seat at the table in policy debates, or even adequate health insurance for the men and women of the Guard.

I have cautioned that any Guard units should operate under the authority of State Governors. In addition, the Federal Government should pick up the full costs of such a deployment. Those costs should not be foisted onto the States and their already overtaxed Guard units.

Controlling our borders is a national responsibility, and it is regrettable that so much of this duty has been punted to the States and now to the Guard. The Guard is pitching in above and beyond, balancing its already demanding responsibilities to the States, while sending troops who have been deployed to Iraq. The Guard served admirably in response to Hurricane Katrina when the Federal Government failed to prepare or respond in a timely or sufficient manner. The Vermont Guard and others have been contributing to our national security since the immediate aftermath of 9/11. After 5 years of failing to utilize the authority and funding Congress has provided to strengthen the Border Patrol and our border security, the administration is, once again, turning to the National Guard.

It was instructive that last week President Bush and congressional Republicans staged a bill-signing for legislation that continues billions of dollars of tax cuts for the wealthy. Instead of a budget with robust and complete funding for our Border Patrol and border security, the President has focused on providing tax cuts for the wealthiest among us. Congress has had to step in time and again to create new border agent positions and direct that they be filled. Instead of urging his party to take early and decisive action to pass comprehensive immigration reform, as he signaled he would in February 2001, the President began his second term campaigning to undercut the protections of our Social Security system, and the American people signaled their opposition to those undermining steps. While the President talks about the importance of our first responders, he has proposed 67 percent cuts in the grant program that supplies bullet-proof vests to police officers.

Five years of the Bush-Cheney administration's inaction and misplaced priorities have done nothing to improve our immigration situation. The

Senate just passed an emergency supplemental appropriations bill that allocated nearly \$2 billion from military accounts to border security. The Democratic leader had proposed that the funds not be taken from the troops. But last week the President sent a request for diverting a like amount of funding, intended for capital improvements for border security, into operations and deployment of the National Guard. The Republican chairman of the Senate Appropriations Subcommittee on Homeland Security came to the Senate Floor last week to give an extraordinary speech in this regard.

Border security alone is not enough to solve our immigration problems. We must pass a bill—and enact a law—that will not only strengthen the security along our borders, but that will also encourage millions of people to come out of the shadows. When this is accomplished we will be more secure because we will know who is living and working in the United States. We must encourage the undocumented to come forward, undergo background checks, and pay taxes to earn a place on the path to citizenship.

In addition, last week the Senate adopted a billion-dollar amendment to build fencing along the southern border without saying how it would be funded. We also adopted amendments by Senators BINGAMAN, KERRY, and NELSON of Florida to strengthen our enforcement efforts.

Last week we defeated an Ensign amendment to deny persons in legal status the Social Security benefits to which they are fairly entitled. I believe that most Americans will agree with that decision as fair and just. It maintains the trust of the Social Security trust fund for those workers who contribute to the fund. This week we defeated a Sessions amendment that would have unfairly stripped immigrants of earned-income tax credits. I am pleased that in both cases the Senate agreed not to unfairly withhold these benefits from hard-working immigrants who will benefit immensely from them.

The opponents of our bipartisan bill have made a number of assaults on our comprehensive approach. Senators KYL, SESSIONS, and CORNYN opposed the Judiciary Committee bill. Senators VITTER, ENSIGN, CHAMBLISS, and INHOFE have been very active in the amendment process, as well. I hope that they recognize how fairly they have been treated and the time they have been given to argue their case against the bill and offer amendments. We have adopted their amendments where possible. A narrowed version of the Kyl-Cornyn amendment disqualifying some from seeking legalization was adopted. The Sessions amendment on fencing was adopted. The Vitter amendment on documents was adopted. The Ensign amendment on the National Guard was adopted. The Cornyn amendment imposing additional costs on immigrants was adopted.

I trust that with so many of their amendments having been fairly considered and some having been adopted, those in the opposition to this measure will reevaluate their previous filibuster. It may be too much to think that they will support the bill as amended.

Mr. DURBIN. Mr. President, I rise in support of S. 2611, the Comprehensive Immigration Reform Act of 2006.

This is not a perfect bill. It is a compromise. I strongly support some provisions of this bill and I have serious concerns about others, but, on balance, I believe it is worthy of support.

If we want to solve the problem of illegal immigration, we must take a comprehensive approach. We must secure our border, strengthen enforcement of our immigration laws, and address the situation of approximately 12 million undocumented immigrants who live and work in our country. In the final analysis, this bill does all of these things and that is why I will support it.

I want to express my gratitude to Senator MCCAIN and Senator KENNEDY for their steadfast leadership of our bipartisan coalition for immigration reform. I also want to salute Senator SPECTER, the chairman of the Judiciary Committee, and Senator LEAHY, the ranking member of the Judiciary Committee, for shepherding this bill to the verge of passage.

As a member of the Judiciary Committee, and a supporter of the bipartisan McCain-Kennedy immigration reform legislation, I have been very involved in the debate over this bill for the past several months.

The process of drafting this bill began in the Judiciary Committee in early March. We engaged in a serious, substantive debate. There was disagreement on some points, but the discussion was always respectful. We considered dozens of amendments during several marathon committee meetings. At the end of the process, we approved a tough, fair, and comprehensive bill on a strong bipartisan vote.

We have seen a similar process on the floor of Senate. We have debated this legislation for several weeks. By my count, we have had over 30 roll call votes on amendments to this bill. It is rare for us to devote this much time and energy to a single piece of legislation. It demonstrates that the Senate takes the subject of immigration very seriously. And it is reflected in the quality of the final product.

As I said earlier, this bill includes provisions that I oppose and those that I support. Let me first mention some of the provisions of this bill that concern me most.

This bill includes an Inhofe amendment that declares English to be the national language of the United States. Unfortunately, the amendment goes beyond that. It includes sweeping language that some fear will call into question the validity of controlling Executive Orders and regulations.

I am especially concerned that we not undermine Executive Order 13166,

which requires Federal agencies to provide meaningful access to Government services for people who have limited proficiency in English. This Executive Order protects all of our safety and well-being by ensuring that limited English proficient Americans understand vital information that the Government provides, particularly in the event of a natural disaster or a threat to national security. The threat to Executive Order 13166 is one reason why dozens of national Latino and civil rights organizations oppose the Inhofe amendment.

Senator SALAZAR and I authored an amendment declaring that, "English is the common and unifying language of the United States that helps provide unity for the people of the United States." In contrast to the Inhofe amendment, the amendment that Senator SALAZAR and I offered makes it explicit that nothing in our amendment "shall diminish or expand any existing rights under the law of the United States." The Senate approved our amendment on a strong bipartisan vote.

There is no disagreement on this principle. It is very difficult to be successful in this country if you do not speak English. Throughout American history, immigrants have come to the United States and learned English. That process continues. According to the Urban Institute, nearly 40 percent of immigrant children have limited proficiency in English, but by the second generation, only about 20 percent have limited proficiency, and by the third generation children, that number falls to .5 percent. The U.S. Census found that 92 percent of Americans "had no difficulty speaking English;" 82 percent of Americans speak only English at home; and most people who speak a language other than English also speak English "very well."

Unfortunately, many immigrants who want to learn English have few opportunities to do so. There are waiting lists of thousands of immigrants for English as a second language classes in cities around the country. We should be creating more opportunities for immigrants to learn English. The Inhofe amendment would not do that. Instead, it has the potential to marginalize immigrants and make it more difficult for them to access vital government services.

Both the Inhofe and the Salazar-Durbin amendments are in this bill. In the conference committee, we must clarify that Congress does not intend to overturn controlling Executive Orders or regulations, particularly Executive Order 13166.

I am disappointed that my Republican colleagues rejected an amendment that I offered that would have authorized the Attorney General or Secretary of Homeland Security to grant a humanitarian waiver to an immigrant if deportation of the immigrant would create extreme hardship for an immediate family member of the immigrant

who is a U.S. citizen or legal permanent resident.

We need to strengthen enforcement of our immigration laws in order to restore integrity to our immigration system. As we make our laws tougher, we must ensure that we stay true to American values. I am concerned that some of the enforcement provisions in this bill are so broad that they will have unintended consequences. These provisions have the potential to sweep up long-term legal permanent residents and separate them from their immediate family members.

My amendment would have created a limited waiver that would have applied only in the most compelling cases—where deportation of an immediate family member would create extreme hardship for an American citizen or legal permanent resident.

The waiver would not be automatic. In every case, the immigrant would have to demonstrate that he meets the "extreme hardship" standard. In every case, the government would have "sole and unreviewable discretion" to deny a waiver.

This is the same strict standard that Senators KYL and CORNYN used in an amendment we approved last week by a unanimous vote. The Kyl-Cornyn waiver would apply in cases where undocumented immigrants are seeking legal status. The waiver in my amendment would apply in cases where an immigrant who was previously in legal status is subject to deportation because of a change in the law made by this bill.

It seems inconsistent to give a chance for a humanitarian waiver to an undocumented immigrant and not give the same chance to a legal immigrant. I hope that the conference committee will revisit this issue and resolve this inconsistency by extending the humanitarian waiver for undocumented immigrants to legal immigrants who face deportation because of changes in the law made in this bill.

We already give the Government broad discretion to apprehend, detain and deport immigrants. We should also give the Government some limited discretion to show mercy in the most compelling cases.

I am also very disappointed that the Senate approved a Gregg amendment that would effectively gut the Diversity Visa Program, threaten the jobs of Americans, and exacerbate the "brain drain"—the migration of talent from the poorest countries in the world to the richest.

Congress created the Diversity Visa Program to provide immigration opportunities for people from countries with low levels of immigration to the United States. Diversity visas open the door to thousands of people from around the world who could otherwise never aspire to the American Dream. The program helps to ensure that the United States continues to be the most diverse country in the world.

The Gregg amendment would fundamentally alter the Diversity Visa

Program by setting aside two-thirds of diversity visas for immigrants who hold advanced degrees in science, mathematics, technology, and engineering. These set-asides would favor immigrants from wealthier countries and reduce the diversity of future immigration to our country.

By bringing more high-skilled immigrants to the United States, the Gregg amendment will also increase competition for highly sought-after American jobs. For the same reason, I am concerned that this bill would increase the annual number of H-1B visas to 115,000 and allow that cap to increase every year if American companies use all of the available visas in a given year. Some experts argue that the H-1B program is already taking jobs away from Americans.

I am also very concerned that the Gregg amendment would exacerbate the "brain drain."

And unfortunately, this bill includes another provision that will increase the brain drain by lifting the annual cap on the number of nurses who can immigrate to our country every year. A story in yesterday's New York Times on this provision, headlined, "U.S. Plan to Lure Nurses May Hurt Poor Nations," reports:

A little-noticed provision in [the Senate] immigration bill would throw open the gate to nurses and, some fear, drain them from the world's developing countries . . . The exodus of nurses from poor to rich countries has strained health systems in the developing world, which are already facing severe shortages of their own. . . . Public health experts in poor countries, told about the proposal in recent days, reacted with dismay and outrage, coupled with doubts that their nurses would resist the magnetic pull of the United States, which sits at the pinnacle of the global labor market for nurses.

Later I will address a provision in this bill that will take modest but important steps to begin to address this brain drain, but we must do much more.

I am also disappointed that the Senate approved an amendment requiring construction of a 370-mile wall on the Southern border. We need to secure our border, and this bill includes literally dozens of provisions to do so. Among other measures, we double the size of the border patrol and we mandate the use of new technology to create a "virtual fence" at the border.

A wall will not secure our border. The reality is that no wall will prevent illegal immigration. There will always be a way around, over, or under a wall. In fact, experts estimate that 40 percent of undocumented immigrants enter the country legally and then overstay their visas. No wall will stop visa overstays.

Constructing a wall will be very expensive. It will make life more difficult for innocent Americans in border communities, including noise and light pollution. It has the potential to do great harm to environmentally sensitive border areas. Most important, a wall will send the wrong message to the rest of the world about the United States.

Now I would like to focus on the positive in this bill, especially measures with which I was personally involved.

This legislation includes the DREAM Act, a narrowly-tailored, bipartisan measure that I sponsored with Senator HAGEL and Senator LUGAR. The DREAM Act would give undocumented students the chance to become permanent residents if they came here as children, are long-term U.S. residents, have good moral character, and attend college or enlist in the military for at least 2 years.

Currently our immigration laws prevent thousands of young people from pursuing their dreams and fully contributing to our Nation's future. They are honor-roll students, star athletes, talented artists, valedictorians, and aspiring teachers and doctors. These young people have lived in this country for most of their lives. It is the only home they know. They are assimilated and acculturated into American society. They are American in every sense except their technical legal status.

And they have beaten the odds in their young lives. The high school dropout rate among undocumented immigrants is 50 percent, compared to 21 percent for legal immigrants and 11 percent for native-born Americans. These children have demonstrated the kind of determination and commitment that makes them successful students and points the way to the significant contributions they will make in their lives. These children are tomorrow's doctors, nurses, teachers, policemen, firefighters, soldiers, and Senators.

The DREAM Act would help these students. It is not an amnesty. It is designed to assist only a select group of young people who have done nothing wrong and who would be required to earn their way to legal status.

The DREAM Act offers no incentive for undocumented immigrants to enter the country. In fact, it requires beneficiaries to have been in the country for at least 5 years on the date of enactment.

The DREAM Act would also repeal a provision of Federal law that prevents States from granting in-State tuition rates to undocumented students. It would not create any new tuition breaks. It would not force States to offer in-State tuition to undocumented immigrants. It would simply return to States the authority to determine their own tuition policies.

The DREAM Act is not just the right thing to do, it is good for America. The DREAM Act would allow a generation of immigrant students with great potential and ambitions to contribute more fully to our society.

The DREAM Act is supported by a broad bipartisan coalition in the Senate, and by religious leaders, immigrant advocates, and educators from across the political spectrum and around the country. Our coalition will fight to ensure that the DREAM Act is included in the conference report.

I am also very pleased that we were able to remove some of the bill's harshest provisions during the Judiciary Committee markup.

The original version of this bill would have taken the unprecedented step of criminalizing people based solely on their immigration status. That is not the way we should treat immigrants in our country. And that is not the way our criminal justice system works. We punish people for their conduct, not their status.

Criminalizing immigrants will not help us to combat illegal immigration. Our Government does not have the time or resources to prosecute and incarcerate 12 million people. Enacting yet another law that would not be enforced will not solve the problem of illegal immigration. In fact, it would make the problem worse.

If we make undocumented immigrants into criminals, we will drive them further into the shadows. This will harm our national security because we will be unable to identify who is in our country.

