

in place, to effectuate all of the pieces of this legislation.

That goes back to my point that we have to get this signed as soon as possible. If there are amendments to the legislation here on the Senate floor, then it will have to go to a conference committee. That is all right, assuming we can get the conference to act quickly and bring the bill back to both the House and the Senate. But it is important we do that so the President can sign the legislation.

I appeal to my colleagues who have something to say about this, especially those who believed we should not consider it without debate on the floor, to come to the Chamber and explain their views on it, and to offer any amendments if they have amendments, so we can deal with those amendments and get on with our business.

I know the majority leader was reluctant to do this before without an agreement to have a specific time limit on debate because he wanted to complete work on the energy bill by the end of this week—as do, I think, almost all of us. I am sure all of us would like to be done with the energy bill. But we are not going to be able to finish that if we cannot quickly finish the Enhanced Border Security and Visa Entry Reform Act.

Again, I call upon my colleagues to come over. Let's finish the job and get this done.

I would like to say one other thing because there is a little element of confusion about something in section 245(i). Section 245(i) is a provision of the immigration law that allows for people who want to gain permanent status in the United States under two specific provisions to do so. Its provisions had terminated with respect to a large group of people, maybe 200,000 or 300,000 people, who wanted to gain permanent residence but whose legal status in the United States terminated and therefore they would have had to go back to their country of origin and apply for that status.

What some people wanted to do, including the administration, was to extend the period of time that they could make their application and complete that process so they could be allowed to stay in the United States permanently. Some of this involves reunification of families, for example.

In an effort to support the administration and to accommodate the interests of those who wanted to do that, there was an agreement between Senator KENNEDY and myself—and others—about exactly how that should be done. We both committed ourselves to trying to achieve the ratification of the temporary extension of section 245(i). The House of Representatives actually passed a second version of the Enhanced Border Security and Visa Entry Reform Act, a version which included section 245(i) with it. They did that earlier this year. That bill is pending at the desk.

It has not been called up for consideration, but I want my colleagues to

know that is where this debate about section 245(i) comes into effect. There are some who believe section 245(i) represents a grant of amnesty to people. Perhaps one could argue that is, to a limited extent, true.

They are concerned that it represents the first step in a broader grant of amnesty. I hope that is not the case. But they have some concerns they have expressed about it. I hope we do not confuse the issue of 245(i) with H.R. 3525, the bill pending at the desk that we will be taking up again in just a few minutes—we can quickly pass H.R. 3525, get it to the President for signature, and then deal with section 245(i)—because I believe we need to deal with it, but I believe it will be easier to deal with outside the context of H.R. 3525.

Here is the reason I say that. I urge my colleagues who may be thinking about combining the two just to think about this for a moment. I believe we have an excellent chance of getting both of these things passed. But I think we may have an excellent chance of getting neither of them passed if they are combined. The reason is, I am concerned the Members of the House of Representatives may not be as inclined to vote for section 245(i) again as they were before. As a result, if we put this into conference and the question were put to the Members of the House, I am not certain they would vote for it. Nor am I sure that those who are opposed to section 245(i) in this body would permit it to come to a vote if it had to be brought back to this body as part of the Border Security and Visa Entry Reform Act.

So I urge my colleagues who support this to bear with us and understand we can have both of these things if we treat them separately. Those who oppose 245(i) will have a full opportunity to debate it and amend it if necessary, and to have a vote on it. But I hope that in an effort to kill section 245(i), they will not also be willing to kill H.R. 3525. I just tell my colleagues, if you try to combine 245(i) with H.R. 3525, you may be signing the death warrant for both, and I do not think that is the intent, of some people, anyway, who have talked about the possibility of filing an amendment relating to section 245(i) on H.R. 3525.

So I call on my colleagues to come to the floor and debate this legislation. If they have amendments, let's offer the amendments and try to dispose of them.

I see Senator KENNEDY is here, with whom I worked closely on this legislation. Frankly, we would not be where we are without all the work he has put into it. I am sure he will join me in asking those who have anything at all to say about it to come to the floor and say it so we can get on with it, take our vote, and then get back on the energy bill which obviously we want to conclude by the end of this week.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 3525, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 3526) to enhance the border security of the United States, and for other purposes.

The PRESIDING OFFICER. Who yields time?

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

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

Mr. KENNEDY. Mr. President, I spoke at some length on Friday, and I will only take a few moments now. If there are Members who desire to seek recognition to offer an amendment, I will yield the floor.

I just want to, as we come back to the discussion at the start of this week, once again underline the importance of the legislation; but, secondly, I want to mention the various groups that are in strong support of it.

Again, I am enormously grateful to my friend and colleague, Senator FEINSTEIN, who spends a great deal of time on immigration issues, as do Senators KYL and BROWBACK. I commend all of them for their wonderful work in helping develop this legislation. They all have spoken very effectively on this legislation and have made a very strong case for it.

I will mention again the various groups that are in strong support of the legislation. It is always a fair indication of the breadth of support.

First of all, we have the principal student organizations that deal with international education. This is extraordinarily important because one of the most complicated and difficult issues is trying to know, when educational visas are given, whether the student comes to the United States; and when they come and gain entrance, whether they actually attend the college, whether they attend the classes,

whether they graduate. They can have those visas for a long period of time, and it is very easy to lose complete track of them.

We have worked out a very effective and detailed way of making sure the Immigration Service is going to know the whereabouts of those students.

The Alliance for International Education and Culture Exchange says:

We have worked with your staffs as the legislation developed and had opportunities for input to help ensure the bill strikes the right balance between our strong national interests and increased security and continued openness and exchange of visitors, students and scholars from around the world. We believe this legislation accomplishes this goal.

The National Association for International Educators has a similar endorsement:

We have worked closely with your offices. While at the same time maintaining openness to international students and scholars, we also understand the national security issues.

That is enormously important. We are grateful for their strong support. The Chamber of Commerce has indicated its strong support for the legislation. The important reliance on biometrics, we had good hearings on how we can benefit from the various breakthroughs taking place in that area of science and research. We have worked very closely with the biometric industry, and the International Biometric Industry Association is strongly in support of the legislation.

Another group of supporters includes the broad group of organizations that understand immigration law. The American Immigration Lawyers Association, an organization which spends a great deal of time on immigration and immigration law, has been a strong supporter, as well as the various church groups, church world services, and civil rights groups. Supporters include the Leadership Conference on Civil Rights, the Council of La Raza, and the National Immigration Forum. So the basic overall groups we rely on that work on the settlement of refugees, work with immigrants and this settlement, work with various families, all reviewed these various provisions. They understand what we are attempting to do, and that is to maintain our historic role in terms of the reunification of families.

We have important national security issues as well in trying to work out that balance. These groups have been very supportive of what we have done, which is, again, reassuring.

Finally, the most important compelling letter from the Families of September 11. We had wonderful testimony from MaryEllen Salamone, who is director of the Families of September 11, in support of this legislation, very moving testimony. I commend those who have lost loved ones who are channeling their grief into useful and productive and constructive action, in this case, to try to make our country more secure in terms of the dangers of ter-

rorists. Her very strong testimony and the support of the Families of September 11th is enormously important.

I am sure there are ways that we could have done this more effectively. We have the National Border Patrol Council that is strongly supportive of the program as well.

We have tried to balance the various interests we have talked about: One, making sure we are going to collect and have the appropriate sharing of information about foreign terrorists—and we set up a very important and up-to-date technology to be able to get to do that—getting the intelligence about potential terrorists into the hands of the Nation's gatekeepers in real time; it creates the layers of security with multiple opportunities to stop someone intent on doing us harm; it eliminates opportunities for terrorists to hide behind fraudulent travel documents, which is so important; and it determines how our Government might best work with the Governments of Canada and Mexico to deter terrorists arriving in North America in the first place and to manage our land borders in ways that deter the dangerous passage of people and cargo while facilitating the lawful and orderly passage of commerce and people who benefit our country.

This is what we have attempted to do. As I say, we welcome the opportunity to consider the amendments or to go into greater discussion of the particular provisions as the afternoon goes on. We invite our colleagues who have amendments to offer them. We were ready on Friday last to consider them. We spent some time in the afternoon in the presentation. Those Members who had the opportunity to read through the record will understand both the substance of this legislation and the very broad and wide support. We are hopeful we can make progress through the course of the afternoon.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I see the Senator from West Virginia in the Chamber. I know he would like to speak. Any time he stands up, I will end my remarks and allow the Chair to recognize him.

I did want to add to the comments Senator KENNEDY has made. I am very pleased that Senators KENNEDY, BROWBACK, KYL, and I have joined in authorizing this legislation. I am very proud that more than 60 of our colleagues have joined in cosponsoring it. I had a chance on Friday, along with the other Senators, to describe the legislation. I would like to make a few comments now.

I sincerely believe, in the wake of September 11, this is the most impor-

tant bill this Senate can pass in terms of being able to begin to fix what is a very broken system and also to begin to change our priorities.

Our immigration policies have been in the past largely driven by our humanitarian and economic interests. That has changed today because we now realize that security of our borders is extraordinarily important and that our visa system, as a product of many errors and many instances in which it doesn't produce the dividends that it was expected to produce for a lot of reasons, needs changing.

Before September 11, just over 300 U.S. Border Patrol agents were assigned to the job of detecting and intercepting illegal border crossers along our vast 4,000-mile United States-Canadian border. Nine hundred State Department consular officers were assigned to conduct background checks and issue visas to 6 million foreign nationals seeking to enter the United States in a whole host of capacities—as students, tourists, temporary workers, and as temporary visitors.