This is also a moral issue. We are measured by how we treat the most vulnerable among us. It is not right to make criminals of millions of people who go to work every day cooking our food, cleaning our hotel rooms, and caring for our children and our parents. It is not right to make criminals of those who worship with us in our churches, send their children to school with our own and love this great and free land as much as any of us.

During the Judiciary Committee markup, I offered an amendment to strike the provision that would have criminalized undocumented immigrants. My amendment was approved by a strong bipartisan vote, and as a result that provision is not in the bill we are considering today.

The original version of this bill also included a provision that would make it a crime for innocent Americans to provide humanitarian assistance to undocumented immigrants. This provision stated that it would constitute alien smuggling, an aggravated felony to "encourage or induce a person to . . . remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority."

This language is so broad and vague that it could conceivably constitute an aggravated felony for a priest to counsel an undocumented mother to stay in the United States with her U.S. citizen children, rather than abandoning them to return to her home country. And a domestic violence shelter that takes in a battered immigrant spouse without asking whether or not she has a green card could be guilty of alien smuggling.

Americans honor our heritage as a Nation of immigrants by welcoming and caring for new arrivals in our country. We should thank them for their service, not prosecute them.

The original version of the bill included an exception for humanitarian

assistance, but it was far too narrow. It only would have protected individuals, not organizations, like churches, hospitals, schools, or unions. It would only have applied to "emergency humanitarian assistance," not aid that is provided in non-emergency situations. It only would apply to assistance that is "rendered without compensation or the expectation of compensation." And it would only cover humanitarian assistance, not other types of lawful activity like labor organizing.

Charitable organizations, like individuals, should be able to provide humanitarian assistance to immigrants without fearing prosecution. Churches, shelters, and schools should not be limited to providing only "emergency" assistance. A domestic violence shelter should not be forced to decide whether the Government would regard a situation as "an emergency" before they take in a battered woman. A non-profit hospital should not be required to provide medical care without compensation in order to avoid criminal prosecution. And labor unions should be able to organize workers without checking their green cards.

During the Judiciary Committee markup, I offered an amendment to this provision which was approved on a strong bipartisan vote. My amendment expanded the humanitarian exception to cover organizations. It made it explicit that humanitarian assistance includes, but is not limited to, housing, counseling, and victim services. It eliminated the provisions that limit the humanitarian assistance exception to emergency situations and to assistance that is rendered without compensation.

My amendment also eliminated the provision that would have made it a crime to encourage or induce an undocumented immigrant to "remain in" this country. As a result, the law remains the same: it is not a crime to engage in activities like labor organizing with undocumented immigrants, which could conceivably be construed by an overzealous prosecutor to constitute encouraging someone to remain in the United States.

Unfortunately, H.R. 4437, the immigration bill passed by the Republican-controlled House of Representatives, still includes provisions that would criminalize hard-working immigrants and good Samaritans who provide humanitarian assistance to immigrants. This is an issue that I will monitor very closely. A conference report that criminalizes millions of undocumented immigrants and the innocent Americans who care for them will be unacceptable to me and many other Senators on both sides of the aisle.

This bill includes an amendment I offered to address a critical international problem: the dire shortage of healthcare personnel in the least developed nations of the world. Shortages of healthcare personnel are a global problem, but the brain drain of doctors, nurses, and other health workers from

the poorest countries in the world to the richest is an urgent problem. According to the World Health Organization, Africa loses 20,000 health professionals a year as part of this brain drain. In Ethiopia, for example, there are now only 3 doctors and 20 nurses per 100,000 people. By comparison, there are 549 doctors and 773 nurses per 100,000 people in the United States. Experts say the shortage of health care personnel is the single biggest obstacle to fighting HIV/AIDS in Africa.

My amendment would take two measured steps to address the brain drain.

In exchange for financial support for their education or training, some foreign doctors, nurses, and other healthcare workers have signed voluntary bonds or made promises to their governments to remain in their home countries or to return from their studies abroad and work in the healthcare profession.

The Durbin amendment will require people who are applying for legal permanent residency or for visas to work as health care workers in the United States to attest that they do not have an outstanding commitment to perform healthcare work in their home country that they have incurred in exchange for support for their education or training.

If an applicant has made such a commitment as part of a voluntary agreement, the applicant would be inadmissible until he or she has fulfilled this commitment. This will enable underdeveloped countries to benefit from the investments they have made in their citizens' medical education and training, and it will ensure that U.S. immigration policy respects commitments that immigrants have made. The Secretary of Homeland Security would be able to waive this requirement in certain compelling circumstances.

The amendment will also allow healthcare workers who are legal permanent residents of this country to provide healthcare assistance in developing countries for up to 36 months without prejudicing their own immigration status. During the period when the healthcare worker is providing assistance, he or she would be deemed to be physically present in the U.S. for purposes of naturalization.

Many immigrants who have come to this country would like to participate in the fight against global AIDS and other health crises. Under my amendment, they could lend their skills to developing nations without sacrificing their own American dreams.

These small but important steps will not stop the brain drain, but they will signal American leadership in the effort to help stem the migration of talent from the poorest countries in the world to the richest.

I am also pleased that this bill includes important reforms to the immigration court system that will improve the quality of judicial decision-making and help to protect due process.

Just as important, the bill does not include provisions from the original version of this bill that would have undermined judicial review of immigration appeals.

One provision would have stripped Federal appellate courts of their jurisdiction over immigration appeals and redirected these appeals to the Federal Circuit Court, a small specialized court whose caseload consists largely of patent Federal personnel, and Government contract cases.

Another would have assigned all immigration appeals to a single Federal Circuit judge, who would have acted as a gatekeeper to full appellate review. Unless this single judge issued a so-called "certificate of reviewability," the appeal would be denied.

In recent years, Federal appeals courts judges around the country have been outspoken about the serious problems with our immigration court system.

Take the example of Judge Richard Posner, a highly-respected conservative who sits on the 7th Circuit in my home state of Illinois. Last year, Judge Posner issued an opinion in which he concluded, quote, "the adjudication of [immigration] cases at the administrative level has fallen below the minimum standards of legal justice."

After I reviewed the troubling provisions in the original version of this bill, I asked Judge Posner for his reaction to them. Judge Posner sent me a letter, which I circulated to the members of the Judiciary Committee. In his letter, Judge Posner concludes, "Funneling all petitions for judicial review of [immigration] orders to the Federal Circuit and authorizing single judges of that court to deny petitions without further review are neither just nor effective solutions."

In the aftermath of Judge Posner's letter, others stepped forward. The Judicial Conference, the policy-making arm of the Federal Judiciary, expressed their opposition to these provisions. John Walker, a Republican appointee who is the Chief Judge of the 2nd Circuit wrote in opposition to these provisions, concluding, "Reassigning petitions for review to the Federal Circuit and allowing their disposal by only one judge will neither reduce the backlog more efficiently, nor protect the aliens' entitlement to adequate review. Indeed the reverse is likely." Dozens of other sitting and retired appellate judges, law school deans and professors expressed similar views.

In fact, as the Judicial Conference explains, the Fed. appeals courts are making progress in clearing the existing backlog of immigration appeals: "These courts have worked diligently to establish court management procedures to assist them in effectively and efficiently handling these cases. These measures are enabling the courts to process significantly larger numbers of cases than in prior years."

Judges and scholars have concluded that the solution to the problems in

our immigration courts is to increase their capacity. As Judge Posner says, "The only just and effective way of alleviating the burden of immigration appeals is by greatly augmenting the decisional capacity of the Immigration Court and the Board of Immigration Appeals."

Similarly, Judge Walker concludes, "The principal problem with the current system is that both the Immigration Judges and the BIA are impossibly overtaxed... I firmly believe the most effective and sound way of addressing this problem is by allocating sufficient resources to expand the capability of the Department of Justice, rather than altering the procedures for judicial review."

After considering the input of Judge Posner and other judges and scholars, I decided to offer an amendment to strike the provisions that would consolidate immigration appeals to the Federal Circuit Court and give a single judge the power to deny an immigration appeal. In response, Chairman Specter decided to remove these provisions from the original bill and they are not in the bill that we are considering today.

As judges and scholars advised us, the bill does include provisions that would bolster the capacity of the immigration courts by, among other things, increasing the number of immigration judges and members of the Board of Immigration Appeals. I hope that the conference committee retains these improvements.

Most important, this bill takes a comprehensive approach that is tough but fair. We would improve our border security by increasing manpower and deploying new technology. We would crack down on the employers that are hiring millions of undocumented workers.

We need tougher enforcement, but in this bill we acknowledge something that the House of Representatives' bill does not: A strategy that focuses only on enforcement is doomed to failure.

In the last decade, we have doubled the number of Border Patrol agents and they have spent eight times as many hours patrolling the border. During the same period, the number of undocumented immigrants has doubled.

We need a realistic and reasonable approach to address the 12 million undocumented immigrants living here today.

As the Department of Homeland Security acknowledges, mass deportation is not an option. It is impractical and too expensive. Experts estimate that deporting all of the undocumented would cost over \$200 billion—that's five times the annual budget of DHS.

Amnesty is not an option. It is not right to reward those who have broken the law with automatic citizenship.

If we are serious about reform, we need to offer a chance for immigrants who work hard and play by the rules to earn their way to citizenship over the course of many years.

Some people claim this is an amnesty. But under the Judiciary Committee bill, undocumented aliens can earn their way to citizenship only if they have a clean criminal record, have been employed since before January 2004, remain continuously employed going forward, pay a large fine, pass a security background check, pass a medical exam, learn English, learn U.S. history and government, pay all back taxes, and go to the “back of line” behind all applicants waiting for green cards.

This is an II-year path to earned citizenship, not an amnesty.

Frankly, if we do not give people the chance to earn their way to citizenship, we will not solve the problem of illegal immigration. People who are living here illegally will stay in the shadows instead of coming forward to register. This would hurt our national security and hurt American workers, who are being undercut by illegal labor.

And it is not the American way. It is important to remember that this is not just a national security issue and an economic issue—it is also a moral issue. Scripture teaches us to treat immigrants as we would like to be treated: “The strangers who sojourn with you shall be to you as the natives among you, and you shall love them as yourself, for you were strangers in the land of Egypt.” That is why the Catholic Church and so many other faith communities support comprehensive immigration reform that includes a path to citizenship for hardworking immigrants who play by the rules.

Today is a historic day in the United States Senate, but there is still one more bridge to cross. We must reconcile this bill, which takes a comprehensive approach, with the harsh enforcement-only legislation passed by the Republican-controlled House of Representatives. The President says he supports comprehensive reform. Now he must exercise leadership to make it a reality.

Mr. KOHL. Mr. President, I rise in support of the comprehensive immigration reform bill today. This bill appreciates the importance of addressing the problem of illegal immigration and border security while at the same time proposing an intelligent solution to the issue of the millions of people here without documentation today.

First and foremost, we need to control our borders and enforce our laws. This bill adds thousands of additional border patrol agents and authorizes the use of the National Guard to help secure our borders. It wisely increases the use of technology—including unmanned aerial vehicles, UAVs, cameras, and motion sensors—so we can succeed in controlling our borders. It also enhances the authority of our immigration enforcement officials to deport criminals and others who may seek to do us harm. This will significantly enhance our ability to catch people before they enter the country,

and deport those who do. I could not support a bill that I did not believe could secure our borders.

Border security alone is not sufficient. We must also enforce our laws in our interior. This bill includes a strong employment verification system, so that employers can determine who in this country is eligible to work, and will be punished when they employ those who are here illegally. If we do not dry up the demand for illegal workers among employers, it will remain difficult to control the supply of illegal immigrants trying to enter our country.

Law enforcement alone, however, is not the entire solution. We must be realistic about how to deal with the millions of undocumented immigrants currently in this country. It is not realistic to deport them all. For those hardworking, law-abiding people who have been here for years and set down roots in our communities, it is reasonable to allow them to earn citizenship over a significant time period. This is not amnesty, and it is not automatic legalization. Under this bill, if they pay thousands of dollars in fines for violating our immigration laws, work for a number of years, learn English, and pay any taxes they may owe, only then do they go to the back of the citizenship line. They are asked to earn their legalization over the course of eleven or twelve years and demonstrate that they deserve to be an American.

We have succeeded in creating a comprehensive bipartisan solution, one that I believe effectively addresses each of the many complex issues that plague our immigration system today. There are few issues as important as immigration facing this country today, and I am glad that we have put the time and effort into crafting a solution we can be proud of: one that is both tough and fair.

Mrs. FEINSTEIN. Mr. President, I wish to comment on amendment No. 4084, which was tabled yesterday.

The Chambliss amendment would modify the eligibility requirements for blue card and green card status under AgJOBS, as drafted in the Comprehensive Immigration Reform Act.

The Chambliss amendment would make the AgJOBS earned legalization program unworkable by denying most farm workers access to it.

Just yesterday, my staff received an e-mail from the California Canning Peach Association, which produces 80 percent of the peach volume in California. They said that the Chambliss amendment would eliminate at least 90 percent of their workers from pursuing earned adjustment under the current AgJOBS language.

When I look at the Chambliss amendment, I find it to be counter to the language in AgJOBS.

One reason I believe the Chambliss amendment is counter to providing American farmers with a legal work force is the work day requirement he proposes.

Senator CHAMBLISS’ amendment would change the definition of “work-day” to 8 hours per day. This change would essentially gut the bill because agricultural workers simply wouldn’t be able to demonstrate 8-hour workdays.

Under his amendment, in order to get a blue card, agricultural workers would have to prove that they worked at least 150 work days per year during the 24-month period ending on December 31, 2005.

Anything short of an 8-hour day wouldn’t count.

This is just unworkable and impractical. There are many reasons why a farm worker might not be able to demonstrate 8-hour workdays, such as:

Weather conditions—maybe it is raining or too cold, there’s hail. For instance, oranges can’t be picked wet nor can table grapes. So if it rains and workers have only worked 6 hours, they have to call it a day. That wouldn’t count under the Chambliss amendment.

Transportation issues—workers may not be able to catch a ride one day, or their ride may leave after only 7 hours. That wouldn’t count under the Chambliss amendment.

Market demands—workers can only pick what growers ask of them, and if the market only demands x number of oranges in 1 day and that only takes 6 hours, then that is all the work they will have in that day. That wouldn’t count under the Chambliss amendment.

Sickness—a worker may have a cold or other ailment that might keep them from working for a few days. In agriculture, given the seasonal nature of work, a few days lost are precious to a worker.

Labor shortages—one condition that growers tell me about are labor shortages and how they impact how many hours workers put in. For instance, a crew of workers might be in such demand that they only put in 7 hours each per day. That wouldn’t count under the Chambliss amendment.

All of these are reasons why workers may not put in 8-hour workdays. And if they don’t, then that doesn’t count toward their eligibility and they remain here illegally.

The average number of hours that California agricultural workers log daily is 5.97 hours per day. And that’s for crops like citrus, vegetables, tree fruit.

Many farm workers do not work 8 hours per day even when working full-time and 6 days a week.

Frequently, agricultural workers work 3 to 7 hours per day. This amendment would deny workers credit for their farm work on such days, and deprive them of the chance to enter the program.

Many jobs in agriculture result in fewer than 8 hours per day, particularly at times other than the peak of the harvest.

Luawanna Hallstrom with Harry Singh & Sons, which is the largest single vine ripe tomato grower in the

country, explained the following to my staff about the average hours worked in a season, and how they may vary in a typical year or season at their farm in San Diego, CA.

She said that work hours and days can change from one year to the next because of reasons beyond their control—weather, production, changes to timing of harvest, fluctuation in number of employees available at any point in time, disease and more.

Ms. Hallstrom noted that agriculture is extremely fluid and vulnerable and a typical work week for them can consist of anything from 0 to 10 hours.

Another grower, Benny Jefferson, a large vegetable grower in Monterey, CA told my staff that his average worker works 6 hours per day and that 8-hour days would be a serious problem for him.

By way of example, the following job offers were posted in America's Job Bank of the U.S. Department of Labor:

Seeking farm worker for "harvesting fruits such as blueberries, cherries, strawberries, grapes, oranges, and peacans" in Georgia for "full time" work of 32 hours per week.

Seeking Citrus Harvest Worker in Florida for a contract period from April 30, 2006, to June 30, 2006, Monday through Saturday. Hours: 36 hours per week, 6 hours per day.

Florida employers seek nursery labor in West Virginia for 40 hours week, 7 hours per day Monday through Friday and 5 hours on Saturdays.

What do these job postings show? That even "full time" work often means less than 8 hours per day.

So I believe that the Chambliss amendment, if successful, would deprive most farm workers of the chance to enter the earned legalization program, or if they entered, the chance to earn a green card.

The Chambliss amendment is an effort to destroy the AgJOBS compromise. It is not only unfair but counterproductive.

One purpose of AgJOBS is to stabilize the workforce by encouraging undocumented workers to come forward and work in agriculture in return for the opportunity to earn a blue card and eventually, after additional hard work in the fields, a green card.

By depriving many farm workers of this opportunity, the Chambliss amendment would perpetuate the unstable farm labor force that contains so many undocumented workers.

Mr. OBAMA. Mr. President, on May 1, I was in Chicago to witness a monumental event. There were close to half a million people marching for comprehensive immigration reform. They were mostly people of Mexican origin, but among them were also Nigerians, Polish, Irish, Central American immigrants, and their American-born friends, family, and supporters.

By now, most Americans are familiar with the issues surrounding immigration. We have a system of legal immigration under which 1 million people

apply for legal residency each year and eventually pursue citizenship if they choose. Another 500,000 come across the border illegally and evade our border patrol.

There are an estimated 12 million undocumented persons here working mostly in backbreaking jobs in agriculture, construction, packing plants, restaurants, and elsewhere. Some in the media have presented them as an invading hoard.

But I spoke to the marchers who gathered 3 weeks ago, and what I saw was nothing to fear. They have come here for the same reason other immigrants have come for generations: to pursue the notion that they can make a better life for themselves, and most importantly for their children, if they work hard and apply themselves.

Our country is ambivalent about this influx of undocumented immigrants. Many Americans, including myself, believe that these people are doing what many of us would do for our own children in the same situation. They take immense risks to get here and would not have come illegally if they could have come legally through the limited visas we issue each year.

But while Americans understand the human desire to pursue a better life, they know we do not have an infinite capacity to absorb everyone who would like to come here. Ours is a nation of laws. And we cannot perpetuate a system that continues to have people coming here outside the law.

Economists debate the effect undocumented workers have on the economy and opportunities available to Americans. There are areas where immigrants are doing jobs Americans would not do. But there are other circumstances where employers are bringing in workers for jobs that Americans would fill if employers paid fair wages. In the African-American community, where unemployment rates often remain high, there is some tension about whether we should be importing large numbers of workers to compete with American workers.

What I say to them is that immigrants in illegal status have no ability to fight for fair pay and fair treatment. African-American workers and Latinos at the bottom of the wage ladder will all be better off if these workers can come out hiding and defend themselves.

Today, under Chairman SPECTER, Senator LEAHY, Senator MCCAIN, and Senator KENNEDY's leadership, we will pass a bill that provides stronger border security, meaningful enforcement in the workplace, and a long, earned pathway to citizenship. The idea for the undocumented is that they would jump through multiple hoops over an 11-year period to earn the right to stay and eventually become citizens of the United States.

The Senate bill upholds our tradition as a nation of immigrants and proposes reforms in a comprehensive, common-sense manner, and it imposes new,

strict but sensible enforcement mechanisms.

The opponents of this effort have called it amnesty. They would prefer a punitive House bill that builds a wall across our southern border, deports the 12 million people here illegally, and makes any undocumented worker a felon.

That kind of approach is not realistic. We are not going to deport 12 million people. Millions of them have American children. Many have been here for many years and have deep roots. It is hard to imagine that we would have police and immigration officials invading people's homes, separating families, and forcibly sending people home. But Americans are right to demand that we end illegal immigration going forward.

The draconian House legislation led to the marches. But what started as marches of fear on the part of immigrant workers has turned into a movement of hope. People are hoping they have an opportunity to legalize their status in some way. Their hope and our hope is that we can move forward together.

This was and will continue to be an emotional debate. What we saw in the marches was the face of a new America. The face of our country is changing, and we cannot be threatened by it. I strongly believe that we are going to be better off united than divided.

But I also believe in a common culture. I told the immigrants at the marches that citizenship involves a common language, a common faith in the country, a common sense of purpose, and a loyalty to a common flag. I believe that this is what the immigrant community wants. They want to follow in the steps of the millions who came before them and helped our country meld from many peoples into one Nation. In diversity we come together as one.

To those who fear immigrants, I say we cannot have a country in which you have a servant class picking our lettuce, mowing our lawns, and caring for our children, but who never have the full rights and obligations of citizenship.

Today, the Senate will respond to the call for action from not only these marchers but all Americans who want to uphold our finest traditions. It has been a tough few weeks, but I am proud of this body today. We worked hard, conducted a civil debate, and have taken a big step toward fixing our immigration system. My hope is the conferees will put their stamp of approval on the Senate bill we are passing today.

Let me say that while I support this bill, it is not perfect. I have serious reservations about several of the provisions in the bill, most notably the guest worker provision. I voted for two amendments offered by Senator DORGAN that would have eliminated or sunsetted the provision, but these amendments failed. I am pleased, however, that the Senate adopted an

amendment by Senator BINGAMAN that lowers the number of guest workers that could enter the country under this bill.

I also am concerned about the changes we have made to the diversity visa program that will end up disadvantaging potential immigrants from underrepresented countries, such as African countries.

On balance, however, this is a very good bill. It gives us strong border security, makes hiring illegal workers virtually impossible, and provides all those families, children, mothers, and fathers I saw in that amazing march with the opportunity to become full members of the American community.

I was pleased that two amendments I offered were included in the bill. One amendment strengthened the prevailing wage requirements in the bill for all American workers and all jobs. It also ensured that communities where the American unemployment rate is high will not experience unnecessary competition from guest workers.

The second amendment was a collaborative effort with Senators GRASSLEY, KENNEDY, and BAUCUS to create a new employment eligibility verification system. We are making it simple but mandatory for employers to verify that their employees are legally eligible to work here. This amendment will have a far greater impact on stopping the flow of illegal immigrants into this country than simply building a fence along the border.

I commend my colleagues for their work on this legislation. Together, with faith in the values that unite our country, we are moving forward true to our tradition as a nation of immigrants that is capable of coming together to resolve difficult challenges.

I urge my colleagues to support this bill.

Mr. CONRAD. Mr. President, I am voting for the immigration reform bill today because it is urgent that we act to secure our borders. And we must find a way to deal with the 11 or 12 million illegal immigrants already living in the United States. As imperfect as this bill is, it is at least a beginning on strengthening our borders and dealing with those who are here illegally.

Currently, we have 500,000 new illegal immigrants entering our country every year. That is an unacceptable security risk. If we cannot control our border, we cannot control our future.

This bill dramatically strengthens border security. It provides for triple-layered fencing, adds thousands of additional Border Patrol agents, and cracks down on employers who hire illegal aliens.

The bill also begins to deal with the 11 to 12 million illegal immigrants who are currently in this country. The bill provides a path to earned legalization for those who pay a fine, pay back taxes, learn English, and fulfill other requirements. We need some process like this; the alternative of deporting 11 million people who do not want to leave is simply unrealistic.

Finally, the Congressional Budget Office has concluded that this bill will have a positive effect in reducing the deficit.

However, there are serious flaws in this bill. I think that asking the millions of illegal aliens who have been in this country fewer than 5 years to return home before getting on a path to citizenship is unworkable. And, although the bill was improved by cutting in half the number of new guest workers who will be able to enter the country next year, I still cannot support the guest worker provisions. Finally, overall, the bill will result in millions of new immigrants entering the country over the next decade. In my view, we need to consider very carefully the effects on our society of trying to assimilate such a large number of additional immigrants in a relatively short period of time.

But at the end of the day, we are faced with one question: will this bill help secure our borders and deal with the people who are here illegally? I have concluded that, although deeply flawed in many respects, it does make improvements over the current failed system.

This is not the end of the process. During the negotiations between the House and the Senate, there will be opportunities to address the serious flaws and produce a better bill. If, at the end of the process, the bill is not substantially improved, I will not be able to support the final product.

Mr. HATCH. Mr. President, although I rise today in opposition to S. 2611, the Comprehensive Immigration Reform Act of 2006, I would like to take a moment to commend its proponents.

The task of reforming this Nation's broken immigration system is Herculean. As my colleagues know all too well, the issue of immigration rules—justifiably so—the public like nothing else. I cannot think of any piece of legislation that has provoked a prolonged national debate such as this one. I cannot think of a day in recent months that I have not turned on the television or picked up a newspaper and read about or listened to a discussion of immigration reform.

This bill consisted of roughly 616 pages when we began this debate last week, and I have no doubt that the legislation is now over 700 pages. This undertaking has been truly monumental, and while I do not agree with the result, I must acknowledge and commend the sincerity, the diligence, and the good faith of the bill's architects.

The majority leader, the distinguished Senator from Tennessee, should be recognized for his leadership on this pivotal issue. The fact that Senator FRIST has managed to get an immigration bill through the Senate despite a splintered caucus and a hotly partisan atmosphere is a tribute to his abilities as a leader.

While I believe Senator FRIST deserves a great deal of the accolades for the passage of this bill today, I would be remiss if I did not mention Judiciary Committee Chairman ARLEN SPEC-

TER. The senior Senator from Pennsylvania has once again achieved the impossible. This bill, regardless of what one thinks of the policies it contains, is a tribute to his daunting work ethic, intelligence, and remarkable ability. Time and time again, Chairman SPEC-TER has overcome the odds both personally and professionally—to make sure the people's work is done, and done well.

There are many others who deserve recognition—Senators MEL MARTINEZ and CHUCK HAGEL were critical to this effort, and we cannot ignore the tireless efforts of Senators JOHN MCCAIN and TED KENNEDY. I must also thank Senators JOHN KYL, JEFF SESSIONS, and JOHN CORNYN for their vigilance and conscientious objections to this legislation. Their work has been invaluable and will continue to be so as we move to conference.

It is with great regret that I cannot endorse the substance of the bill before us despite the best efforts of many in this body. There are many laudable aspects of this bill—particularly the enforcement provisions—and, as many believe, the DREAM Act, upon which we worked so hard through the years, but at the end of the day this bill amounts to an amnesty that is several orders of magnitude larger than the one undertaken in 1986.

I would like to provide some perspective to this debate. In 1982, award-winning journalist Mr. Theodore W. White stated the following in his book, *America in Search of Itself*: “The United States has lost one of the cardinal attributes of sovereignty—it no longer controls its own borders. Its immigration laws are flouted by aliens and citizens alike, as no system of laws has been flouted since Prohibition.” These words were true nearly a quarter of century ago, and they are true today. Some may ask what Congress has done to address the issue during this time well, I will tell you. In 1986, Congress passed, among other things, the Immigration Reform and Control Act, or IRCA, and we passed stringent enforcement measures in the 1990s. I submit that neither the IRCA amnesty policy nor the previous enforcement measures have worked. Moreover, I submit that the current legislation amounts to the combination of two failed policies that will yield nearly identical results today and in the future.

We are all aware that we have lost control of our own borders. The President of the United States has made statements to that effect. Something has to be done. Illegal immigration has also been tied in with the enormous flow of illegal drugs into this country and to international terrorist violence being imported here from abroad. Something must be done, but this bill is not the answer.

The idea that a legalization or amnesty can be given to potentially millions of illegal immigrants, who arrived illegally in this country before

January of 2004, is to undermine the very principles of legality upon which our entire immigration system is founded. In the words of my former colleague, Senator Richard Schweiker, the so-called legalization or amnesty “puts the Government squarely behind the lawbreaker, and in effect, says ‘Congratulations, you have successfully violated our laws and avoided detection—here is your reward.’” In clear language, granting amnesty rewards the lawbreaker, pure and simple.

To highlight the scope of this problem and the dangers of charting the wrong course yet again, I must point out to my colleagues that a significant portion of the comments I just made are over 20 years old. I changed a few names and a few numbers, but the substance remains the same.

It took the proponents of the Immigration Reform and Control Act of 1986 3 years to put a bill together. This effort took 3 months. Despite the rhetoric to the contrary, the bill before us today constitutes a massive amnesty one several orders of magnitude larger than the one undertaken 20 years ago. I do not understand how this body has failed to learn from its mistakes.

I commend the sincerity, the diligence, and the good faith of this bill’s proponents, but I cannot agree in its result.

I fail to understand how a massive guest worker program that constitutes an end run around our immigration system is a good idea.

I fail to understand how an amnesty for millions of illegals is a good idea.

I fail to understand how a bill that does not address the root causes of our immigration crises is a good idea.

I ask my colleagues, why does this legislation ignore the recommendations of the U.S. Commission on Immigration Reform—an entity that spent 7 years examining the issue of immigration and making recommendations for this august body? Why do we insist on pursuing failed policies? We have an obligation to the American people to leave no stone unturned in this debate, but we have failed to live up to that obligation.

The time has come to undertake truly comprehensive reform. We must start from the ground up. We must secure our borders. We must identify the problems with the current immigration system with certainty. We must, in turn, develop meaningful solutions. I submit that the bill before us today builds upon a faulty foundation—we may have renovated a few rooms, we may have updated a few appliances, but it will all come to naught unless we fix the basic structure.