The State Department's policy was that consular officers did not have to perform extensive background checks for students coming from such terrorist-supporting states as Syria or Sudan. Only an intermediate background check was required for Iranian students. More extensive checks were required for students from Iraq and Libya.

Frontline agencies, such as the INS, were chronically understaffed, used obsolete data management systems, and had substantial management problems. We all knew that. Today, the INS does not have a reliable tracking system to determine how many of our visitors legitimately enter the United States and how many leave the country after their visas expire.

It almost seems effortless, the way the terrorists got into this country. They didn't have to slip into the country as stowaways on sea vessels or sneak through the borders evading Federal authorities. Most, if not all, appeared to have come in with temporary visas, which are routinely granted to tourists, students, and other short-term visitors to the United States.

Clearly, our guard was down. September 11 clearly pointed out other shortcomings of the immigration and visa system. Just the sheer volume of travelers to our country each year illustrates the need for an efficiently run and technologically advanced immigration system. Most people don't really realize how many people come into our country, how little we know about them, and whether they leave when they are required to leave.

Each year, we have over 300 million border crossings of individuals from other countries. For the most part, these individuals are legitimate visitors to our country. We currently have no way of tracking all of them. We had 30.4 million nonimmigrants entering

the United States during one year, 1999. That is the most recent year for which INS has statistics. Now, 23 million of them entered as tourists on the visa waiver program—23 million from 28 different countries. No visas, little scrutiny, no knowledge where they go in the United States or whether they leave once their visas expire.

Another startling fact is that the INS estimates that over 100,000 blank passports have been stolen from government offices in participating countries in the visa waiver program in recent years. Now, why is that significant? Right now, countries that participate are not required to report information on missing passports. That will change under this bill. The number of passports reported stolen or lost by visa waiver countries is not always entered into the lookout database or entered in a timely manner. That, too, will change when this legislation is enacted.

Abuse of the visa waiver program poses threats to U.S. security and increases illegal immigration. These visas are often sold on the black market for as much as \$7,500 per visa. Passports from visa waiver countries are often the document of choice for terrorists.

Consider this: Ahmed Ressam, the Algerian convicted of plotting to blow up the Los Angeles International Airport in 1999, trafficked in a number of these false passports, at least one of which was linked to a theft from a townhall in Belgium, a visa waiver country. In addition, two members of an al-Qaida cell who assassinated the Northern Alliance leader Ahmed Shah Massoud just before September 11 traveled from Brussels to London to Karachi on stolen Belgian passports. Mr. Robert Reid—the shoe bomber—had a visa from the United Kingdom, another visa waiver country. These are some of the problems our bill seeks to stop in the visa waiver program.

Each year, more than a half million foreign nationals enter with student visas. Most recently, 660,000 foreign students entered in the fall of 2001. That is just last fall. Within the last 10 years, 16,000 have come from such terrorist-supporting States as Iran, Iraq, Sudan, Libya, and Syria.

The foreign student visa system is one of the most underregulated systems we have today. We have seen bribes, bureaucracy, and many problems with this system that leave it wide open to abuse by terrorists and other criminals. For example, in the early and mid 1990s, in my own State of California, in the San Diego area, 5 officials at 4 California colleges were convicted of taking bribes, providing counterfeit education documents, and fraudulently applying for more than 100 foreign student visas. These are university officials in that area who practiced fraud and said students were there when they were not, and they falsified grades. They were convicted for doing so.

However, it is unclear what steps the Immigration and Naturalization Service took to find and deport the foreign nationals involved in that scheme. It has been all too clear to those of us on the committee—Senators KENNEDY and BROWNBACK on Immigration, and Senator KYL and I on the Technology and Terrorist Subcommittee—that without an adequate tracking system, our country becomes a sieve, which is what it is today, creating ample opportunities for terrorists to enter and establish their operations without detection.

Consider these facts:

On May 28, 2001—last May—11 months ago, a criminal warrant was issued for Mohamed Atta's arrest in Broward County, FL, after he failed to appear in court for a traffic violation. On July 5, Atta was pulled over for speeding in Palm Beach, FL. At that time, the officer conducted a criminal search on Atta and found no outstanding warrants. After a trip to Spain, in which he allegedly met with coconspirators, Atta entered the United States for the final time—that was on July 19—despite past illegal incidents and the fact that his name was on a terrorist watch list. Instead, Atta was allowed into the United States as a nonimmigrant visitor after informing an INS officer that he had applied for a student visa.

One of the hijackers entered on a student visa and, though he never showed up for classes, was never reported because the INS stopped taking such reports in 1988. In other words, the INS doesn't even take reports if you don't show up for class when you come in on a foreign student visa.

In December 1999, Ahmed Ressam, otherwise known as the "millennium bomber," crossed the northern border into the United States with the intent to bomb Los Angeles International Airport. He presented a legitimate Canadian passport under the name Benny Norris, and a computer check of Norris showed no reason to detain him.

However, had they checked the name Ahmed Ressam, they would have found that Ressam had been arrested four times in Canada, had a pending warrant for deportation, and was being investigated by the French and Canadian Governments for being a terrorist. It was only because a U.S. Customs agent in Port Angeles, WA, voiced suspicions about his demeanor, causing Ressam to flee on foot, that Ressam was then arrested.

This man had an extensive criminal record and terrorist ties. Yet there was no data system to supply the Border Patrol with such crucial information.

Clearly, existing technologies that employed biometric identifiers could have been used to uncover Ressam's criminal background even though he had used a false name. We do this in our bill.

We must make it more difficult for foreign visitors to enter our country using false identification and take sufficient steps to combat and prevent identification and visa fraud.

The world might well be in an electronic age, but agencies such as the INS are still struggling with the paper-bound, bureaucratic system. Even in instances where technological leaps have been made, like the issuance of more than 4.5 million smart border crossing cards with biometric data, the technology is still not being used. In other words, we appropriated the money, 4.5 million of these technologically superior cards were issued, but INS never put in the laser reading systems.

According to the Department of Justice inspector general, INS has approximately 100 different automated information systems for each function of the agency. Few of these systems talk to each other. This is a stark reminder of how much work needs to be done to fix our broken immigration system.

By now, we are all aware of the various proposals that have emerged to restructure or dismantle the INS. While restructuring the INS is certainly an idea worth examining, the most immediate need today is for Congress to enact this legislation because restructuring it is not going to cure any of the problems we address in this legislation. Restructuring it does not provide additional inspectors, does not provide additional border patrol, does not provide for an interoperable database system, does not provide for visa waiver reform, does not provide for student visa oversight monitoring and tracking.

Our bill would do just these things. It attempts to transform agencies, such as the INS, from a paper-driven bureaucracy to one that better manages its mission by upgraded information management and sharing systems. It would enable the INS and consular offices to access vital intelligence information in real time before they issue visas and permit entry to the United States.

The INS has often argued that it did not have sufficient intelligence to prevent the terrorists from entering the United States. However, this failure of intelligence information does not explain why the INS would admit at least three terrorists who clearly were inadmissible at the time they were permitted to enter the country.

Last year, in the subcommittee that I chair and on which Senator KYL is the ranking member, we heard the testimony of Assistant Secretary of State for Consular Affairs, Mary Ryan. She testified that the consular staff felt terrible because they had granted visas to some of the 19 terrorists. At least three of the hijackers, including Mohamed Atta, the alleged ringleader, had stayed in the United States longer than authorized on their previous visits, making their visas invalid. Because the consular officers had no information on these individuals, they had no reason at the time to deny the visas.

If the INS had a system in place to identify visa overstayers, this might have enabled both the State Department to further investigate the backgrounds of the terrorists and the INS

inspectors to enforce the law by stopping these terrorists before they entered the country.

The INS should have had the information at their disposal. They either did not collect the information or they did not have the means for the INS inspectors on the front lines to access it.

In the wake of September 11, we know the chances of another terrorist attack are great, and we know it is unconscionable for our systems to allow entry of another terrorist into the United States. Unless we move on this bill, we cannot possibly remedy the faults in our system.

The legislation would require the Attorney General and the Secretary of State to issue machine readable, tamper resistant visas that use standardized biometric identifiers. This in itself is a big improvement. I myself have visited streets where in a half hour, one can buy a green card that certainly no layperson can tell the difference between a forged green card produced on this street in Los Angeles and a real green card.

Our bill allows INS inspectors at ports of entry to determine whether a visa properly identifies a visa holder and, thus, combats identity fraud.

Second, it will make visas harder to counterfeit.

Third, in conjunction with the installation of scanners at all ports of entries to read the visas, the INS can track the arrival and departure of aliens and more reliably identify aliens who overstay their visas.

The bill also provides that aliens from countries that sponsor international terrorism cannot receive nonimmigrant visas unless the Attorney General and the Secretary of State determine that they do not pose a threat to the safety of Americans or the national security of our country.

American embassies and consulates abroad will be required to establish terrorist lookout committees that meet monthly to ensure that the names of known terrorists are routinely and consistently brought to the attention of consular officials, our Nation's first line of defense.

The bill contains a number of other related provisions as well, but the gist of the legislation is this: Where we can provide law enforcement, more information about potentially dangerous foreign nationals, we do so. Where we can reform our border crossing system to weed out or deter terrorists and others who would do us harm, we do so. And where we can update technology to meet the demands of the modern war against terror, we do that as well.

As we prepare to modify our immigration system, we must be sure to enact changes that are realistic and feasible. We must also provide the necessary tools to implement them.

The legislation Senators KENNEDY, BROWNBACK, KYL, and I have crafted is an important and strong first step, but this is only the beginning of a long, difficult process.