My colleagues know the extent of my commitment to my Hispanic friends. I founded and I have chaired the U.S. Senate Republican Conference Task Force on Hispanic Affairs for years now—I know the immigration issue is not solely a Latino issue, but we all know that the vast majority of the illegal aliens in this country are Hispanic.

I say to my friends that my opposition to this bill has nothing to do with a lack of support or dedication to the Latino community but, rather, a fundamental and principled opposition to widespread amnesty. We have been down that road, and that road led us to this moment.

There is no question that the millions of people who are here illegally broke the laws of the land and further that they should not be rewarded for that conduct. We gave over three million illegals amnesty 20 years ago. Today, we are poised to grant amnesty to three times that number. When will we learn? What will we do when we are faced with this exact situation in another 20 years? Enough is enough.

We must take the time to craft real legislation with real solutions to real problems. We cannot afford another failure. Our children cannot afford another failure. And our Nation cannot afford another failure.

We must restructure our visa system. We must determine—affirmatively—what policies should guide admission to this country. We must provide for a truly temporary guest worker program. We must create a realistic and effective employer verification system. And we must find a humanitarian, just, and equitable solution to the millions of people in this country illegally.

This bill does nothing to address the underlying flaws in the current immigration system. This bill does not fix the current visa system. This bill does not create a truly workable employer verification system. This bill does not create a truly temporary guest worker program. Instead, this bill creates more visa categories. It increases the numbers in existing visa categories. It creates a shell of an employer verification regime. It creates a guest worker program that is an end run around the immigration system. And finally, it grants the largest amnesty ever undertaken in any country, at any time.

I wish I could support this bill. I wish we had taken more time in Committee, I wish we had taken more time before the Committee process, and I wish we crafted a comprehensive reform bill that actually lived up to its name.

I am fully aware of the hard work on both sides of these very important issues. It is important that we get this bill to conference where I hope we can correct the many deficiencies therein, and I am aware some are voting for it with that in mind despite their severe reservations.

I believe it is absolutely critical that the Congress address the issue of immigration, and I look forward to working to improve this bill during the course of our negotiations with the House. The real work lies before us, and I believe the men and women of both bodies have the mettle, the tenacity, the intelligence, and the drive to do what is right for the American people.

Mr. KERRY. Mr. President, I am proud to cast my vote today in support

of S. 2611, the immigration reform bill. This legislation has strong bipartisan support—something we don’t see enough of these days in the Senate. Time and time again, amendments were offered and motions were made in order to derail this bill, yet time and time again, our strong bipartisan coalition stuck together to fend off every single attack. As a result, we’re able to pass comprehensive immigration reform—reform that has a real chance of solving the immigration crisis that we face today.

The bill addresses what I consider to be the four cornerstones of successful immigration reform: (1) strengthening our Nation’s borders; (2) providing a path to legalization for the approximately 11 million undocumented workers currently living and working in the United States; (3) addressing future flow needs by adjusting visa caps and creating an effective guestworker program with strong labor protections; and (4) implementing a reliable employment verification program. Thus, not only will this bill prevent people from illegally crossing our borders, it will eliminate incentive for coming illegally in the first place.

I am particularly happy that the bill included an amendment I offered to strengthen our border security. My amendment increases the number of border patrol agents by an additional 1,000 this year, bringing the total number of agents in fiscal year 2006 to 3,000. It also gives border State Governors the ability to request up to 1,000 more border patrol agents from the Secretary of Homeland Security in times of international border emergencies. We need more agents on the border, and we need to make sure they have the tools to get the job done. That is why my amendment provides more helicopters, power boats, patrol vehicles, GPS devices, encrypted 2-way radios, night vision equipment, high-quality border armor; and reliable and effective weapons.

The bill also includes my amendment to the performing artist visa, which will ensure that international artists will have their visa petitions processed in a timely manner. U.S. Citizenship and Immigration Services, USCIS, delays are making it increasingly difficult for international artists to appear in the United States. Currently nonprofit arts organizations confront uncertainty in gaining approval for visa petitions for foreign guest artists and inconsistent policies in processing artist visa petitions which result in delays, expense, and unwarranted requests for further evidence. USCIS practice compounds the growing risk that foreign guest artists will be unable to enter the U.S. in time for their engagements, causing financial burdens on nonprofit arts organizations, and potentially denying the American public the opportunity to experience international artistry due to delays and cancellations. My amendment requires the UCIS to review these visa

applications in a timely fashion—and consistent with protocols that ensure our security would never be compromised.

Of course, the bill contains some things that I do not agree with. For example, I would prefer that the bill not include Senator INHOFE's English language amendment not because I do not believe that English should be our national language but because I think the amendment will have some unintended, negative consequences. I believe everyone who aspires to be a part of our country should learn English. I was proud to support Senator SALAZAR's amendment declaring English is our common language. Yet I felt compelled to oppose Senator INHOFE's amendment because it would prevent critical services—including health, public safety, or education services—from being provided in more than one language. I believe that in some instances it may be important for the government to communicate in a language other than English.

However, I accept these provisions as part of the compromise. Take the temporary worker provisions, for example. They represent a true compromise between the need to protect American workers and the need to meet the future labor demands of the U.S. marketplace. Thus, the bill allows a certain number of temporary workers into the country every year, but only after the employers seeking to hire them have made serious efforts to hire an American worker. The bill also includes significant labor protections to ensure that temporary workers receive the same wages, benefits, and working conditions as similarly-employed U.S. workers. Thus, the bill does everything possible to prevent temporary workers from becoming a secondary class of citizens or from depressing American worker wages.

Passing this immigration bill is just the first step. The House passed a punitive, enforcement-only immigration bill that I believe will exacerbate rather than ameliorate the immigration crisis. The House bill sparked protests across the country. Millions of people took to the streets to call for a comprehensive and humane approach to immigration reform. I hope that the House has heeded their calls. I hope that the President can rally support for a comprehensive solution. And I sincerely hope that the conference comes back with a bill I can support.

Mr. BAUCUS. Mr. President, I rise today to commend the Senate for accepting my amendment to the Immigration Reform Bill which addresses an area that needs more attention—the northern border of the United States. We have 5,526 miles of border between the United States and Canada. This is over double the size of our southern border. Along Montana's 560-mile portion of the border we have remote terrain which is mountainous and difficult to patrol. My amendment will help our Border Patrol cover this vast area by

requiring the Department of Homeland Security to conduct a pilot program using unmanned aerial vehicles along the northern border.

In his immigration speech last week, President Bush emphasized that in addition to personnel and training we must also employ the latest technologies. The Border Patrol has already conducted successful tests using UAVs along the southwestern border in Arizona. This was done for surveillance and detection of individuals attempting to enter the U.S. illegally. My amendment requires that some of the UAVs already in the bill be used to run a pilot program on the northern border similar to the program which was conducted on the southern border.

We don't want to compete with our friends along the U.S. border with Mexico, but I want to make it clear that the northern border also needs increased attention. As you can imagine, as the southern border of the U.S. is tightened, our northern border—which used to be America's back door—is quickly becoming the front door.

Customs and Border Patrol reports that their number one concern on the southern border is illegal immigration. What is their number one concern on the northern border? Terrorism. We are all aware that some of the 9/11 hijackers made their way into this country through Canada. In 1999 the "Millennium Bomber", Ahmed Ressam, was apprehended on the northern border with a trunk full of explosives. His plan was to blow up Los Angeles International Airport. Now border gangs are going international and admitting having ties to Al-Qaeda and smuggling Al-Qaeda members into the United States. In Montana markings from these gangs have been found in the corrections system—within the walls of our jails and detention facilities.

Surveillance of our ports is being conducted from the Canadian side of the border. It appears that our procedures for checking out vehicles both leaving and entering the United States are being looked at by criminals and it has been reported that these "dry runs" are being conducted near Glacier National Park.

All of these activities are made easy due to the wide open space and insufficient numbers of law enforcement along the border. Yet the bill that has been before us has many provisions which are stacked against the security of the northern border. For example, one provision in this bill provides border States with additional Immigration and Customs Enforcement field agents to help with necessary background checks. However, it stipulates that these allocations are not available to States with populations under two million. This makes northern border States Montana, North Dakota, Idaho, Alaska, Vermont, New Hampshire, and Maine ineligible for assistance.

Now the President has proposed sending our National Guard troops to the southern border. We rely greatly on

our National Guard and at a time they are already stretched too thin, it is dangerous for us to lose that resource from our States. More importantly, this is being done at a time when we currently have border patrol agents being detailed from the northern border to the southern border.

The ability of our Border Patrol to successfully carry out their daily duties is of critical importance to the safety of all Americans. This amendment will give us the tools we need to protect our borders. UAVs are a safe alternative to placing civilians in harm's way and by introducing a pilot program that helps us patrol our northern border, we are getting on the right track to fighting the war on terrorism and keeping the home front safe.

Mr. BROWNBACK. Mr. President, I wish to speak to the very important issue of interior worksite enforcement in the context of the debate over comprehensive immigration reform legislation.

One of the most important elements of this bill, that is crucial to the successful implementation of the guest worker and earned legalization programs, is interior worksite enforcement. Only a serious commitment to enforcing our immigration laws against employers who knowingly hire illegal immigrants will actually deter illegal immigration because the number one reason people enter the United States illegally is to find a job.

Looking back on the history of immigration reform, one of the key elements that has been missing, and is still missing, is successful interior enforcement. However, thanks to hard work of Senators GRASSLEY, OBAMA, KENNEDY, and BAUCUS, this bill contains worksite enforcement that can work.

The original language in the underlying bill, S. 2611, concerned me in several ways, particularly with respect to certain contractor liability provisions that would have created a de facto "rebuttable presumption" for contractors whose subcontractors hired undocumented immigrants, even if the principal contractor had no knowledge of such hiring. In essence, the contractors would be guilty until proven innocent, even if the offense of hiring unauthorized workers was committed without their direct knowledge.

Before I continue, let me be clear—I am in full support of cracking down on employers who knowingly hire unauthorized workers because doing so is the key to having a lawful and successful immigration system. However, we should not cast the net so broadly that innocent contractors are punished for the independent actions of a subcontractor.

It is somewhat clear that the contractor liability provisions in the underlying bill were targeted at "bad actor" construction contractors, but I interpret the legislation to impact all employers, not just those in construction. In fact, any employer using suppliers or contractors involving labor in

the normal course of their operations are impacted. A broad interpretation of the language covers companies that contract with, for example, suppliers of refreshments, including beverage companies that supply coffee, sodas and bottled water. What about the suppliers of copier services that come to fix the copy machine? Certainly they are suppliers of contracts involving labor. Can all companies contracting for such labor be responsible for ensuring that all of its suppliers employ persons of legal status? Such a requirement is unrealistic and unfairly penalizes employers.

There exists somewhat of a defense for these companies, a "knowing" standard, but what concerned me most was how a company could defend itself against accusations that it knew that its supplier employed illegal immigrants.

With the understanding that the original language applied to all employers, the construction industry nevertheless represents a good example of how unworkable these provisions are. The construction industry is a system which includes general or prime contractors with subcontractors ranging from plumbing to roofing to electrical specialty contractors. On any given project, a general contractor may have contractual relationships with as many as 50 different subcontractors. Ensuring that these prime contractors are not liable for the independent, illicit behavior of one or more of the subcontractors was the focus of my amendment.

I was also troubled by the original language, which involved a presumption of guilt before the company was able to prove its innocence.

Therefore, in effort to correct these dangerous provisions, I offered amendment number 4096 which would protect employers from being liable for the illegal behavior of their suppliers and subcontractors. This amendment resembled one that was offered during the consideration of H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act, legislation that focused on securing the border and increased internal enforcement. Offering this amendment was freshman congressman, LYNN WESTMORELAND of Georgia's 8th district. I should point out that when the House debated immigration legislation in December 2005, Westmoreland's amendment was so popular that it received more votes of support than that on final passage of the legislation.

Though the language in the Grassley title III amendment does not include the language in my amendment, Senator GRASSLEY's amendment is much more reasonable than the provisions in the underlying bill. Senator GRASSLEY's amendment replaces the "guilty until proven innocent" rebuttable presumption with a standard of "knowing or with reckless disregard," which goes a long way to protect innocent contractors from being held liable for ac-

tions of a subcontractor that are out of their control.

In closing, I respectfully request that the House-Senate conferees pay careful attention to the provisions in both the House and Senate regarding unlawful employment of aliens. I hope the conferees will engage in a discussion regarding the differences between the various standards for holding contractors liable for the actions of their subcontractors. I understand that there exists ample case law regarding the definitions of these terms, yet I ask that the conferees further define these terms for the sake of employers who will quickly be required to abide by the new provisions under this bill.

In addition, it is important for the conferees to clarify how the Electronic Employment Verification System will communicate with contractors regarding the hiring practices of their subcontractors. This relationship is yet unclear as the bill is currently written and should be clarified before the bill becomes law.

I reiterate my wholehearted support for a strict worksite enforcement system that cracks down on "bad actor" employers who thumb their nose at the law by knowingly hiring unauthorized workers. These employers should be punished for their actions; however, they should not be punished for actions taken by their subcontractors without their direct knowledge.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, I will use leader time so as not to interfere with the schedule on the floor.

I said at the beginning of this debate 2 weeks ago that this was a blockbuster. I said that this is the summer season for movies and this is the time for blockbuster movies. "The DaVinci Code" and "Mission Impossible III" came out, but I said we had our own blockbuster here in the Senate: part 2 of immigration. Prior to the Easter recess we know how immigration fared. It didn't. It stopped for a lot of different reasons. But now we start part 2. I said that 2 weeks ago, and now for me, this has been such a reminder of how the Senate used to be. We held a number of votes. I was on the prevailing side of some and I was not on the prevailing side of others. Coalitions were built here in the Senate, Democrats with Republicans and vice versa. That is the way we used to legislate.

In this most important bill, no one got everything they wanted. There were compromises made in the committee and certainly compromises made here on the Senate floor. But we have had bipartisan cooperation. This is comprehensive immigration reform, focusing first on border security.

This legislation will do so much to make our borders more secure. We have done a lot of things that have never been tried before to improve the security of our Nation by doing something about our borders. I have gone to the borders and I have seen the hard-work-

ing Border Patrolmen. They work so hard with so little attention. And this legislation is the opportunity for them to do their jobs better, because we are going to give them more resources. I would hope that we will do that. We certainly need to.

Before we finish, I would caution everyone from confusing what we are doing here today—we are going to complete passage of this bill shortly—with ultimate victory. This is not the final scene of this blockbuster that we have on the Senate floor. There is another act to go. But I want to express my appreciation to the two managers, Senator SPECTER and Senator KENNEDY. They have done yeomen's work to sort through all of the hurt feelings that people have in offering these amendments and not getting the votes they wanted when they wanted them. This is a big bill to manage, and I think these two very senior Members of the Senate have done a tremendous job. I also want to express my appreciation to Senator MCCAIN.