As the Senator from West Virginia has pointed out, this legislation is only as good as the appropriations that follow forthwith. The annual cost is about \$1.1 billion. The 3-year cost is about \$3.5 billion. This leaves for this year about \$753 million that we will have to come up with to meet the cost of the first year. My understanding is that this money is available in unallocated dollars, but that, of course, has to be checked out, or we should take it from another source.

I guess the biggest assurance I can give, as a lowly appropriator, to the distinguished powerful chairman of the Appropriations Committee, is I will do my level best to lobby my colleagues to produce the money and, with whatever influence I probably do not have with the administration, try to influence the administration, as well, because I truly believe if we are to protect our people, this bill is a prerequisite. Unless we tighten up our loopholes and provide the funding for the technology we need, we are going to be nowhere. That is not to say that a terrorist still cannot come in, but it is to say we can make it very much more difficult for them.

So I conclude by saying that for some time many of us have been calling for reforms of our visa and border security system. We should have acted in 1993. We did not, and that left us vulnerable to the events of September 11. We are now in a position where we are reacting to this latest tragedy, and I think it is really important we act now to get this legislation on the books. Then it is up to each and every one of us to do everything we possibly can to see that it is funded promptly and, more importantly, for the Immigration Subcommittee to really exercise oversight over the INS and oversight over the Consular Affairs Division of the State Department to see that the necessary reforms do get put in place with respect to the visa system.

There is not much else I can say, but I ask unanimous consent to have printed in the RECORD, without going through it again because I went through it on Friday, a summary of the bill and also some critical statistics on the number of people coming into our country, and particularly the specific status under which they come and the loopholes that exist.

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

ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2001—FACTS AND STATISTICS
FOREIGN-BORN IN THE UNITED STATES

An estimated 30 million foreign-born residents lived in the U.S. in 2000.

Between 8 and 9 million are residents without legal status (i.e., either they entered illegally or overstayed a temporary visa)—40 percent of that total were visa overstays.

30.4 million nonimmigrants entered the U.S. during 1999 (the most recent year for which the INS has statistics)—23 million of them entered as tourists on the Visa Waiver Program (according to State Department statistics); 6 million of them were issued

nonimmigrant visas as students, tourists, temporary workers and other temporary visitors (only 900 State Department consular officers, mostly junior staff, are assigned to issue these visas and conduct background checks); and 660,000 were foreign students who had entered in Fall 2001.

Foreign students

660,000 foreign nationals held student visas in Fall 2001—more than 10,000 enrolled in flight training, trade schools and other non-academic programs; and more than 16,000 came from terrorist supporting countries.

Some 74,000 U.S. schools are allowed to admit foreign students, but checks of the schools on the current INS list found that some had closed; others had never existed.

Exactly six months after the 9/11 attacks, Huffman Aviation in Venice, Fla. received student visa approval forms for Mohamed Atta and Marwan Al-Shehhi. The men were aboard separate hijacked planes that struck the World Trade Center towers, killing thousands.

VISA WAIVER PROGRAM

23 million foreign visitors enter the U.S. each year under the Visa Waiver Program.

There are now 28 countries that are included in the program.

Earlier this year, Argentina was dropped from the program because of the country's political and economic instability.

Current Inspections System

Because visitors traveling to the U.S. under the Visa Waiver Program do not need a visa to enter the U.S., INS inspectors at U.S. ports of entry are the principle means of preventing unlawful entry of individuals from one of the 28 countries.

The primary tool available to INS inspectors during the inspections process is the Interagency Border Inspection System, known as IBIS, which allows INS inspectors to search a variety of databases containing records and lookouts of individuals of particular concern to the U.S.

A 1999 Office of the Inspector General (OIG) report found, however, that INS inspectors at U.S. ports of entry were not consistently checking passport numbers in IBIS.

INS officers also failed to enter lost or stolen passports from visa waiver countries into IBIS in a timely, accurate or consistent manner.

One senior INS official from Miami International Airport told the OIG that he was not even aware of any INS policy that required the entry of stolen passport numbers.

Anti-fraud enforcement

In a report released in February 2002, the U.S. General Accounting Office said that anti-fraud efforts at the INS are "fragmented and unfocused" and that enforcement of immigration laws remains a low priority.

The report found that the agency had only 40 jobs for detecting fraud in 4 million applications for immigrant benefits in the year 2000.

NATIONAL SECURITY

In FY 1999, the Department of State identified 291 potential nonimmigrants as inadmissible for security or terrorist concerns.

Of that number, 101 aliens seeking nonimmigrant visas were specifically identified for terrorists activities, but 35 of them were able to overcome the ineligibility.

47 foreign-born individuals—including the 19 September 11th hijackers—have been charged, pled guilty or convicted of involvement in terrorism on U.S. soil in the last 10 years.

41 of the 47 had been approved for a visa by an American consulate overseas at some point. Thus, how we process visas is critically important.

Only 3 entered without inspection (illegally) into the United States and thereby avoided contact with an immigration inspector at a point of entry.

This means that 44 of the 47 had contact with an inspector at a point of entry.

Of the 47 terrorists, at least 13 had overstayed a temporary visa at some point prior to taking part in terrorist activity, including September 11th ring leader Mohamed. Therefore, tracking visa overstays is therefore a very important part of terrorism prevention.

The terrorists who entered on student visas took part in the first attack on the Trade Center in 1993, the bombing of U.S. embassy in Africa in 1998, and the attacks of September 11th. Therefore, how we process and track foreign students is clearly important.

Some reports indicate that Khalid Al Midhar, who probably flew American Airlines flight 77 into the Pentagon, was identified as a terrorist by the CIA in January 2001, but his name was not given to the watch list until August 2001.

Unfortunately, he had already reentered the United States in July 2001. (I should point out that there is some debate about exactly when the CIA identified him as a terrorist).

But, if it really did take the CIA several months to put his name on the list as PBS' Frontline has reported, then that is a serious problem because we might have stopped him from entering the country had they shared this information sooner. This speaks to the issue of sharing information between federal agencies.

Absconders/detainees

In December 2001, INS estimated that 314,000 foreigners who have been ordered deported are at large.

More recent estimates released in March 2002 suggest that there may be at least 425,000 such absconders.

At least 6,000 were identified as coming from countries considered Al Qaeda strongholds.

BORDER AGENCY STATISTICS

There are 1,800 inspectors at ports of entry along U.S. borders.

The Customs Service has 3,000 inspectors to check the 1.4 million people and 360,000 vehicles that cross the border daily.

The 2,000-mile long Mexican border has 33 ports of entry and 9,106 Border Patrol agents to guard them all.

In October 2001, there were 334 Border Patrol agents assigned to the nearly 4,000-mile long northern border between the U.S. and Canada. This number of agents cannot cover all shifts 24 hours a day, 7 days a week, leaving some sections of the border open without coverage: The Office of the Inspector General found that one northern border sector had identified 65 smuggling corridors along the 300 miles of border within its area of responsibility; and INS intelligence officers have admitted that criminals along the northern border monitor the Border Patrol's radio communications and observe their actions and this enables them to know the times when the fewest agents are on duty and plan illegal actions accordingly.

350 million foreign nationals enter the U.S. each year.

The INS estimates that approximately 40 to 50 percent of the illegal alien population entered the U.S. legally as temporary visitors but simply failed to depart when required.

An estimated 40 percent of nonimmigrants overstayed their visas each year. 9 million illegal and 4 million visa overstayers.

THE ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT—SUMMARY

The legislation would:

Create interoperable data system.—The Administration would be required to develop and implement an interoperable law enforcement and intelligence data system by October 26, 2003 to provide the INS and State Department immediate access to relevant law enforcement and intelligence information.

The database would be accessible to foreign service officers issuing visas, federal agents determining the admissibility of aliens to the U.S. and law enforcement officers investigating and identifying aliens. The bill also prevents and protects against the misuse of such data.

Reform the visa waiver program.—The bill would require that each country participating in the visa waiver program issue tamper-resistant, machine-readable biometric passports to its nationals by 2003.

Require the reporting of lost or stolen passports.—The INS would be required to enter stolen or lost passport numbers into the interoperable data system within 72 hours of notification of loss or theft. And until that system is established, the INS must enter that information into an existing data system.

Require new requirements for passenger manifests.—All commercial flights and vessels coming to the U.S. from international ports must provide manifest information about each passenger, crew member, and other occupant prior to arrival. This section of the bill also eliminates the 45-minute deadline to clear arriving passengers.

Require new travel document measures.—Requires all visas, passports, and other travel documents to be fraud and tamper-resistant and contain biometric data by October 26, 2003.

Increase scrutiny of nonimmigrants from certain countries.—Prohibits the issuance of nonimmigrant visas to nationals from countries designated as state sponsors of international terrorism, unless the Secretary of State, after consulting with the Attorney General and the heads of other appropriate agencies, determines that the individuals pose no safety or security threat to the United States.

Institute student visa reforms.—Reforms the student visa process by:

Requiring the Attorney General to notify schools of the students entry and requiring the schools to notify the INS if a student has not reported to school within 30 days at the beginning of an academic term. The monitoring program does not, at present, collect such critical information as the student's date of entry, port of entry, date of school enrollment, date the student leaves school (e.g., graduates, quits), and the degree program or field of study. That and other significant information will not be collected.

Requiring the INS, in consultation with the State Department, to monitor the various steps involved in admitting foreign students and to notify the school of the student's entry. It also requires the school to notify INS if a student has not reported for school no more than 30 days after the deadline for registering for classes.

Requiring the INS to conduct a periodic review of educational institutions to monitor their compliance with record-keeping and reporting requirements. If an institution or programs fails to comply, their authorization to accept foreign students may be revoked.

While the INS is currently responsible for reviewing the compliance of educational institutions, such reviews have not been done consistently in recent years and some schools are not diligent in their record-keeping and reporting responsibilities.

Increase more border personnel. This section authorizes an increase of at least 1,000 INS inspectors, 1,000 INS investigative per-

sonnel, 1,000 Customs Service inspectors, and additional associated support staff in each of the fiscal years 2002 through 2006 to be employed at either the northern or southern border.

Increase INS pay and staffing. To help INS retain border patrol officers and inspectors, this section would raise their pay grade and permit the hiring of additional support staff.

Enhance Border patrol and customs training. To enhance our ability to identify and intercept would-be terrorists at the border, funds are provided for the regular training of border patrol, customs agents, and INS inspectors. In addition, funds are provided to agencies staffing U.S. ports of entry for continuing cross-training, to fully train inspectors in using lookout databases and monitoring passenger traffic patterns, and to expand the Carrier Consultant Program.

Improve State Department information and training. This section authorized funding to improve the security features of the Department of State's screening of visa applicants. Improved security features include: better coordination of international intelligence information; additional staff; and continuous training of consular officers.

WHY IS THIS IMMIGRATION REFORM NECESSARY?

Six months to the day after Mohamed Atta and Marwan Al-Shehhi flew planes into the World Trade Center, the Immigration and Naturalization Service notified a Venice, Florida, flight school that the two men had been approved for student visas.

One week later, the INS discovered that four Pakistani crewmen, four Pakistani nationals were reported missing after an INS inspector had inappropriately allowed them to take shore leave after a ship docked in the Norfolk, Virginia harbor.

On November 30, Senators Feinstein, Kennedy, Browback and Kyl introduced this bill to make sure these missteps do not happen again. This bill would help prevent terrorists from entering the United States by exploiting the loopholes in our immigration system.

The House passed this bill by voice vote on December 19, 2001 and again on March 12, 2002. It is now time for the Senate to act.

Facts to consider

As many as 3.5 to 4 million tourists, students and others legally entered the U.S. with visas, but later became illegal immigrants by remaining in the country long after their visas expire. The INS has acknowledged that the agency has no idea where they are.

Each year, we have 350 million border crossings. For the most part, these individuals are legitimate visitors to our country. We currently have no way of tracking all of these visitors.

47 foreign-born individuals—including the 19 September 11th hijackers—have been charged, plead guilty or convicted of involvement in terrorism on U.S. soil in the last 10 years.

41 of the 47 had been approved for a visa by an American consulate overseas at some point. Thus, how we process visas is critically important.

Other serious problems that have come to light

Foreign Students

Each year, more than 500,000 foreign nationals enter the U.S. with foreign student visas.

Within the last ten years, 16,000 came from such terrorist supporting states as Iran, Iraq, Sudan, Libya and Syria.

The foreign student visa program is severely under-regulated. During the 2000-2001 academic year, 3,761 foreign nationals from terrorist supporting countries were admitted into the U.S. on student visas.

Before September 11th, the State Department did not perform extensive background

checks for students coming from Syria or Sudan. An intermediate background check is required for Iranian students and more extensive checks are required for students from Iraq and Libya.

Last year, the National Commission on Terrorism warned, "Of the large number of foreign students who come to this country to study, there is a risk that a small minority may exploit their student status to support terrorist activity."

The problem is that the INS has no idea whether the students are registered at the schools that sponsored them or how many are in the United States today with expired visas.

Nor can the INS provide information on the number or the type of institutions who are eligible to accept foreign students into their academic programs. This type of information is essential to INS and the Congress' ability to exercise effective oversight over the visa program.

Foreign Student Visa Fraud

In the early 1990s for example, five officials at four California colleges, were convicted of taking bribes, providing counterfeit education documents and fraudulently applying for more than 100 foreign student visas.

When asked what steps the INS took to ensure that the college would comply with the terms of the program in the future, INS staff said no steps were taken. When asked about the fate of the 100 foreign nationals who fraudulently obtained foreign student visas, the INS had no idea.

Visa Waiver

The Visa Waiver Program was designed to enable citizens from 29 participating countries to travel to the U.S. without having to first obtain visas for entry. Earlier this year, Argentina was dropped from the program, so now there are 28 participating countries.

An estimated 23 million visitors enter the U.S. under this program. This program has been subject to abuse and has, at times, facilitated illegal entry because it eliminates the need for visitors to obtain U.S. visas and allows them to avoid the pre-screening that consular officers normally perform on visa applicants.

As a result, checks by INS inspectors at U.S. ports of entry become the chief and sometimes only means of preventing illegal entry; INS inspectors have, on average, less than one minute to check and decide on each visitor.

The INS has also estimated that over 100,000 blank passports have been stolen from government offices in participating countries in recent years.

Abuse of the Visa Waiver program poses threats to U.S. national security and increases illegal immigration. For example, one of the co-conspirators in the World Trade Center bombing of 1993 deliberately chose to use a fraudulent Swedish passport to attempt entry into the U.S. because of Sweden's participation in the visa waiver program.

Information Sharing Among Federal Agencies

In a Judiciary Subcommittee hearing I held in September, Mary Ryan, the Assistant Secretary of State for Consular Affairs, said that the lack of information sharing is a "colossal intelligence failure" and that the State Department "had no information on the terrorists from law enforcement."

Right now, our government agencies use different systems, with different information and different formats, and they often refuse to share that information with other agencies within our government. This clearly, in view of September 11th, is no longer acceptable.

I am amazed that a person can apply for a visa and there is no mechanism by which the FBI or CIA can enter a code into the system to raise a red flag on individuals known to have links to terrorist groups and pose a national threat.

In the Wake of September 11th, it is hard for me to fathom how a terrorist might be permitted to enter the U.S. because our government agencies aren't sharing information.

I am also concerned about the current structure of information technology. An assessment made of the INS management and investment of information technology by the Department of Justice Inspector General revealed the INS cannot ensure that the money it spends each year on information technology will be able to support the service and enforcement functions of the agency.

Nor is the agency's information adequately protected from unauthorized access or service disruption. Moreover, the INS currently uses too many different data bases, many of which do not communicate with each other.

All these problems point to the dramatic need for change.

WHAT THE "ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT" DOES

This bill protects our nation's openness to newcomers while at the same time adds some prudent steps to our immigration policy to ensure that Americans are safe at home.

The bill's major provisions would:

Require the administration to create a computerized database system giving INS and the State Department, which issues visas, immediate access to law enforcement and intelligence service information. One of the 19 hijackers, Khalid Almidhar, may have appeared on a CIA watch list—well before he entered the country—that information was not shared with the INS.

Require U.S. universities and other educational institutions to notify the INS if a foreign student has not reported to school within 30 days of the start of the academic term. Two of the 19 hijackers came to the United States on student visas yet never showed up for class.

Tighten reporting requirements for the 500,000 people admitted annually on student visas.

Force airlines and shipping companies to provide passenger and crew manifests for every flight and ship originating at international ports before they arrive in the United States.

Require the 28 countries taking part in the Visa Waiver Program, which permits certain of their citizens to travel here for up to 90 days without first obtaining visas, to issue tamper-resistant biometric passports by 2003.

Prohibit the issuance of visas to nationals from countries designated as state sponsors of international terrorism unless they are carefully vetted and determined to pose no security threat to the United States. Such countries currently include Iraq, Iran, Syria, Libya, Cuba, North Korea and Sudan.

Even if we pass this legislation, it is still possible for a terrorist to sneak into this country and inflict serious harm. But, if we pass this important legislation, we can at least reduce substantially the probability that terrorists such as those who came here prior to September 11th will ever be able to launch that type of attack again.

Mr. BYRD. Will the Senator yield?

Mrs. FEINSTEIN. I certainly will yield to the Senator from West Virginia.

Mr. BYRD. That is an important question. It is one of the questions I wanted to raise. Where is the money? Is the President asking for the money

in his budget? Did he ask for it in his supplemental request? Where is the money? Is his administration going to support the appropriations for this legislation?

This is one of the areas that I had difficulty with last December when I was importuned by the many Senators on both sides of the aisle to give unanimous consent that we take this bill up without any debate, without any amendments, and pass it.

One of the questions I wanted to ask was, What about the funding?

Mrs. FEINSTEIN. May I respond, as best I can?

Mr. BYRD. If the Senator would allow me to finish my question.

Mrs. FEINSTEIN. All right.

Mr. BYRD. I thank the Senator for yielding.

So it is one thing to advocate the passage of an authorization bill, and I very much want to support this legislation. I am not against this legislation, and I will vote for it, depending upon what it looks like when we get ready to pass it. But as an appropriator, as the chairman of the Appropriations Committee in the Senate, I think I need to ask about the funding. What assurances do we have that this money is going to be forthcoming? Is it budgeted? Is the administration supporting the bill? Is the administration going to support the monies for it? Are all the Senators who are advocating this legislation going to support the request for appropriations? Now if the Senator would answer.

Mrs. FEINSTEIN. I will take a crack at it, if I may.

Mr. BYRD. All right.

Mrs. FEINSTEIN. It is my understanding, certainly Senator KYL, Senator BROWNBACK, and I, along with the Republicans with whom the Senator was concerned at our subcommittee meeting, will support the appropriation. It is my understanding that roughly \$743 million of this amount is covered in the administration's fiscal year 2003 budget request. Therefore, the amount not covered is \$440 million.

It is also my understanding the administration has allocated all but \$327 million of the \$10 billion that was previously allocated for homeland security in last year's emergency supplemental. I, for one, would certainly support my chairman on the Appropriations Committee to take whatever is required from the unspecified \$10 billion additional fund in the defense budget that was put in by the President. I think as part of defense, homeland defense is the most vital part of it, and this certainly provides for that.