I also want to focus attention on someone who I think has done a great job on this bill, who is behind the scenes always trying to grow the compromises that the managers and Senator MCCAIN haven't been able to work out, and that is the senior Senator from South Carolina, LINDSEY GRAHAM. I really have appreciated the work he has done on this bill. He has been a tremendous asset to Senator KENNEDY, Senator SPECTER, and Senator MCCAIN.

I want to also say that my assistant whip of the Senate has done a great job. We all know that Senator DURBIN legislates so much with his heart. He is a good person and has a good sense of what is right and what is wrong. He was heavily involved in this legislation, being a member of the Judiciary Committee, and I want the RECORD spread with my appreciation for the work that he has done, being our counterpart to LINDSEY GRAHAM, working through different issues that we have had.

For all of the good that we are going to be able to accomplish by passing this bill, there is a lot more work to do.

I want to say something about someone who opposes this legislation. No one has been a bigger opponent of this legislation than JEFF SESSIONS of Alabama. If there has been a bigger opponent, I haven't seen him. I have told him this personally and I will say it publicly. JEFF SESSIONS and I don't agree on too much politically, in the political spectrum, but I admire how he approaches issues, because every time he came to the floor to talk about an issue, he believed sincerely what he was doing was right, and I admire that and appreciate it. Now, the fact that I disagreed with him doesn't make me any more right than he is. That is the purpose of legislation. We present our cases to this body and the body decides. But I want the Senator from Alabama to know that I appreciate his adversarial efforts.

Finally, Mr. President, for all the good work that we have done here over the past 2 weeks, it can be eliminated in a heartbeat when we go to conference with the House. We have seen it happen so much these last few years where the minority is eliminated from decisions made, public conferences are not held, items that the Senate supports are stripped, and there is nothing to prevent the same thing from happening on this bill but for the good faith we have in moving forward.

We should know the dark clouds are forming on the horizon. Influential Members of the House of Representatives in the Republican leadership are still pushing for the bill they passed, a bill that makes felons out of millions of immigrants and those who assist them, such as a member of the clergy, a health care worker, a social worker. In fact, the House Majority Leader, my friend, JOHN BOEHNER, yesterday, was quoted as saying:

Trying to find a pathway that is acceptable to the House and Senate is going to be very difficult.

I acknowledge and say that is true. But the words we have heard from the House leadership are not encouraging.

The one thing we fought for was to have a fair balance on the conference committee, and we have gotten that. I express my appreciation to the majority leader. We have the ability to name conferees on our side who I think are going to be just fine. Knowing the Republicans who are going to be part of this conference committee, it is going to work out well. We have people who are going to work hard to uphold the position of the Senate.

But we also need the active involvement of the President. I appreciate what he has done to this point. I said that on a number of occasions before. But his biggest work is ahead of him if he wants comprehensive immigration reform.

Yes, this bill includes border security. It includes help for guest workers. Mr. President, 45,000 to 50,000 hotel rooms are going to be built in Las Vegas in the next 4 to 5 years. I just had a meeting in my office with the head of the MGM Hotel, a man who has 80,000, 90,000 employees and was part of the group who got me interested in this legislation. The hotel owners, the Chamber of Commerce in Las Vegas, and the unions have said unless we get some help on guest worker programs, we can't find people to work in those 45,000 to 50,000 hotel rooms. That is in this bill.

Another thing that is in it I am proud of, and we should be proud of, is a pathway to legalization for people who are in America and are undocumented: Pay your taxes, have a job, learn English, stay out of trouble, pay your penalties and fines, go to the back of the line—but you can come out of the shadows.

Then, finally, what we have in this legislation is better—better employer sanction enforcement, and we need that.

We are authorizing things, but they are not worth anything unless we appropriate the money to do them. All the measures we have relating to security, they must be favored with appropriations bills, as with everything else in this bill. I hope we will have the carry-through to do that. This is a two-step process from this point forward. We have to have a conference and then we have to have appropriators who will do the right thing.

Again, I feel so good today. This is what the Senate is all about. I spent 24 years of my life in the Congress of the United States, 20 of them here in the Senate. This is the way it used to be. This is the way it should be in the future. I have every hope and belief that we can make it that way.

I appreciate the courtesy of all my colleagues here allowing me to have this time.

The PRESIDING OFFICER (Mr. COLEMAN). Two minutes remain in opposition to the Ensign amendment. Who yields time? The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that the votes occur in the order in which the amendments were offered, provided further that following the disposition of amendments, the Senate proceed to an immediate vote on the managers' amendment. I also ask that there be 2 minutes equally divided between the votes and that all votes after the first be limited to 10 minutes each.

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

The Senator from Nevada.

Mr. ENZI. Reserving the right to object, Mr. President, from what I understand we just got the managers' amendment. It is 115 pages. I think the Senator from Arizona is one of the first ones to acknowledge getting a managers' amendment with 115 pages, and then agreeing to a time agreement would be a little unreasonable. So if you would take out the agreement to have a vote directly on the managers' amendment until we have a little bit of time to go through it, I think the unanimous consent would be agreeable.

Mr. SPECTER. I modify the unanimous consent request to that effect.

The PRESIDING OFFICER. Is there objection to the modified request? Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I now ask unanimous consent Senator MCCAIN be recognized for 7 minutes, the managers be recognized for 7 minutes, and the leader will speak at the conclusion on leader time.

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

The Senator from Arizona.

Mr. MCCAIN. Mr. President, after several weeks of extensive debate and consideration of numerous and complicated amendments, the Senate is about to move to final passage of S. 2611, the Comprehensive Immigration Reform Act. This legislation addresses

comprehensively one of the most important and complex issues facing our country. Our Nation's immigration system is broken. I don't think there was one Member of the Senate to argue that fact. Without enactment of comprehensive immigration reform as provided for under this bill, our Nation's security will remain vulnerable.

That is why we must pass this bill and reach a meaningful final product through conference deliberations. Our failure to produce a final comprehensive measure is an unacceptable proposition.

I want to first thank the President for his leadership on this issue. The President's speech to the Nation last week, which I thought was inspired, was greeted by 74 percent of the American people overnight favorably, including his absolute determination to see the Congress send him a bill which has a comprehensive approach to the issue which we as a Congress and a Federal Government have ignored for too long.

I also commend the Senate leadership on both sides of the aisle for their efforts to ensure that the Senate address this important issue and give us more than adequate time for a thorough debate.

I think this is a proud moment for the Senate, as we have conducted good work and returned to orderly traditions of the legislative process as envisioned by our Founding Fathers.

I also again recognize Chairman SPECTER for his work in leading us to this point in the legislative process. He and all the members of the Judiciary Committee deserve our appreciation for the considerable effort they have taken on this issue during this Congress.

Of course, I commend Senator KENNEDY, who is perhaps the leading expert on this difficult issue. He and I spent many months working to develop a comprehensive, reasonable, workable legislative proposal, much of which is contained in the bill before us.

I also thank Senators BROWNBACK and LIEBERMAN and GRAHAM and SALAZAR, MARTINEZ, OBAMA and DEWINE for their shared commitment to this issue, in working to ensure this bill moves successfully intact through the legislative process.

Throughout this debate we were reminded that immigration is a national security issue, and it is. It is also a matter of life and death for many living along the border. We have hundreds of people flowing across our borders every day, coming here only in search of better lives for themselves and their families. They come to fill the vacant jobs at businesses and farms that struggle with real labor shortages that impact our economy negatively.

This Nation is calling for our borders to be secure, for an overhaul of our immigration system, and that it be done in a humane and comprehensive fashion. Vote after vote after vote taken in this body reaffirms that fact.

The new policies as provided for in this legislation will increase border security and provide for a new temporary worker program to enable foreign workers to work legally in this country when there are jobs that Americans will not fill, and will acknowledge and address in a humanitarian and compassionate way the current undocumented population.

As many have noted, there are over 11 million people in America today who came here illegally. They live in our cities and towns and rural communities. They harvest our crops, tend our gardens, work in our restaurants, and clean our houses. They came as others before them came, to grasp the lowest rung of the American ladder of opportunity, to work the jobs others won't, and by virtue of their own industry and dreams to rise and build better lives for their families and a better America.

Some Americans believe we must find all these millions, round them up, and send them back to the country they came from. I don't know how you do that, and I don't know why you would want to. Yes, in this post-9/11 era America must enforce its borders. There are people who wish to come here to do us harm, and we must vigilantly guard against them, spend whatever it takes, devote as much manpower to the task as necessary. But we must also find some way to separate those who have come here for the same reasons every immigrant has come here from those who are driven here by their hate for us and our ideals.

We must concentrate our resources on the latter and persuade the former to come out from the shadows. We won't be able to persuade them if all we offer is a guarded escort back to the place of hopelessness and injustice that they have fled.

Why not say to those undocumented workers who are working the jobs the rest of us refuse: Come out from the shadows, earn your citizenship in this country. You broke the law to come here, so you must go to the back of the line, pay a fine, stay employed, learn our language, pay your taxes, obey our laws, and earn the right to be an American.

SSgt Riayen Tejada immigrated to New York from the Dominican Republic. He came with two dreams, he said, to become an American citizen and to serve in the U.S. Marine Corps. He willingly accepted the obligations of American citizenship before he possessed all the rights of an American. Staff Sergeant Tejada, from Washington Heights by way of the Dominican Republic, father of two young daughters, died in an ambush on May 14, 2004. He had never fulfilled his first dream, to become a naturalized American citizen. But he loved this country so much that he gave his life to defend her.

Right now, at this very moment, there are fighting for us in Iraq and Afghanistan soldiers whose parents are not yet American citizens but who

have dreamed the dream that their sons and daughters risked their lives to defend. They should make us proud to be Americans. These people have come for the very same reason immigrants have always come to America. They came to grasp the lowest rung of the ladder, and they intend to rise. Let them rise. Let them rise. We will be better for it.

For America—blessed, bountiful, beautiful America—is still the land of hope and opportunity, the land of the immigrant's dreams. Long may she remain so.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, when Oscar Handlin, the eminent historian at Harvard, won the Pulitzer Prize in 1952 for his history of immigration "The Uprooted," he said he had set out to write a history of immigrants in America, but "discovered that the immigrants were America."

With passage of this legislation, we reclaim that America. We lift once again the lamp beside the golden door.

This is the most far-reaching immigration reform in our history. It is a comprehensive and realistic attempt to solve the real-world problems that have festered for too long in our broken immigration system.

It strengthens our security and reflects our humanity. It is intended to keep out those who would harm us and welcome those who contribute to our country. It has the potential to build a stronger, better, fairer America for the 21st century.

It protects our security through stricter enforcement, tamper-proof immigration cards, and high-tech border controls.

It protects American jobs and wages by bringing immigrants out of the shadows and requiring employers to pay fair American wages.

And it enables decent men and women who work hard and play by the rules to earn the privilege of American citizenship.

That has been America's story. And it's a story we must live anew with each new generation if we hope to continue as a vibrant land of liberty, progress and opportunity—a land of people who want to do better, who love their families, embrace our Nation, and are proud to be American citizens.

Wisdom in immigration policy doesn't just happen. It is a choice between a future of progress as a nation of immigrants or a future defined by high walls and long fences.

Clearly, we still have much to do before this legislation becomes the new law of the land. Some believe that enforcement is the only path to take.

I would urge them to remember that from the beginning to the present day, immigrants helped build our country, and made us strong.

They worked in our factories and toiled in our fields, and we are stronger for it.

They built the railroads that took America to the West. Even today, it is said that under every railroad tie, an Irishman is buried.

Immigrants have loved America and fought under our flag, and we are stronger for it.

And if we enact this bipartisan comprehensive reform, we will be stronger for it too.

As we close this debate, I commend our two leaders, Senator FRIST and Senator REID, for their skill in enabling this debate to take place. At a time of heated political division in Congress, the debate we have seen these past 2 weeks is unique in recent times. Senators of both parties have come together for the common good. This opportunity would not have been possible without our leaders, and I hope it is a precedent for other major issues in the weeks ahead.

I commend President Bush for putting this issue before the country and for helping Americans understand the need for comprehensive reform.

I commend the chairman and ranking member of our Judiciary Committee, Senator SPECTER and Senator LEAHY, for their strong support throughout this process.

I thank those of our bipartisan group who stood together to make this legislation possible—Senator GRAHAM, Senator SALAZAR, Senator MARTINEZ, Senator HAGEL, Senator DURBIN, Senator LIEBERMAN, Senator BROWNBACK, Senator OBAMA, and Senator DEWINE.

And most of all, I express my appreciation to my colleague, Senator MCCAIN, who made all this possible from the start. He'd probably prefer I didn't say this, but he's been a profile in courage once again, and I commend him for his leadership.

I'm also grateful to the many staff members who helped to get us to this point. I'm grateful to Ron Weich and Serena Hoy of Senator REID's staff; to Bruce Cohen, Tara Magner and Matt Virkstis of Senator LEAHY's staff; to Joe Zogby of Senator DURBIN's staff; to Jennifer Duck and Montserrat Miller of Senator FEINSTEIN's staff; to Felicia Escobar of Senator SALAZAR's staff; to Tom Klouda and Alan Cohen of Senator BAUCUS' staff; to Kevin Landy of Senator LIEBERMAN's staff; to Danny Sepulveda of Senator OBAMA's staff; and to Chris Schloesser of Senator MENENDEZ' staff.

This was a truly bipartisan effort, and I'm grateful to staff from the other side of the aisle as well: Juria Jones, Joe Jacqot, and Michael O'Neill of Senator SPECTER's staff; to Clay Deatherage, Brian Walsh, and Nilda Pedrosa of Senator MARTINEZ' staff; to Jill Konz and Steve Taylor of Senator HAGEL's staff; to Matt Rimkunas of Senator GRAHAM's staff; to Steve Robinson of Senator GRASSLEY's staff; to Ajit Pai and Bryan Clark of Senator BROWNBACK's staff; and to Brook Roberts of Senator CRAIG's staff.

And special thanks, of course, to Senator MCCAIN's staff, with whom we've

worked so closely over the past year—Ann Begeman and Brook Sikora. And I'd like to express my deep appreciation for Becky Jensen. Without her vision and determination, this bill would never have happened.

On my own staff, I'm very very grateful to the many who worked so long and hard as well to make this day possible—Jeffrey Teitz, James Flug, James Walsh, Laura Capps, Missy Rohrbach, Lauren McGarity, Guarav Laroia, Charlotte Burrows, Christine Leonard, and Michael Myers.