So I hope that is at least a partial answer to the Senator's question.

Mr. BYRD. The distinguished Senator is certainly trying. She is making the effort, but there are many other Senators who have ideas with respect to that \$10 billion. People on the Armed Services Committee certainly have ideas as to the \$10 billion, and the appropriators, including Senator

INOUE and Senator STEVENS, who are the chairman and ranking member of the Appropriations Subcommittee on Defense, have ideas. So there are all kinds of ideas around as to funding.

The Senator has mentioned some figures. I would like to be shown that the Senator is correct in her figures. I have some serious questions about funding of this bill, and they need to be answered. This is one reason I thought we ought to have a little debate about it.

I thank the Senator for yielding.

Mrs. FEINSTEIN. I thank the chairman of the Appropriations Committee, the distinguished Senator from West Virginia, for his inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, again I compliment the distinguished Senator from California. Her heart is in the right place. She is trying to do the right thing, and I admire her for all of those things. Money is a problem, even for the best of things.

Recognizing the need for improved border security, I included nearly \$1.1 billion for border security in my \$15 billion homeland defense amendment last November. Within that total, I included over \$725 million that the President did not request for the Immigration and Naturalization Service. That amendment to the Defense bill was defeated in the Senate when we could not get the 60 votes required to meet a 60-vote point of order.

I tried again on the Defense supplemental appropriations bill that the Senate considered in December. I included \$335 million above the President's request for the INS for improvements in border security, particularly along the northern border. Once again, the funding was rejected when a 60-vote point of order was raised and we could not get the 60 votes.

Finally, in the conference on the Defense supplemental appropriations bill, we provided \$150 million more than the President's request.

Now, as the border security bill pending before us proves, there continues to be a need for significant infusion of resources to staff, to train and to equip the Immigration and Naturalization Service to do its job on our Nation's borders. Sadly, in the \$28.6 billion supplemental that the President requested just a few days ago, on March 21, he includes only \$35 million for the INS.

I ask the question—perhaps it is a rhetorical question—how much is required of the INS in this bill? How much money does the INS need to meet the requirements of this bill? The President requested a \$28.6 billion supplemental just a few days ago, on March 21, and he included only \$35 million for the INS. Where is the money coming from to meet the requirements that will be placed on the INS by this bill?

I am not being critical of the bill. I want to know the answer. I want the bill to work. That is why I said I wasn't going to agree to the unanimous consent request last December to take up

the bill and pass it in the bat of an eye, without any debate, without any questions asked.

I am here today. I want to improve this bill. I want to vote for it, but what are the answers to these questions? How much money is being appropriated to the INS if it is to meet the requirements of the pending bill? How much is it going to cost the INS? The President requested, again, \$28.6 billion in a supplemental, not yet a month ago, March 21; it will be 1 month ago this coming Sunday. He asked for \$28.6 billion, but he included only \$35 million for the INS.

The request is particularly weak for providing the resources to construct border facilities and to equip border personnel and to provide the technology and the computer system necessary for the INS to effectively work with other Federal agencies.

I ask that question. If one of the authors to the pending bill can answer that question, I would like to know.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from Massachusetts.

Mr. KENNEDY. Madam President, Senator BYRD asked an important question about the payment for these measures. As I understand, following what my friend and colleague from California, Senator FEINSTEIN, has made available, I am happy to reference to the chairman of the Appropriations Committee, but he obviously has this information. It has designated \$5 billion; that is what the INS budget is, \$5 billion. In that is the entry exit, which is basically what we are talking about, \$380 million; computer infrastructure is the downpayment, \$83 million; the land border inspectors, \$34 million; air/sea inspectors, \$51 million; border construction, \$145 million; Retention, \$743 million. This is not all of what we would like to have in this authorization. Quite frankly, I think this is a higher priority than other measures, both of which will be in our Defense authorization bill, as well as in the supplemental. We will have, hopefully, the opportunity to make that case. I will stand shoulder to shoulder with the Senator from California, Senator BROWBACK, and Senator KYL to make that presentation to this body and to the appropriators in order to fund this measure.

I agree, we do not want to misrepresent to the American people that we are doing something on student visas, that we are doing something in terms of requiring our intelligence agencies to give information to the INS to try to stop terrorists, or that we have backup systems so we know whether the students are going to their colleges or staying in the colleges. All that is included in here.

I think we have a strong case. As in many different areas of public policy, we are not able to get all the things we would like, but this is a very compelling justification for all of the provisions we have included in this bill, why

we have such a broad support from so many of the different groups and individuals who understand the importance and significance of this proposal.

It has been very worthwhile, as the Senator from West Virginia has pointed out, that with the authorization of this legislation it does not mean all resources are going to be there. Within the President's budget, there is a downpayment for the startup of these proposals and we will have the opportunity as these appropriations try to give this the high priority it deserves.

Quite frankly, I think if we are looking over what the nature of the threat is, we know it obviously is military, and that is costing more than \$1.5 billion a month. More importantly, it has cost a number of American lives. We know that. We know it is intelligence. We know the very substantial amount runs into the billions and billions of dollars in terms of intelligence, particularly in human intelligence. We know we need additional resources to pursue and track down money laundering. That is costly. Perhaps we are not spending enough in that area.

The good Senator has raised the importance of making sure we will have adequate capability in areas of bioterrorism. I think that is as high a threat as any of the others. Still, as he has pointed out on other occasions, he brought the administration to a more robust investment in bioterrorism, which I still don't think is adequate to construct and begin the early detection and containment as well as the stockpiling of various medicines but we have made an important downpayment.

For me, and I think for others, this area in terms of doing something about the easy access into this country falls right into similar priorities. For this Nation, if we haven't got it today, we ought to have it tomorrow. The American people will certainly support, out of a \$2 trillion budget, \$1 billion additional for our national security. That is what we are committed to. Of course, we would obviously welcome the Senator from West Virginia, but I don't think the American people can understand with the case that has been made in a bipartisan way, a compelling way, in terms of where the threat is to our borders, this is a matter of key national security. It could be as important as shortening the length of time of an aircraft carrier battle division off the Indian Ocean for a couple of months.

This is national security and important. We ought to be able to make the case. I hope we will be able to fund it. We don't have all the answers or all the resources clearly today. We are strongly committed to making sure this is going to be funded and going to be put into effect. I believe we will be very careful in overseeing and making sure it is effective. But as the good Senator has pointed out, we haven't got the resources on this today. This is an authorization. We have remaining time before we get into the appropriation.

This has a high national priority in terms of our national security. As we move down the process, we welcome the chairman's help in making sure the protections that will be guaranteed by this legislation for our people will be achieved.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, there is no difference, when it comes to stating the compelling need for what the bill seeks to do—there is no difference between the Senator from Massachusetts and myself. We stood toe to toe last year. So did the distinguished Senator from California, who is now presiding, Mrs. FEINSTEIN. We stood toe to toe with each other. When I tried to add \$15 billion—half was for New York—in the stimulus bill for homeland defense, we were together. I am with you today. We were together then. But a point of order was raised on the other side of the aisle against that money. It was the 60-vote point of order. We could not find the 60 votes.

Then, when the Defense appropriations bill was called up at the end of the year—again, there was \$7.5 billion for homeland defense in that bill, \$7.5 billion—a point of order again was raised on the other side of the aisle. It was a 60-vote point of order. We did not have the 60 votes on this side of the aisle.

So there is no question about the compelling need for these additional items to protect the borders of this country. But what I am saying today is the President of the United States—we saw it in the papers, I believe it was today or yesterday—threatened to veto any appropriations bill that went beyond what he was requesting. That may not be the exact phrasing, but we are already threatened with a veto.

So where is this money coming from? I am only saying we make a mistake when we pass legislation here that leaves the American people under the impression we have done something to surmount the problem, that we pass legislation to deal with border security that will adequately deal with the problem, will provide the technology, will provide the additional personnel, will provide the money so people can sleep on their pillows after this bill passes and it is signed into law, if it is signed into law, comfortable in the thought that the Congress has taken care of the matter quite adequately; we have passed legislation to do it.

But where is the money? It is one thing to talk about belling the cat, but who is going to bell the cat? That is an old fable.

Saying these things, I do not level criticism at the authors of this bill. As I said, I intend to vote for it, depending on what it looks like when it comes up for passage. But I raise these legitimate questions. I do not believe anybody in this Chamber can answer them. How much is this bill going to cost? How much is it going to cost? How much more is going to be put on the shoulders of the INS?

We make a serious mistake, when we pass legislation to deal with an obvious and compelling problem, when we pass legislation that purports to deal with that problem but does not deal with it or is not enforceable. I question whether or not some of the deadlines in this bill can be met.

Let me read for the Senate what Alexander Hamilton says in the *Federalist* No. 25, just a single paragraph. Here is what Hamilton says in the *Federalist* No. 25, and I think we should keep this in mind every day when we pass legislation. I think it is very apropos to the legislation we are going to pass here. We are going to pass it, I have no doubt about that. Here is what Hamilton said:

Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know—

They know—

that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breasts of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.

That is Alexander Hamilton. That is not ROBERT BYRD. Let me read it again:

Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know—

In other words, the wise politicians know—

because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breasts of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.

So Hamilton is saying that wise politicians ought to be very cautious about fettering the Government with restrictions that cannot be observed. And that is why I am saying about this bill: Can these deadlines be met? Is the technology available now in order to meet them? Is the technology available so that those deadlines can be met? Is the money going to be there? Is the money going to be there for the personnel, for the technology, to meet those deadlines?