My special thanks go to two on my staff who worked so hard over so many months on this bill, Janice Kaguyutan and Marc Rosenblum.

Finally, and certainly not least, there's our hero of the hour—a remarkable person with extraordinary talent, skill and compassion. We've all come to rely on her knowledge and judgment in moving this bill forward—Esther Olavarria.

Some say the easy part of this debate is over, and now we face the hard part reconciling the Senate bill with the House bill. We'll do our best, and I'm optimistic we can resolve our differences again.

Mr. SPECTER. Mr. President, the U.S. Senate is on the verge of passing landmark legislation. It has had a long, tortuous path. The McCain-Kennedy bill was the core proposition and went through very substantial hearings in the Judiciary Committee and a complex markup. It came to the floor at a moment when it was foundering, and we added to it Hagel-Martinez and their ideas to break a very complex logjam at that time.

We have labored under the competing principles of rule of law and concern for immigrants who have come to the United States without complying with the law.

On the other side, the rich tradition of the formation and development of the greatest country in the history of the world, the United States of America, made up of immigrants. Some came here illegally and some did not. But we are the melting pot, and the immigrants have contributed enormously and have made this the great country which it is today.

As we approach the final moments of action in the Senate, we are aware that there are still very strident competing concerns, strident competing interests of those who continue to insist that our legislation is amnesty, contrasted with those of us who point to the facts. The definition of amnesty is forgiveness of some wrongdoing, which is not the case.

There is a rigorous ladder which these undocumented immigrants have to pass through. They have to pay a fine, and that \$2,000 fine in the underlying bill has now been increased to \$3,250. They have to undergo a criminal background check, they have to pay back taxes, they have to learn English, they have to work for 6 years, and they go to the back of the line. It is genu-

inely earned citizenship by any measure.

We have had a very constructive debate here. We have improved the bill. The bill has been improved not only by the bipartisan coalition in favor of it, but it has been improved by the critics.

In committee we had a very rigorous debate. Objections were raised by Senator KYL, by Senator COBURN, and by Senator SESSIONS. Their concerns have been taken into account in structuring the final product which we have.

There has been a real balance for those who say that there ought to be border security before we consider a guest worker program or before we consider placing undocumented immigrants on the path to citizenship. We have provided very rigorous border safeguards.

We have provided for enforceable employer sanctions to see to it that immigrants who do not qualify do not get jobs. There has been a reduction in the number of green cards, 325,000 to 200,000. We have made major concessions to those who have been looking for enforcement by itself.

At the same time, we have structured a complex arrangement giving those here 5 years or more of the path to citizenship. We made a distinction based upon how deep their roots were here. Those who were here 5 years or more have an easier path, although they go to the back of the line. Those here 2 to 5 years have to touch back before coming back to a guest worker program and then on the path to citizenship. Those here for less than 2 years have to return to their native country and get in line if they want to come back to the United States.

That cutoff was made on January 7, 2004, the date the President made a speech outlining immigration reform. So they were on notice that they would be in a different category.

This is a practical approach. When we have 11 million people who are undocumented immigrants, we obviously do not want to create a fugitive class in America—an underclass.

If anybody has a better idea, we have been open to it, and we are still open to it as this bill will go to conference.

I am not pessimistic about the prospects of the conference. We have a bicameral legislature. We have to have agreement between both the House and the Senate. There is a genius in the American constitutional form of government in the separation of powers. No one has too much power.

We have worked out differences in the past, complicated problems on the PATRIOT Act, complicated problems on other legislation where we have gone to conference with the House Judiciary Committee under the able leadership of Chairman SENSENBRENNER.

We have had the leadership of the President on his nationwide speech at a critical moment in the progress of their bill. The President has been commended by all of those who have been in the leadership role on this bill.

We look forward to the President's more intense participation. He is the leader.

We have the House and Senate controlled by the Republican Party. There is an important political issue about the ability of Republicans to govern and whether we can do that. There is an election in November. Our leadership position as Republicans is on the line. I think that will weigh heavily in the conference.

But most of all, I credit the bipartisan nature of what has been done.

Every morning during the course of the 2 weeks of debate a group of Senators met, Democrats and Republicans, to work through the issues and to be prepared for the debate of the day. I am pleased to see the complex issues debated in the best traditions of the Senate.

I look forward to a productive, constructive and successful conference with the House of Representatives, and ultimately a day when there will be a signing by the President of the United States of this important landmark legislation.

I yield the floor.

We are awaiting the arrival of the majority leader who should be here momentarily.

Mr. DODD. Mr. President, will the manager withhold?

Mr. President, I rise today to share my views on the work that the Senate has undertaken over the last several weeks on a very difficult and complex issue—comprehensive immigration reform. Before I start, I would like to acknowledge the work of many of my colleagues, who have spent years attempting to address various aspects of this issue and who have worked in good faith to get us to the place we find ourselves as we conclude debate on the legislation before us.

Last month when the Senate first began consideration of this matter, the process fell apart rather suddenly because of procedural issues regarding which and how many amendments would be offered. These were legitimate concerns, since nearly 400 amendments were introduced, and since many of those amendments were intended to gut that measure.

In order to get this reform right, we need to address all three components of immigration—border security and enforcement, guest worker programs and, for undocumented workers who are currently in the U.S., a path to "earned" citizenship. We need to also reconcile the fact that we are nation of immigrants with ongoing legitimate economic, social and national security concerns related to the undocumented individuals currently within our borders and the impact of continuing to welcome newcomers to our Nation has on those concerns.

But let me be clear from the outset. Immigration reform must first and foremost be about protecting America's national security, economy, and citizens from the myriad challenges we face in the 21st century. We must have

no higher priorities than these. Fundamentally protecting our national security means securing our borders.

I believe that the bill before us, with all the additions we have made as the Senate has worked its will on this measure, is an imperfect document, but probably the best we are going to achieve given the polarizing nature of many of the issues that have been debated, adopted and rejected.

On a positive note, the bill does set the stage for the United States to greatly increase control over our borders and help prevent individuals from illegally entering our country. Among other things, it would provide advanced border security technologies to assist those tasked with protecting our borders. And it would improve our ability to enforce our immigration laws by making structural reforms and increasing personnel and funding levels where they are needed most. It would also double the size of the border patrol over 5 years, adding 12,000 new agents to patrol our borders. It would expand the number of interior enforcement officers by 1,000 per year over each of the next 5 years. It would utilize advanced technologies to improve surveillance along the border, creating a "virtual fence" to detect and apprehend people who are illegally attempting to enter this country. And it would create new and increased penalties for individuals trying to subvert our borders with tunnels, or who attempt to smuggle people into the U.S.

These are all critical measures. I support them. Other measures adopted in the name of better controlling our borders, will in my view have less than optimum results. I am thinking of the vote that occurred last week to unilaterally construct a 370-mile fence in border areas in California and Arizona. I believe that no fence or wall or other barrier is going to stop desperate people from entering our country unless we do something about the conditions on the other side of the border and the historic unwillingness of Mexican authorities to take steps to dissuade its citizens from illegally crossing the border. That is why I opposed this initiative and have sought to strengthen the likelihood that we will get more rather than less cooperation from Mexican authorities by proposing an amendment to require advance consultations at the federal, state and local levels of government on both sides of the border before fence construction moves forward. I am grateful to the managers for their willingness to accept this amendment.

Securing our borders, while necessary is only one part of the bigger immigration equation. Were we to deal with that issue, while ignoring two other goals—bringing 11 to 12 million undocumented workers out of the shadows, and putting in place limited and carefully regulated guest worker programs to fill jobs when no Americans are available or willing to take them, we would not have fundamentally confronted the national security implica-

tions of immigration. In my view, turning our backs on this reality is the same as turning our backs on real and lasting immigration reform.

I would say the following with respect to the 11 to 12 million undocumented individuals living within our borders.

These are predominantly hard-working individuals, who are not here to flood the welfare rolls or collect our charity. They are here to work and to contribute. They want what all of our families wanted when they came to the U.S.—a piece of the American dream.

However, I understand the concerns of those who rightly state that these undocumented workers came here illegally. The pending bill recognizes that fact. And so it wouldn't give them a free ride. Instead, it would penalize illegal immigrants by requiring undocumented workers to pay fines. It would require them to pay all back taxes, submit themselves to background checks, and learn English. And for those who are eligible, this process would take an average of 11 years.

Yet even with these tough measures, it provides an incentive for undocumented workers to come out into the open. Frankly, we need to be honest with ourselves that they're not going to come out of the woodwork if they face deportation. No rational person would do that.

Why is getting them to come out into the open so important?

Because the presence of so many individuals without documentation in our country creates enormous challenges for law enforcement and undermines worker protections. It is bad for our security, bad for the American worker, and bad for undocumented immigrants themselves.

But not all people seek to come permanently to the U.S. Many seek temporary work here and desire to return home when that work is complete. The pending proposal contains extensive provisions related to guest workers.

There are legitimate concerns that temporary workers might displace American workers who are available and willing to take a job. That should never be the case. American jobs should always be filled first and foremost with American workers. Only after serious efforts to find American applicants to fill vacancies have been exhausted are guest worker programs justifiable. Much has been done in the course of consideration of this legislation to ensure more due diligence on the part of employers to look first to Americans to fill jobs.

Moreover, we need to be judicious when it comes to determining the number of guest worker visas that are needed. This shouldn't be an excessively high number that increases automatically every year. Instead, it should match actual needs. That's why I supported a number of amendments by my colleagues to place certain caps on the number of guest worker visas that are granted. As I've already said, the num-

bers of visas should match needs. If at any point in the future the U.S. government determines that needs aren't being met, then we can always change the numbers to reflect the facts on the ground. But we need to turn to American workers first, not foreign workers.

Some of my other concerns with the outlines of the guest worker programs have been addressed in the course of our consideration of the bill. Worker portability and the right to unionize were key deficiencies that have been remedied during the amendment process. These fixes were important, because if done incorrectly, guest worker provisions could produce a permanent underclass and downward pressure on wages for American workers.

I remain concerned about a number of the provisions that have been adopted in the course of consideration of this legislation—some by very close votes. Among these are conflicting provisions on the nature and role of the English language, one of which could result in some of our own citizens being denied full participation in our society and opportunities to improve English proficiency. The other amendment recognizes the importance of the English language as a unifying force in our society without eliminating the many safeguards in law to ensure that those Americans with imperfect language skills can still participate in society.

Before concluding, I would like to speak briefly of two provisions in the bill which have gotten very little attention but which are very important and constructive additions to the overall package.

First, I am pleased that it includes provisions of the DREAM Act. I've long supported the DREAM Act, which in my view is a common sense measure, allowing undocumented students under the age of 16—who were brought into this country illegally through no fault of their own—a chance to complete higher education.

Qualifying students, however, will have had to live in the U.S. for at least 5 years prior to the date of enactment of this legislation. If they earn an advanced degree or serve our country in the Armed Forces, they would then be granted permanent status and allowed to petition for citizenship. Every student deserves a chance to learn and to serve a cause greater than him- or herself. This measure will give many deserving children that opportunity.

The second provision would establish programs to help our neighbors to the south, including Guatemala and Belize to fight human smuggling and gain control of their tenuous borders. It would also encourage strategic coordination across the hemisphere to fight the growing problem of gang violence. In my view, these are critically important areas because in reality we cannot solve our problems here without also addressing the roots of the problems abroad.

It remains to be seen what will happen to this bill when Senate conferees

sit down with our House colleagues to work out the considerable differences between the House and Senate versions of the bill. Speaking as one Senator, the measure as it has passed the Senate is a very delicate package of compromises that just barely makes it acceptable. Any significant diminutions from the Senate package will make this measure unacceptable to me, and I suspect, to many of my colleagues. I urge the Senate conferees to stand fast to the Senate position.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. DURBIN. Mr. President, are we under unanimous consent agreement as to the speaking order?

The PRESIDING OFFICER. We finished with all the speakers on the unanimous consent order.

Mr. DURBIN. Mr. President, I seek recognition, then, in reference to the bill before the Senate.

In the 200-plus year history of the Senate, there have been few moments when Senators were called to reflect on an issue of this gravity. This issue of immigration goes to the heart and soul of this Nation in which we live. It is an issue which has called forth from each side of the aisle the very best in debate, the very best in consideration, to tackle one of the most complicated issues that has ever faced our Nation.

But it is not a new debate. It is not a new issue. Almost from its outset, America has grappled with this issue of immigration. We are a nation of immigrants. We are a diverse nation. Look around your own neighborhood, at your church, at the gallery, look around at your place of business, and you will see people from all over the world who at one time or another came to this great Nation to call it home. With the exception of those Native Americans who were here when Christopher Columbus arrived, we are all newcomers to America. We are all strangers to this land. God has blessed us with this great opportunity to live in this land of opportunity.

That immigrant spirit has meant so much to what we are today and why we are different in this world, the courage of individual immigrants to leave behind everything—their home, their church, their relatives, their language, their culture, their friends—and to strike out for America, to find that opportunity which meant so much to them.

I am a product of that immigrant spirit. My mother was an immigrant to this country. She came to the United States 95 years ago as a 2-year-old infant, brought by her mother with her brother and sister. They came from Lithuania and landed in Baltimore, MD. They found their way across the United States by train to St. Louis and then by wagon across the Mississippi River on the old Eades Bridge to go to East St. Louis, IL, to join with other Lithuanian immigrants, immigrants who worked in the packinghouses, in the steel mills, in some of the hardest jobs you could find.

Our family's story is a story that has been repeated millions of times over. I am sure my mother never would have dreamed in those early times when she was struggling with her family to make an immigrant home that her son would one day represent the great State of Illinois. But that is the story of America. And it is a story we should honor.

When I consider this debate and everything that has come to it—and I understand there are serious differences of opinion—I know this great Nation cannot absorb every person who wants to come and live here. We are trying to find a reasonable way to deal with that yearning and spirit which drives so many people to our borders. I think we have a good bill. It is not perfect by any means, but it is a good bill, with enforcement at the borders, enforcement in the workplace, and a fair process for people to earn their way, over a long period of time, facing many obstacles, to legal status in America.

We would never have had that bill before the Senate were it not for the bipartisan leadership in the Senate. I especially commend Senator TED KENNEDY on our side of the aisle. What a warhorse. Whenever there is a battle in the Senate, you will find TED KENNEDY in the midst of it, bringing his special spirit, his special determination, as he has to this bill. His great ally in this cause has been Senator JOHN MCCAIN of Arizona of the opposite political faith but joining with him in this effort to come up with a good bill. And so many others whom I could go through the list and name, including Senator SPECTER, who led this effort in the Senate; Senator LEAHY—without his help, we never would have brought this bill out of the Senate Judiciary Committee; the four Republicans, Senators who stood up in the Senate Judiciary Committee and said they would join the Democrats, did make this a bipartisan effort. When I look at those people and what they brought to this debate, I see the best of the Senate.