Hamilton says that if we pass these requirements and they are not met, then this is a breach of the law, although it may be dictated by necessity—as we readily admit that the necessity is there, to do what this bill does. He speaks to that sacred reverence which ought to be maintained in the breasts of rulers towards the constitution of a country. And he says one breach will lead to other breaches. One breach will be a precedent for other breaches, where the same plea, of necessity, may not even exist.

So I consider it to be a pretty serious matter that when we pass a bill of this kind, we are going to pass a law that can be observed and will be observed, the requirements will be met, the

equipment is there, the technology is there, the money is there, and so we can rest assured that whatever the bill purports to require will be done. That is the basis of my concern.

The President's supplemental request for the INS is related to hiring more agents for airports and seaports. Senator HOLLINGS believes we gave them enough money in December for this because they cannot hire people fast enough with the money they have. As I understand it, Senator HOLLINGS believes that where we are short is in INS construction of building facilities to house the staff they are hiring. Therefore, we are seeking more INS construction in the supplemental.

I will be glad to have anyone answer the questions I have asked, if they wish to do so. In the meantime, I will proceed with my statement.

Over the last ten years, a vigorous campaign has been waged in behalf of immigration. The economic benefits of immigration have been touted by businesses, the news media, and politicians. Those who have questioned the benefits of immigration were immediately labeled as being "uninformed" or "outside of the mainstream." The Congress quietly passed legislation, without adequate debate or amendments, to roll back deadlines and weaken mandates for our border defense agencies. As a result, immigrants—illegal and legal—have flowed into this country at a rate of over 1 million immigrants per year.

The attacks that occurred on September 11 brought that campaign to a screeching halt as the American people were made acutely aware of just how porous our border defenses had become. Each of the 19 hijackers was granted visas by a U.S. consulate abroad. Three of the September 11 hijackers had overstayed their visas and were living in the U.S. illegally at the time of the attacks. Seven of the 19 hijackers obtained fraudulent ID cards with the help of illegal aliens.

The American people must have wondered how the terrorists that perpetrated the September 11 attacks could so easily have slipped across our borders and seamlessly blended into society. With all the governmental requirements placed on law-abiding families simply to own a dog or to build a tool shed in the backyard, it seems outrageous that foreign terrorists could be leasing apartments, opening bank accounts, attending school, and invisibly maneuvering through the system while plotting their dastardly schemes.

The American people are clear in what they now ask from the Congress and the Administration—tougher border security and immigration laws, more resources dedicated to our border defenses, and a more vigilant Immigration and Naturalization Service. What they have received so far is enough to make anyone wonder if Washington ever hears the concerns of the people back home.

I devoted a large amount of my time last fall to providing additional border

security funds. As some have already indicated, I crafted a \$15 billion homeland defense package as part of the economic stimulus bill the Senate considered last November. That homeland defense package provided \$1.1 billion for border security initiatives.

Under a presidential veto threat, those funds were removed from the economic stimulus package by a partisan vote on a budgetary point of order. Many of the Senators who will support this authorization bill voted against those actual additional border security funds last fall.

After the \$15 billion homeland defense package was removed from the stimulus bill, I offered a \$7.5 billion homeland defense package. Of that amount, \$591 million was devoted to border security initiatives.

Once again, under the threat of a presidential veto, those funds were removed, this time from the Fiscal Year 2002 Defense Appropriations bill, by a partisan vote on a budgetary point of order requiring 60 votes to overcome. And once again, many of the Senators who will support this authorization bill voted against border security funds last fall.

Had those funds been approved, that money would be in the pipeline right now for hiring and training hundred of additional Border Patrol agents. The Administration, instead, chose to wait, and then asked the Congress for those same border security funds that it threatened to veto just two months earlier. As a result, even if, by the October 1 deadline, those funds are appropriated by the Congress, those funds will not be released until early next year—at the earliest. The Administration effectively delayed hundreds of millions of dollars in border security funds for at least one full year.

As for a more vigilant Immigration and Naturalization Service, the American people must have been shocked—I know that the President said he was shocked—to learn that, six months to the day after the September 11 attacks, the INS was still processing paperwork for two of the terrorists who piloted the planes into the World Trade Center towers.

They were dead, and internationally recognized as the September 11 terrorists. Yet, the INS was still processing the paperwork for them to attend a flight school in Florida.

In March, the American people learned that the INS mistakenly granted special waivers to four Pakistani sailors who were aboard a Russian ship in Norfolk, VA. When the ship sailed for Savannah, GA, 2 days later, the four Pakistani crewmen were missing. An INS inspector entered an improper birth date for one of the four missing Pakistanis. If the birth date had been entered correctly, INS would have found that the man had committed an immigration violation in Chicago several years ago, and, therefore, was not eligible for a visa.

To make matters worse, in the midst of a debate on border security, there

are efforts underway to add to this legislation, at the request of the President, an amnesty provision for hundreds of thousands of illegal aliens, including many who have not undergone any background or security check.

The American people have good reason to raise an eyebrow when they hear the Congress and the administration tell them that they are working to tighten our border security.

If we are to restore the trust of the American people in our efforts to secure our nation's borders, we need to have a serious debate about our border defenses and what we can actually do to repair them.

That is part of the reason I objected to passing this bill by unanimous consent without any debate or amendments. I understand there are some amendments that have been agreed upon already which will be in the managers' amendment at the end of the debate when we vote on the bill. There are some amendments that have already been agreed upon apparently by the managers. So the American people, by virtue of at least some debate, can have at least some idea of what is in the bill and whether or not it would be successful in tightening our borders.

We do not know how much money this is going to cost. We do not know how the money will be made available. In a supplemental? By virtue of Presidential request in a budget? The President did not request anything in his supplemental request.

We have tight restrictions on moneys that are appropriated here. They have to come within 302(a) allocations. They have to come within 302(b) allocations. Anything over and above has to be labeled an emergency, and the President has threatened to veto appropriations that are labeled as emergencies unless he or his administration requests that that be done.

So we are in a straitjacket when it comes to appropriations. I know there are Senators who are going to be looking at me, wanting moneys to be appropriated for this bill.

So really proponents of this measure have no way of judging whether they will have the necessary support for the appropriations that will be needed later this year to implement many of the provisions of the bill. How can taxpayers, who ultimately will be responsible for footing the cost of the bill, be expected to support the long-term financial commitment this bill requires if we do not know now, when we are debating the bill, where the money is coming from?

I do not know how enthusiastic or whether the administration will be enthusiastic at all about this bill. I do not know how enthusiastic they will be, if at all. And yet the administration tells us we need to have an amnesty provision. Not in this bill. Fortunately, the distinguished Senator from Massachusetts, Mr. KENNEDY, and others, are not advocating that in this bill.

But that 245(i) amnesty bill, that is something that is clearly opposed, I believe, by a majority of the American people. Yet the administration says, on the one hand, how careful we have to be, how cautious we must be, how much on our guard we must be. The administration has issued how many alerts? Four already? Three or four already. He says, on the one hand, be alert. On the other hand, he says, let's let the illegals in. Let's let them stay. Those who have violated U.S. law, let them stay. What about those people who have stood in line, who have followed the procedures by which they can be entitled, eventually, to become residents and citizens? How do they feel when as to a group of thousands or hundreds of thousands of others who violate the laws, who make the short-cuts, they see the administration advocating that those who made the short-cuts, those who violated the laws, be given amnesty? Why abide by the laws if you can violate them and achieve your goal even much quicker by violating them? What is the inducement for following the laws?

Now let's take the visa waiver program, for instance. Under this program, roughly 23 million foreign nationals from 28 countries enter the United States as temporary visitors without obtaining a visa from a U.S. consulate abroad. By eliminating the visa requirement, aliens are permitted to bypass the State Department background check—the first step by which foreign visitors are screened for admissibility when seeking to enter the United States.

Proponents of the program are quick to point out that only low-risk countries, mostly Western European, may participate in this program. The Immigration and Naturalization Service has reported that hundreds of thousands of passports from these countries have been stolen—stolen—in recent years. So when you couple these thefts with the fact that, according to the Justice Department's Inspector General, the Immigration and Naturalization Service has roughly a minute to complete an inspection, it is likely that a terrorist with a fraudulent passport will try to slip into the country. That is exactly what happened in 1992, when one of the conspirators in the 1993 World Trade Center bombing tried to get into the country through the visa waiver program with a fake Swedish passport. He was caught, and a search of his luggage revealed bomb-making instructions.

The pending bill addresses this problem, in part, by requiring stolen passport numbers to be entered into a new interoperable database system. But, as I understand it, such a system is years away from being completed. In the meantime, the State Department and the INS are not able to share information on foreign nationals who enter the country under this program. Well, if it is important enough for the INS and the State Department to share information on visa waiver participants, I

suggest the visa waiver program will remain a serious hole in our border defenses until that interoperable database system is fully implemented.

And that is just one problem that Senators will find if they take the time to read through this bill, as I have.

Consider section 402, which deals with passenger manifests.

Section 402 of this bill requires commercial air and sea vessels arriving and departing from the United States to provide an appropriate immigration officer with a manifest of who the passengers are who are on board. In subsection (g), Senators will note that the penalty for not providing these manifests is a \$300 fine—I suppose some people carry that much money around as lunch money—a \$300 fine for each person not mentioned, or incorrectly identified, in the manifest.

This penalty, I suggest, is wholly inadequate. What is more, there is nothing in this bill to prevent a passenger from providing false information to the air or sea carriers. This provision, therefore, just eats around the edges of a significant shortfall in our border defenses. A \$300 fine is not much when compared with the safety and security of the Nation. But, of much greater concern is the question of the ability of anyone who must take information from passengers and fill out the manifest to determine the reliability of the information they have been given by the passenger. It is a joke to assume that someone with bad intentions would give accurate information to an employee of the airlines, for example. That is not a criticism of airline or sea carrier employees.

It is, however, a fine example of how many provisions in the bill which on paper sound good but in reality provide only a false sense of increased security.

The same can be said about the October 26, 2003, deadline. That deadline appears five times in different locations throughout the bill. For example, section 303: Not later than October 26, 2003, the Attorney General shall install at all ports of entry in the United States equipment and software to allow biometric comparison of all U.S. visa and travel documents. That sounds wonderful. I don't know why they picked October 26—why it shouldn't have been October 1 or November 1. Why October 26? Five times that date is used: October 26, 2003.

I don't think that is a realistic deadline. Perhaps someone can convince me otherwise. Let me say it again. Not later than October 26, 2003, the Attorney General shall—not may, shall—install at all—not just a few, not just certain ones, all—ports of entry in the United States equipment and software to allow biometric comparison of all U.S. visa and travel documents.

I wonder if that deadline, October 26, 2003, is realistic. We have 62 ports of entry which are closed 8 hours a day with only an orange cone in front. We are years away from being able to provide the sophisticated equipment for

checking biometric identifiers at all ports of entry.

Under the regular appropriations process, Congress cannot even get that funding out to the agencies before October 1, 2002, at best. Assuming all 13 bills are completed on time by the end of the fiscal year, it could still take months before funds are released to the agencies for this purpose. I think it is unwise to set deadlines such as that one—so strict—when it is highly questionable as to whether or not those deadlines can be met.

As far as I can tell, that deadline is based solely on the fact that the USA PATRIOT Act was signed into law on that same day, October 26, in 2001. If that is the case, that is certainly no reason to use a deadline. Senators should be aware that these deadlines appear wholly unrealistic, especially the one I have just mentioned.

I appreciate the notion that without deadlines, it is difficult to press the agencies to act expeditiously. But when such deadlines come and go and the promised action has not been taken by the Federal Government, then Hamilton's admonition is called into focus: The public becomes rightfully disillusioned with the ability of the Government to do what it promises to do. We should put greater stock in the trust and confidence of the American people. Without their continued support of this measure, we lose the political will to act in the Congress, and we will lose consensus elsewhere throughout the Government; that consensus rapidly dissipates.

The same could be said about the penalties included in this bill for the more than 15,000 universities, colleges, and vocational schools across the country that accept foreign students. There are more than 500,000 foreign students in the United States who are benefiting from the goodwill of this country and from our investment in education. Many of these are nuclear engineering scholars. Many of them are biochemistry students. Many of them are pilot trainees who have access to dangerous technology, training, and information.

This bill takes some good steps toward setting up a national monitoring system to verify the enrollment status of these students. However, universities are going to have to play a role in helping the Government to verify that these foreign nationals are actually showing up for class. It has been noted that one of the September 11 hijackers entered the United States on a student visa, dropped out of classes, and remained here illegally thereafter. But unless this Congress places some tough penalties on universities to comply with the tougher reporting requirements contained in this bill, these universities are unlikely to take seriously the necessity to comply with these new responsibilities.

The legislation gives the INS and the Secretary of State too much discretion in determining whether or not these

educational institutions should be penalized.

Let me read from the bill:

EFFECT OF FAILURE TO COMPLY.—Failure of an institution or other entity to comply with the recordkeeping and reporting requirements to receive non-immigrant students or exchange visitor program participants under section 101(a)(15) (F), (M), or (J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F), (M), or (J)), or section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), may, at the election of the Commissioner of Immigration and Naturalization or the Secretary of State, result in the termination, suspension, or limitation of the institution's approval to receive such students or the termination of the other entity's designation to sponsor exchange visitor program participants, as the case may be.

Now, why do we say "may"? We are talking about the failure of an institution or other entity to comply with the recordkeeping and reporting requirements to receive nonimmigrant students or exchange visitor program participants—that failure, as a result of that failure. So if there is a failure to comply with the recordkeeping and reporting requirements, it may—"may" it says—at the election of the Commissioner of Immigration and Naturalization or the Secretary of State, may result in the termination, suspension, or limitation of the institution's approval to receive such students.

Why shouldn't we say "shall" if an institution is going to be that lax and fail to report? We are talking about people's lives here. It should be "shall" the election of the Commissioner of Immigration and Naturalization, or the Secretary of State "shall" result in the termination—that is the end, cut it off—suspension, or limitation of the institution's approval to receive such students or the termination of the other entity's designation to sponsor exchange visitor program participants, as the case may be.

Senators should understand and should insist that tougher penalties are necessary to ensure that this student monitoring system will work; and it won't work if we leave it full of holes like that.

Similarly, this Congress is quick to pass legislation that will place new requirements and deadlines on the INS without giving adequate consideration to whether that agency is equipped to meet those mandates—that agency of all agencies, sad to say.

The inevitable result is that the Congress will later have to weaken the mandate or roll back the deadline when the Immigration and Naturalization Service fails to comply with the law.

Considering the INS's most recent debacles and its apparent inability to handle its current workload, I suggest that before we task that agency with additional responsibilities and meeting additional deadlines, we should first try to reach some sort of a consensus about its organizational structure.

So far, the administration has proposed two seemingly contradictory INS restructuring plans. The first plan

would split the INS into an enforcement agency and a separate service agency, and the second would consolidate the INS and the Customs Service within the Justice Department.

The House Judiciary Committee marked up an INS restructuring plan about a week ago. As I understand it, Chairman KENNEDY and Senator BROWNBACK are crafting an INS restructuring plan as well. That is to say nothing of the fact that at least two bills have been introduced in the Congress that consolidate the Border Patrol functions of the INS within the Homeland Defense Department or Agency.

With all of these organizational plans circulating through the Halls of Congress, it makes little sense that we are considering a border security bill that places new mandates on the INS without addressing how that agency should be structured.

The organizational structure of our border defenses should be part of any border security debate. The single most important priority that should be driving these policies is the safety of the American people and the safety of the American institutions within their own borders.

Senators may argue that this issue of coordinating our border defenses was addressed when, in the aftermath of the September 11 attacks, the President created the Office of Homeland Security and appointed Governor Tom Ridge as its Director. The Federal Government needs a focal point to coordinate its homeland security efforts.

Yet the Office of Homeland Security and its Director, in lacking any statutory authority, will find it difficult, I am sure, to fulfill this mandate. Governor Ridge can request, but he cannot order, the agencies charged with protecting our homeland to implement his recommendations. He has to rely on the President to resolve agency disputes, which include opposition to the Director's initiatives.

We have already seen the warning signs of the potential troubles that lie ahead. In early February, Governor Ridge said that our borders remain "disturbingly vulnerable." He cited as a reason that there is no "direct line of accountability."

Last year, he proposed that the various border security agencies be consolidated under a single Federal entity, but the agencies charged with border security have resisted this consolidation. While the White House announced that this week the President would endorse such a consolidation, that effort has been delayed for months because of bureaucratic resistance. The authority of the Office of Homeland Security is only as strong as the President's involvement in that office.

Furthermore, under Executive Order 13228, which established the Office of Homeland Security, the President can unilaterally change the mandate of the OHS and, in large or small part, channel discretionary funds to the OHS

through the White House office budget. Well, the Nation's Homeland Security Director has declined to testify before the Congress to justify the Office of Homeland Security's expenditures or to justify his actions in safeguarding the Nation against terrorism. Not only does this make it difficult for the Congress to conduct oversight of appropriated funds and the oversight of our homeland and border security effort, but it limits the Congress from helping the Office of Homeland Security to fulfill its mandate.

Fixing the holes in our border defenses will require more than an interoperable database system and biometric identifiers. While they may prove worthwhile, these border security initiatives are no panacea for border defense.

We need to adopt a different mindset when it comes to the security of our borders. We need to consider the organizational structure of our border defenses. We need to acknowledge that we will have to be committing resources for a long time if we are to close the holes that were exposed by the September 11 attacks.

I thank Senators KENNEDY, BROWNBACK, FEINSTEIN, and KYL for authoring this legislation. But I am sure the bill's proponents understand that the legislation is not the final answer to what ails our border defenses. Meeting the deadlines and requirements set out in this bill will require their continued support for large amounts of funding. I don't know how we can assure that this funding is going to be there under the requirements and restraints under which the Appropriations Committee acts. Without those funds and without their continued support, the bill is just an empty promise.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Mr. BROWNBACK. I thank the Chair.

Mr. President, I rise to speak on the border security bill that is before us, and to also note, at the outset, the thousands of people who are gathering just outside the Capitol in a statement of support for Israel.

It is an important gathering, particularly because of where this Nation is at this point in time and the importance of where Israel is right now: The difficulties and confrontations they have had with suicide bombers, which we witnessed on our soil and which we have dealt with in our own land as well.

September 11 brings back very clear memories—vivid, difficult memories for many of us—when suicide bombers took planes in the United States and

attacked two buildings in New York, the Twin Towers, the Pentagon, and a fourth plane that was perhaps headed even for this building that went down in a field in Pennsylvania, thanks to the heroic efforts of people onboard.

Israel is trying to defend her land from suicide bombers and has been aggressively doing so. I know some people have questions about the tactics involved but not dealing with the issue.

I certainly would like to state my strong support for Israel, a strong ally of the United States and has been and continues to be a strong ally of the United States, a democracy in a different and difficult region of the world, one that has worked and stood side by side with the United States in our times of need, and we should stand with Israel as well.

I urge Israel to allow humanitarian groups in to make certain that people are cared for as much as possible; that civilian damage is limited as much as possible.