It is rare—rare—that we come together, as we will see this afternoon, to face one of the most complicated and controversial issues in America and to do it in a bipartisan fashion, knowing full well that many people think our efforts are futile, that it will fall on deaf ears when we go over to conference with the House of Representatives.

I do not have that negative feeling. I really believe our friends in the House of Representatives can also rise to the occasion and can understand this special moment in history that should not be lost.

Within the pages of this bill is a special provision I have worked on for years, first with Senator ORRIN HATCH of Utah, and then with Senator CHUCK HAGEL of Nebraska. It is known as the DREAM Act. The DREAM Act is a provision which says if you were a child who came to the United States at least 5 years ago, and you graduate from

high school and you are prepared to do one of two things—serve in the U.S. military or go on to work toward a college degree—we will give you a chance, a chance to become an American citizen over a long period.

We call it the DREAM Act because that is what it is. I have seen these young men and women in the city of Chicago and across the United States. They did not select the United States as a home. They were brought here by their parents. Many of them—most of them—are undocumented, but they still believe in their hearts they are Americans and can make this a better nation. The DREAM Act, which is included in this bill, will give them that chance.

When I go to visit Cristo Rey High School in the city of Chicago and see these wonderful young men and women who are defying the odds by completing their high school education, who want to go to college, who want to be our doctors and engineers and scientists and businesspeople and lawyers and elected officials, I think to myself: America cannot afford to waste this great talent and this great resource.

This bill gives them a chance. This bill gives them hope. This bill allows them to have dreams that will be fulfilled.

This is a great moment in the Senate. I look forward to this vote and the passage of this legislation. We will once again validate the American dream that, yes, we are a Nation of immigrants, and, yes, we are an accepting and welcoming Nation that understands the people who come to our shores and bring us diversity bring us strength, as Abraham Lincoln once said, to replenish the stream. These are the people who will build America's tomorrow. And these are the ones we serve with this legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, we are down to the final few minutes of what has been a long and complicated process but a very civil process—as some of my colleagues have referred to the process which has been a very civil process in the best spirit of the Senate.

The Senate is about to vote at last on an issue that bears directly on our core responsibility to make America a better place by making it a safer place, a more secure place. It is an issue that focuses on our identity as a nation, a bill that rises to the challenge of solving the problem of illegal immigration with a plan that not only secures our border but is a comprehensive plan that balances the needs of a growing economy with our heritage as a land of proud immigrants.

This debate has been conducted in the Senate's finest tradition. Since I announced last October that the Senate would act this year, the understanding of this issue has increased, and increased every day we have debated and discussed and voted. The

conversation both in Congress, in the Senate, and throughout the country has become more mature, more sophisticated, has led to a better understanding of the complexity of the challenge before us.

With this better understanding, the fact has become clearer and clearer: true border security combines energetic border enforcement with a realistic program, a practical program which identifies who is in America today, which lays out firm but fair requirements for those who want to be part of our great country.

Last fall, I had the opportunity, as so many have, to go to the border. I went then to the Rio Grande border in Texas. The night before Senator HUTCHISON and I arrived, 800 illegal immigrants were arrested there and were in detention the next morning, and over 200 pounds of marijuana was seized. But you had to wonder how many more people slipped through unseen. Another 400, 500, 1,000, another 1,500, just through that one sector? Who were they? Where were they headed? What were their intentions? What were their names? You had to wonder how many might die crossing the desert, not knowing exactly where they were going to end up. How many pounds of drugs, in addition to that 200 pounds of marijuana we witnessed, were making their way to the streets of Tennessee, New York, and California?

When I returned from Texas, I told the American people the Senate was going to act to make those borders more secure, to make our country safer, to stop that hemorrhaging coming across every night. As one of the major first orders of business in 2006, the Senate took up a strong border security bill. I specifically outlined when we took up that bill that over the ensuing days we would expand that bill to comprehensive immigration reform.

First, the Senate needed to demonstrate we were going to fortify our borders. Next, we would strengthen worksite enforcement where the magnet is attracting people across those borders. Third, we would establish a strong, accountable temporary worker program. Fourth, we would offer a plan for a path to citizenship that deals with the 12 million people, the diversity, that range of people, many who are fully assimilated into our society, some who over the last 6 months just snuck across the border.

Today, I am proud to say the Senate has acted. We will vote here in a few minutes. We have addressed what had seemingly started as an almost insurmountable problem. We are acting with a comprehensive solution. It is not a perfect bill—we all understand that—but a bill that will accurately reflect the will of this Senate, the 100 Members in this Senate.

We took a bill to the Judiciary Committee and in a short period of time, several months, generated a comprehensive bill. We took that bill to the Senate, amended it, and made it better. We have taken a bill that the

American people would have concluded was amnesty and, at least by my lights, we took the “amnesty” out while putting the “security” in.

This bill we are about to pass has a 6-year plan to dramatically increase the number of agents along that southern border, agents who are hired, who are trained, and who are deployed along that border to stop that hemorrhaging. With the amendment by Senator SESSIONS, we have agreed to build at least 370 miles of triple-layered fence, with another 500 miles of vehicle barriers at strategic locations. This adds to provisions in the underlying bill which give the Border Patrol the technology and tools, the sophistication of technology we know they need to make that border less porous. At last, we will have a long-term border control strategy that will work and give us results to make America safer, to make America more secure.

To further bolster border security, we approved an amendment to authorize the National Guard to temporarily support border patrol operations. Coupled with the almost \$2 billion in funds we approved in the Senate last month to beef up that border patrol and building on the money we appropriated last year—almost \$10 billion—to begin hiring new agents, Americans should know the Senate is serious about stopping that hemorrhaging coming across our borders.

We also moved to tackle another commonsense issue of national cohesion. The Senate voted in favor of an amendment by Senator INHOFE to require that English be declared the national language of the United States. Learning to speak English is a necessary step for each and every aspiring American to be successful and to join in the mainstream of American society.

If the American experiment is to succeed, built on common principles and civic duties, every person making their life in this country—all of them, all of us, native born and otherwise—needs to learn the language, needs to learn the culture, needs to learn the history that binds us as a people, as an American people.

As Americans, we are also bound by our right to vote in free and democratic elections. The bill before the Senate provides substantial reinforcement to our border and to the laws on the books. It also provides a means for some to earn citizenship, while enforcing necessary restrictions.

Illegal immigrants who have been in this country less than 2 years must return home. Those who have been here 2 to 5 years would be required to come out of the shadows and leave the country, with the opportunity to legally return as temporary workers. Those who have been here for 5 years or more will be eligible to begin an 11-year process to become citizens without uprooting and returning home. No one who comes here illegally will reap the benefit of citizenship without first demonstrating the commitment to earning, and no one who breaks our laws should gain advantage over those who heeded them.

As I mentioned, this product is not perfect. Much more refinement needs to be done. That can be done in conference. But without a doubt, the amendments and the debate of the past 2 weeks have strengthened the core of this bill. We have had at least 20 Republican amendments, at least 18 Democrat amendments. A number of other amendments will be part of the managers' package. I am grateful to my colleagues for insisting those amendments be heard.

I thank Senator SPECTER, who shepherded this bill through the Judiciary Committee, and Senators HAGEL, MARTINEZ, KYL, CORNYN, and MCCAIN for standing with us all to insist on a fair process that allowed for free and open debate in amendments so we could move forward. I thank Senator KENNEDY for helping all of us set a tone for a civil, healthy debate. And I thank Senator REID for, again, agreeing to open and full debate. We have been in full agreement as to how amendments would come forward; thus, both of us can be proud that, working together, the bill we will be voting on in a few minutes does accurately reflect the spirit and the will of this Senate.

I do hope, as others have suggested this morning, as we turn to other issues, the same spirit with which this debate has been conducted will continue and will characterize our future deliberations in the Senate.

I also thank President Bush for his strong leadership for a comprehensive solution to these challenging problems. From day one, he staked out a position that was tough, not particularly popular when we started but one that was tough as well as compassionate, a position that acknowledges the rich contributions of America's immigrants while recognizing the need, first and foremost, to buttress our borders, that respects our heritage as an immigrant nation while upholding the laws of the land.

Early on in this debate, I said:

This debate, and our effort, is about the American dream and the hope that this country holds for so many hard-working people.

But I should add, it is also an issue about what it means to be a nation. Every nation must keep its citizens safe and its borders secure. We should not have to choose between respect for our history and respect for our laws. With hard work and responsible debate, we can have both.

In this Senate, we have engaged in responsible debate over the last several months. We have worked hard. And with the bill before the Senate today, we do have both.

In closing, we are practical people. We are here to solve problems, applying the very best of my conservative principles, learning about the best ways to act, setting deadlines, seeking action, not giving up just because

things turn tough. That is the job of leadership in the Senate.

So much has been said and done in relation to this bill now, there is only one thing left for us to do: vote, up or down. I will be voting yes, and I hope my 99 colleagues will also vote their conscience but also in the affirmative. We are ready for the clerk to call the roll.

AMENDMENT NO. 4083

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Feingold amendment.

Who yields time?

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I urge my colleagues to support the Feingold-Brownback amendment. This amendment will ensure that asylum seekers, victims of trafficking, and other immigrants can have meaningful judicial review of removal orders.

The amendment would strike from the bill a provision that would have the absurd result of making it harder, in many cases, for an immigrant to get a temporary stay of removal pending appeal than to actually win on the merits of the case.

Let me state this in very clear terms. If this provision is not struck from the bill, people with meritorious asylum claims will be sent back to countries where they will face persecution or even death before a Federal court can even hear their arguments.

Current law allows courts to deny stays to people with frivolous claims who are using delay tactics. This provision, then, is a solution in search of a problem, and one that creates potentially devastating problems of its own. The Senate should strike it from the bill.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. FEINGOLD. Mr. President, I yield back all time.

The PRESIDING OFFICER. The question is on agreeing to the Feingold amendment No. 4083.

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

The PRESIDING OFFICER. The yeas and nays have been requested.

Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 45, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—52

Akaka	Durbin	McCain
Baucus	Feingold	Menendez
Bayh	Feinstein	Mikulski
Biden	Hagel	Murray
Bingaman	Harkin	Nelson (FL)
Boxer	Inouye	Obama
Brownback	Jeffords	Reed
Cantwell	Johnson	Reid
Carper	Kennedy	Sarbanes
Chafee	Kerry	Schumer
Clinton	Kohl	Snowe
Coleman	Landrieu	Specter
Collins	Lautenberg	Stabenow
Conrad	Leahy	Sununu
Dayton	Levin	Voinovich
DeWine	Lieberman	Wyden
Dodd	Lincoln	
Dorgan	Martinez	

NAYS—45

Alexander	DeMint	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nelson (NE)
Bennett	Ensign	Pryor
Bond	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Byrd	Hatch	Smith
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Cornyn	Kyl	Thune
Craig	Lott	Vitter
Crapo	Lugar	Warner

NOT VOTING—3

Enzi	Rockefeller	Salazar
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The amendment (No. 4083) was agreed to.

AMENDMENT NO. 4108

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on the Sessions amendment.

Mr. SPECTER. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

Who yields time?

Mr. KENNEDY. Mr. President, is the Sessions amendment pending?

The PRESIDING OFFICER. Yes.

Mr. KENNEDY. A minute for and a minute against, is that correct?

The PRESIDING OFFICER. Yes.

Mr. SESSIONS. Mr. President, the earned-income tax credit is a major transfer of wealth that we provide to American workers and their families. It is a plan that has grown extraordinarily. The people who are illegally here now are not entitled to that plan. Just because they are legalized, they should not have an automatic right to obtain those benefits. If they are here until citizenship, they are entitled to those benefits. As a matter of law, they would be entitled to that. It amounts to, I believe, \$40 billion over the next 10 years. It is something that we need to take seriously.

This \$40 billion will increase our debt by that much in the next 10 years. We are generous with health care and with education and to allow overwhelmingly these people to stay in our country. But they are not entitled to this welfare benefit.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, what we are saying is when immigrants are

going to be legal immigrants, they are going to pay income tax, and under the Sessions amendment they are going to say you are going to pay your taxes, but you are not going to be able to take the earned-income tax credit. Your two children may be American citizens, but under the Sessions amendment, you will not be able to take the earned-income tax credit because you have not effectively become a citizen, even though you are legally here and paying taxes.

This is a special punitive tax provision that will be unique only to those individuals. It is wrong and it is unfair, and this amendment should be defeated.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the amendment of the Senator from Alabama, Mr. SESSIONS.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 37, nays 60, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—37

Allard	DeMint	McConnell
Allen	Dole	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Frist	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Stabenow
Burr	Hatch	Sununu
Byrd	Hutchison	Talent
Chambliss	Inhofe	Thomas
Coburn	Isakson	Thune
Cochran	Johnson	Vitter
Cornyn	Kyl	
Craig	Lott	

NAYS—60

Akaka	Dorgan	McCain
Alexander	Durbin	Menendez
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murkowski
Biden	Graham	Murray
Bingaman	Hagel	Nelson (FL)
Boxer	Harkin	Obama
Brownback	Inouye	Pryor
Cantwell	Jeffords	Reed
Carper	Kennedy	Reid
Chafee	Kerry	Santorum
Clinton	Kohl	Sarbanes
Coleman	Landrieu	Schumer
Collins	Lautenberg	Smith
Conrad	Leahy	Snowe
Crapo	Levin	Specter
Dayton	Lieberman	Stevens
DeWine	Lincoln	Voinovich
Dodd	Lugar	Warner
Domenici	Martinez	Wyden

NOT VOTING—3

Enzi	Rockefeller	Salazar
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The amendment (No. 4108) was rejected.

Mr. KENNEDY. 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.

AMENDMENT NO. 4136

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes equally divided on the Ensign amendment. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, just so people understand the difference between this amendment and the amendment we just voted on, when folks were here illegally, a lot of them used fraudulent Social Security numbers, some of them had stolen IDs and ruined lives with these stolen identifications. This amendment says that even though that is a felony and this bill gives them amnesty for that felony, we think that is enough. We don't think one of these illegal immigrants should be able to come back, instead of paying back taxes and qualify for EITC and all the other tax credits available to them.

Uncle Sam is saying: We are going to give you citizenship, permanent residency, we are going to forgive the felony of using a Social Security number fraudulently, and also, now you qualify for tax credits, and so the American taxpayers are going to have to write you a check. I think that is wrong. That is why my colleagues should support this amendment.

The PRESIDING OFFICER. Who yields time in opposition?

Mr. KENNEDY. Mr. President, I yield 1 minute to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, my very good friend from Nevada is driven by what he thinks is fair and right. I have a totally different view. Here is what I think is fair and right: Punish people appropriate to the crime; don't take tax policy and connect it to criminal law.

What we are saying people right now is: pay your taxes, learn English, pay a fine. But let's not come up with tax policy for one group of people who are now legal and say: You have to pay, but you don't get what anybody else in the country legally gets, and we have made you legal.

What damage are we going to do? We are going to take the tax law and turn it upside down and focus on one group and kick them around after they do everything else that everybody else has to do. That is not the best of this country. That is not consistent with the punishment versus the crime. Why would we ask somebody to pay their taxes and then say: Thanks for the money; you don't get any other benefits in the Tax Code. Rapists, murderers, and thieves go to jail, but they get refunds if the Tax Code says so. The only people who are not going to get a refund after they pay the taxes is this group of people working hard? That is not right.

Mr. ENSIGN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 4136. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER (Mr. CORNYN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 47, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—50

Alexander	Craig	Murkowski
Allard	Crapo	Nelson (FL)
Allen	DeMint	Nelson (NE)
Baucus	Dole	Roberts
Bennett	Ensign	Santorum
Bond	Frist	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Byrd	Hatch	Stabenow
Carper	Hutchison	Stevens
Chambliss	Inhofe	Sununu
Coburn	Isakson	Talent
Cochran	Johnson	Thomas
Coleman	Kyl	Thune
Collins	Lott	Vitter
Cornyn	McConnell	

NAYS—47

Akaka	Feingold	Martinez
Bayh	Feinstein	McCain
Biden	Graham	Menendez
Bingaman	Harkin	Mikulski
Boxer	Inouye	Murray
Brownback	Jeffords	Obama
Cantwell	Kennedy	Pryor
Chafee	Kerry	Reed
Clinton	Kohl	Reid
Conrad	Landrieu	Sarbanes
Dayton	Lautenberg	Schumer
DeWine	Leahy	Specter
Dodd	Levin	Voinovich
Domenici	Lieberman	Warner
Dorgan	Lincoln	Wyden
Durbin	Lugar	

NOT VOTING—3

Enzi	Rockefeller	Salazar
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The amendment (No. 4136) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

The Senate is not in order.

AMENDMENT NO. 4188

Mr. SPECTER. Mr. President, I think we have finally cleared away all of the underbrush on the managers' package.

All I can say with the managers' package is it makes sausage look very good, but I think we are ready to proceed to a vote on a managers' package. People have asked for it.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I have an inquiry through the Chair. I thought it was possible, though I would not need 10 minutes, not having spoken on the bill, to ask for 10 minutes simply to point out a couple of things in the managers' package, including the fact that the U.S. Government would be required to consult with the Mexican Government before building any fences on the border.

Would I be able to ask for time to discuss anything in the managers' package at this time?

The PRESIDING OFFICER. The Senator could seek approval by unanimous consent.

Mr. KYL. I ask unanimous consent to speak for 1 minute.

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

Mr. KYL. Mr. President, I thank my colleagues for that courtesy.

The managers' amendment has been negotiated right up to the last second. It is hard to know exactly everything that is in it. I am told by staff that among the provisions is one which:

... requires Federal, State and local representatives in the United States to consult with their counterparts in Mexico concerning the construction of additional fencing and related border security structures along the U.S.-Mexico border before the commencement of any such construction to, No. 1, solicit the views of affected communities; No. 2, lessen tensions; and, No. 3, foster greater understanding and stronger cooperation on this and other important security issues of mutual concern.

I am all for consulting with the Mexican Government on matters of mutual concern, but I do not think it is necessary for us to put as a precondition into the building of any fencing structures the requirement that the U.S. Government consult with the Government of Mexico. For that reason among others, I will be voting against the managers' package.

I thank my colleagues.

Mr. DODD. Mr. President I listened to the remarks of Senator KYL concerning the inclusion in the managers' package of the holding of consultations at Federal, State and local levels on both sides of border before fence construction occurs. I think I know something about this issue because it was my amendment. Senator KYL suggested in his remarks that consultations would give the Mexican Government veto power over the building of a fence. Nothing could be farther from the truth, and nothing in that amendment would impede the ability of the U.S. Government to construct a fence in manner the of our choosing.

But it is simply common sense and common courtesy to consult those individuals in our own communities and

in affected communities on the other side of the border before constructing a fence. Why? Because the fence alone is not going to stop the flow of illegal immigration into the United States. It is going to take a cooperative effort between the United States and Mexico. My amendment seeks to foster the kind of cooperation that is vital if we are going to once and for all secure our borders.

I thank the President for the opportunity to clarify this matter.

Mr. SPECTER. Mr. President, I send the managers' package to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. KENNEDY, proposes an amendment numbered 4188.

(The amendment is printed in today's RECORD under "Text of Amendments.")

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

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 assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 41, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—56

Akaka	Durbin	McCain
Baucus	Feingold	Menendez
Bayh	Feinstein	Mikulski
Bennett	Graham	Murkowski
Biden	Hagel	Murray
Bingaman	Harkin	Nelson (FL)
Bond	Inouye	Obama
Brownback	Jeffords	Reed
Cantwell	Johnson	Reid
Carper	Kennedy	Sarbanes
Chafee	Kerry	Schumer
Clinton	Kohl	Snowe
Coleman	Landrieu	Specter
Collins	Lautenberg	Stabenow
Craig	Leahy	Stevens
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lugar	Wyden
Domenici	Martinez	

NAYS—41

Alexander	Dole	McConnell
Allard	Dorgan	Nelson (NE)
Allen	Ensign	Pryor
Bunning	Enzi	Roberts
Burns	Frist	Santorum
Burr	Grassley	Sessions
Byrd	Gregg	Shelby
Chambliss	Hatch	Smith
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Conrad	Isakson	Thomas
Cornyn	Kyl	Thune
Crapo	Lincoln	Vitter
DeMint	Lott	

ANSWERED "PRESENT"—1

Boxer

NOT VOTING—2

Rockefeller Salazar

The amendment (No. 4188) was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I thank the chairman, Senator SPECTER, and Senator LEAHY for accepting my amendment, which would help thousands of religious minorities who have come to the United States seeking relief from the persecution they faced in Iraq.

Currently in the United States, approximately 3,000 Christian Iraqis—about 2,000 of whom are in the metropolitan Detroit area—are in jeopardy of being deported. These are persons with no criminal record who came to the United States seeking asylum during the regime of Saddam Hussein. Due to the long delays in the immigration system, however, their cases were not heard before April 30, 2003, when the United States declared victory in Iraq. When these individuals finally had their day in court, the immigration judge denied their application because the government in Iraq that persecuted these individuals was no longer in power.

These Iraqi Christians had valid claims for asylum when they came here, they have been hard-working, law abiding residents over many years, and they have put down roots and raised families here. They should not be punished for the bureaucratic backlogs of the immigration judicial system.

My amendment would protect persecuted religious minorities who fled Saddam Hussein's oppressive government in Iraq and came to the United States with valid claims of asylum and for whom, despite the change in government regime, it is not safe to return to their homeland. The persecuted religious minorities are defined as someone who is or was a national or resident of Iraq, is a member of a religious minority in Iraq, and shares common characteristics with other minorities in Iraq who have been targets of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. My amendment would make these individuals eligible for legal permanent residency status and would supersede all previous judicial action on their cases.

I am pleased that we are able to provide relief to these individuals who deserve legal permanent residency on the merits of their cases but were unfairly denied it because of bureaucratic delays that were beyond their control.

The PRESIDING OFFICER. The Senator from Louisiana.

CHANGE OF VOTE

Ms. LANDRIEU. Mr. President, on rollcall vote No. 131, I voted yea. It was my intention to vote nay. Given this

does not change the outcome of the vote, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

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

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. SPECTER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall it pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 36, as follows:

The result was announced—yeas 62, nays 36, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—62

Akaka	Feingold	McCain
Baucus	Feinstein	McConnell
Bayh	Frist	Menendez
Bennett	Graham	Mikulski
Biden	Gregg	Murkowski
Bingaman	Hagel	Murray
Boxer	Harkin	Nelson (FL)
Brownback	Inouye	Obama
Cantwell	Jeffords	Pryor
Carper	Johnson	Reed
Chafee	Kennedy	Reid
Clinton	Kerry	Sarbanes
Coleman	Kohl	Schumer
Collins	Landrieu	Smith
Conrad	Lautenberg	Snowe
Craig	Leahy	Specter
Dayton	Levin	Stevens
DeWine	Lieberman	Stevens
Dodd	Lincoln	Voinovich
Domenici	Lugar	Warner
Durbin	Martinez	Wyden

NAYS—36

Alexander	Crapo	Lott
Allard	DeMint	Nelson (NE)
Allen	Dole	Roberts
Bond	Dorgan	Santorum
Bunning	Ensign	Sessions
Burns	Enzi	Shelby
Burr	Grassley	Stabenow
Byrd	Hatch	Sununu
Chambliss	Hutchison	Talent
Coburn	Inhofe	Thomas
Cochran	Isakson	Thune
Cornyn	Kyl	Vitter

NOT VOTING—2

Rockefeller Salazar

The bill (S. 2611), as amended, was passed.

(This bill will be printed in a future edition of the RECORD.)

Mr. LEVIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, our immigration system is broken and needs to

be repaired. This bill is a strong step in the right direction. We need to protect our borders and look out for American workers, and we also need a responsible way to meet the need for temporary workers, particularly in the agricultural area, where they represent about 70 percent of the U.S. agricultural workforce, with a path to earned citizenship for hard-working, law abiding temporary workers. This bill, the product of bipartisan compromise, takes a commonsense approach to all of these issues.

The comprehensive immigration reform bill before us today would strengthen security at our borders through increased border patrol and heavier fines for employers who violate the law. It would create a sustainable temporary worker program to help fill the lowest wage jobs. It would enforce labor protections for U.S. workers by ensuring that the temporary workers who are certified do not adversely impact them. And it would provide a path to earned citizenship that does not bump anybody who has applied through the legal channels and has been waiting. Undocumented immigrants who have been here for years, set down roots, worked hard, and paid their taxes would go to the end of the line and earn citizenship after perhaps as many as 10 to 15 years.

I am pleased that we were able to include additional protections for U.S. workers in the bill. I supported an amendment introduced by Senator OBAMA that strengthens labor protections for U.S. workers and bars employers from hiring guest workers in areas with a high unemployment rate. This and other amendments will help ensure that we have a well-balanced, and workable guest worker program. In addition to these amendments, I am also pleased that we have maintained the AgJOBS provision within the bill. This provision is a commonsense fix to major problems being faced by those who have the least access to resources: low wage agricultural workers from exploitation which would adversely impact American workers.

I was pleased that the Senate recognized the significant implementation challenges associated with the Western Hemisphere Travel Initiative and accepted an amendment that would extend its deadline. The WHTI requires anyone entering the United States via a U.S.-Canadian land border to have a passport or other acceptable alternative document by January 1, 2008. The amendment accepted by the Senate extends this deadline by 18 months to June 1, 2009.

My home State of Michigan, like other northern border States, enjoys a close economic and social relationship with Canada. The WHTI will play an important role in securing our borders, but it must be implemented in a reasonable, fair, and well thought out manner that minimizes negative impacts on trade, travel, and tourism. By voting to extend the deadline, we are

giving the Departments of State and Homeland Security additional time to study and correct the various implementation issues related to the WHTI.

I am also pleased that the immigration bill addresses another key border issue: the security problem that is posed by trash trucks entering this country. My amendment, which was accepted by the bill managers, would stop the importation of Canadian waste if the Department of Homeland Security can not show that the methodologies and technologies used to screen these trash trucks for the presence of chemical, nuclear, biological, and radiological weapons are as effective as those used to screen for such materials in other items of commerce entering the United States by commercial vehicle.

Finally, I want to thank the managers of this bill for accepting my amendment that would protect thousands of individuals who fled religious persecution in Iraq under Saddam Hussein. Due to delays in the immigration bureaucracy, many of these individuals have not yet had their day in court, and, of those who have, many have been denied asylum based on changed country conditions since the war. My amendment would make these individuals eligible for legal permanent residency if they would have received that status but for the bureaucratic delays.

The comprehensive immigration bill before us will make our borders more secure while creating a workable temporary worker program that protects U.S. jobs. I will support this bill and hope that the conference committee will return a final bill similar to it.

EXECUTIVE SESSION

NOMINATION OF BRETT M. KAVANAUGH TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Resumed

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 632, the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Arlen Specter, Saxby Chambliss, Larry Craig, Mel Martinez, Elizabeth Dole, Johnny Isakson, Pat Roberts, Ted Stevens, Craig Thomas, Thad Cochran, Chuck Grassley, Judd Gregg, Tom Coburn, Richard Shelby, Lindsey Graham, Orrin Hatch.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination

of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN, I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 67, nays 30, as follows:

[Rollcall Vote No. 158 Ex.]

YEAS—67

Alexander	Dole	McConnell
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (FL)
Bennett	Enzi	Nelson (NE)
Biden	Feinstein	Obama
Bond	Frist	Pryor
Brownback	Graham	Roberts
Bunning	Grassley	Santorum
Burns	Gregg	Sessions
Burr	Hagel	Shelby
Byrd	Hatch	Smith
Carper	Hutchison	Snowe
Chafee	Inhofe	Specter
Chambliss	Isakson	Stevens
Coburn	Kohl	Sununu
Cochran	Kyl	Talent
Coleman	Landrieu	Thomas
Collins	Lieberman	Thune
Cornyn	Lincoln	Vitter
Craig	Lott	Voivovich
Crapo	Lugar	Warner
DeMint	Martinez	
DeWine	McCain	

NAYS—30

Akaka	Durbin	Levin
Baucus	Feingold	Menendez
Bayh	Harkin	Mikulski
Bingaman	Inouye	Murray
Boxer	Jeffords	Reed
Cantwell	Johnson	Reid
Clinton	Kennedy	Sarbanes
Dayton	Kerry	Schumer
Dodd	Lautenberg	Stabenow
Dorgan	Leahy	Wyden

NOT VOTING—3

Conrad	Rockefeller	Salazar
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The PRESIDING OFFICER. On this vote, the ayes are 67, the nays are 30. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Parliamentary inquiry: Is it appropriate now to begin debate on the confirmation of Brett Kavanaugh?

The PRESIDING OFFICER. It is appropriate.

Mr. SPECTER. Mr. President, I support the confirmation of Brett Kavanaugh to the Court of Appeals for the District of Columbia because of his academic achievements, professional work, and potential to be an outstanding Federal judge.

Brett Kavanaugh was an honors graduate from Yale University, was a graduate of the Yale Law School, and a member of the Law Journal there. That is a strong indication of intellectual achievement. He then clerked for