In their dealing with terrorists, I think they should deal and they have dealt clearly aggressively with terrorism. Terrorism must be renounced. Chairman Arafat must renounce terrorism on behalf of the Palestinian people and say: No more terrorism. That should be a minimum statement.

I hope Chairman Arafat will lead his people toward peace, but I have real doubt whether or not he wants to lead the Palestinian people toward peace. There was an incredible offer on the table from Prime Minister Barak—it was less than 2 years ago—and he walked away from that. I question whether or not he is willing to work toward peace. We need somebody within the Palestinian leadership who wants peace.

I want to address some of the comments being put forward on the border security bill by our distinguished colleague from West Virginia, Senator BYRD, who is an outstanding Member of the body. I want to address the specific concerns he brought forward on this legislation.

I believe we will pass the Enhanced Border Security and Visa Entry Reform Act of 2001. The House passed it last year. The President wants the bill. It is up to this body to act. I believe we will act, and I believe we will have a large vote.

I am hopeful we can do this within a minimum time period because there is so much other important pending business in front of this body. This is important legislation, but so is the energy bill that has been before the Senate; so is a bill I have to prevent human cloning, to stop human cloning. We need to get a budget through. We need to start through the appropriations process.

It is not as if there are not a lot of issues stacked up. This is one of the major issues. I think it is time for us to pass this bill. There was actually very little opposition to it in the House. I think most people are very

comfortable with the main provisions of this bill, and I am hopeful we can work through other provisions without much difficulty.

I will note some of the major provisions of this bill for my colleagues who are following this debate: Restrictions on nonimmigration visas for aliens coming from countries that sponsor terrorism; reform of the visa waiver program; requirement of passenger manifest information for commercial flights and vessels; repeal of the 45-minute time limit on INS inspections of arriving passengers.

That may cause inconvenience for some people. I want to note that, too, for my colleagues who are watching. The lines could be a bit longer, but we are talking about security in the United States, and it may be necessary for the time to be slightly longer to ensure people coming into our country mean us no harm.

In this bill, there is the enhanced foreign student monitoring program. Several of the people who terrorized us, bombed us on September 11 were students. We need to get that procedure under control and know where these students are and if they are going to reputable schools in the United States.

The magnitude of the problem we are dealing with is enormous. Immigration, the travel of people, non-U.S. citizens, in the United States is a key issue for our economy, it is a key issue for our culture, and it is a key issue for our society in the future. We are a land of immigrants. Outside of Native Americans, we all came here from somewhere else. This is a key part of who we are and who we will be in the future.

To give some scale of magnitude of the issue with which we are dealing, 2 years ago, there were nearly 330 million—330 million—legal crossings over our borders by non-U.S. citizens. That has nothing to do with illegal crossings. There were 330 million legal crossings by non-U.S. citizens over our borders. This is a huge bit of commerce. There is a great deal of interaction that takes place and is very important.

Out of that 330 million crossings universe, we are looking for a very small portion of those who want to do us harm. I talked on Friday about this being the equivalent of looking for a needle in a hay field—not a haystack, a hay field. We have to be intelligent about this and use the means at our disposal to find the people who are here trying to do us harm.

One of the key elements is to make sure we have information sharing between various agencies—between INS, the Department of State, CIA, DIA, FBI, and I would like to think, as well, foreign information from foreign intelligence agencies that can point out: These are the people we are watching.

If we are looking at 330 million people in a universe and are trying to hone this down to several hundred, we need a lot of information.

Currently, all this information is in stovepipes, it is stacked up, and there is not the cross-communication we need to have. That is one of the things that is required in this bill. It takes time to get computers talking to one another. It is sometimes difficult getting people to talk to one another. Computers have to be wired.

We can do that, and we need to do that. That is a key provision of a portion of this bill. We are trying to extend the perimeter of the United States to include both Canada and Mexico.

I was at the El Paso INS detention facility about a year ago, and in that detention facility were people from 59 different countries who had come in through Central America, South America, had taken land transportation up and through Mexico, and then crossed over into our borders. We need to have that perimeter extended.

Within this bill is a push to get that perimeter extended to include Canada and Mexico so we get more cooperation and help from them in dealing with our perimeter. That is important for us to be able to do.

Now there were some questions raised about how will these be paid for? Those are certainly legitimate questions. This is an authorization bill. Some of these are authorizing features, not appropriations features, but much of this is going to require resources. It is put forward by the Department of Justice that the first-year implementation of this bill would cost about \$1.186 billion. Of that, \$743 million is in the current Bush budget. That is already put forward in the budget. So we are quite a ways along the way already with what is built into the current Bush budget.

Plus, as I understand it, there are still some resources left from the \$40 billion supplemental that was put forward last year to deal with the crisis and the current situation. I am supportive and will be supportive of additional resources to make sure we do fully fund this at the \$1.186 billion level for this first year. Total implementation costs we have at \$3.13 billion over the full lifetime of the program. That is the universe of the numbers we are talking about. We are well on the way to funding this.

There has been concern raised about why was this not funded last year? There were people who put forward bills. The chairman of the Appropriations Committee put forward an additional \$15 billion supplemental saying, let us fund it now. The President at that time said: No, I want to try to digest the \$40 billion that has already been allocated and authorized before we step into another tranche of funds.

I thought that was a wise and prudent course. That is why I did not at that time support the additional \$15 billion; whereas now we have had some months to be able to think this through, to see where the gaps and the holes are. The President has built a portion of it into his budget, and we

have about another \$600 million that we are looking at to fully fund this program. That is what we are talking about. I think that is a prudent and wise approach for us. I thought it was at that time. We need time to be able to digest these sorts of changes and resources, and I think this is the right way for us to go.

We are not getting the cart ahead of the horse. We are doing the authorization, which we are to do before we do the appropriation. So we authorize for what we in the Congress think we should do, and then we appropriate to follow on with that. I am committed to seeking those resources to get this fully appropriated. I think it is important we do that. Frankly, I like that we are doing this one right because typically or frequently we will do it backwards and not get that done. I do believe that with the nature of this priority, the nature of border security, the importance of that for our future and the security of our people, this will be able to secure the adequate resources it needs throughout the competition within the appropriations process. We should be able to put these forward and meet the higher priorities for the security needs of the country. The lead requirement for us is to provide for the common defense and, to me, in this day and age, it is to provide protection against terrorists.

We are prosecuting our war overseas now. We are prosecuting it in Afghanistan. We have troops in Georgia. We are helping train troops in the former Soviet Union country of Georgia. We have troops in the Philippines as trainers to deal with terrorist groups. There may be troops in some other countries as we go to where the terrorists are to dig them out before they come this way, and then we enhance our border security so we can deal with the terrorists who try to get on our soil.

I think the prosecution of the war is going well at this point in time. It would be my hope, as one of the cosponsors of this legislation, that we could move this through. If people have amendments, we ask for them to bring the amendments forward so we can see if we can get them handled appropriately. I would hope we could do this without too many amendments so we could get this to the House and get it passed. The House has passed this bill twice. We need to get it passed.

I hope if people do have amendments that they want to bring they would bring them up now so we can deal with the legislation, deal with the amendments, and get the legislation passed and implemented into law because it has broad support throughout this body.

I may make comments at a later time on this legislation, but at this time I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

AMENDMENT NO. 3128

Mr. BYRD. Mr. President, I have an amendment which I will shortly send

to the desk, but let me say a few things in regard thereto first.

There is an urgent and pressing need for the United States to improve the enforcement of our laws that prohibit the importation of goods that are made using forced labor. Countries throughout the world are using forced, prison, or indentured labor to cut costs to the bone, increase the export of cheap goods, and drive American manufacturers under. We have to take stronger action to see that U.S. laws that prohibit this repugnant practice are enforced.

Since 1930, the United States has had a law on our books that prohibits the entry of prison-made goods and requires the U.S. Customs Service to seize goods destined for our markets that are made utilizing forced labor. There are common sense reasons for the Tariff Act of 1930. The importation of prison-made goods is not consistent with either the principles of free trade or human rights. American consumers should not unwittingly be supporting repression in other countries simply by shopping at the local mall.

Admittedly it is difficult to enforce laws prohibiting goods made using forced labor. Overall, U.S. Customs officials inspect less than 3 percent of all imports, and often those inspections are superficial. There are the problems of sheer volume of imports, the commercial requirements of rapid movement of goods, and other realities of today's commerce but we must endeavor to do a better job. With respect to forced labor-made goods, there are issues of fraudulent mis-labeling, lack of cooperation of foreign governments, and the existence of a sophisticated network of middlemen engaged in transshipment of goods destined for America. For instance, goods made in the vast forced labor manufacturing network in China may arrive in the U.S. from Nigeria. Such is the nature of global commerce today.

A number of countries make common use of forced labor—China is but one of them. One estimate places the number of forced labor facilities in China at an astounding 1,114, employing as many as 1.7 million people. Mr. President, that bears repeating. China, a country that exports nearly \$100 billion in merchandise to the United States, has up to 1.7 million forced laborers in 1,114 facilities. Some of these people were sentenced to prison time at hard labor for crimes that they actually committed.

Others are forced into prison labor camps without so much as a trial, because of political or religious beliefs, and are subject to torture and beatings. In China, if one visits a non-state-sanctioned church, for instance, such an "offender" could end up making lawn tractors, cordless drills, or soccer balls for U.S. markets.

The forced labor facility network is an integral part of the Chinese economy. But, there are no firm numbers on the quantity of forced labor-made goods that eventually find their way from China's extensive forced labor

network to our shores, shipped here directly or transshipped through other countries. It is anyone's guess as to how much of the \$100 billion in Chinese goods sold in the U.S. each year are made, wholly or in part, by forced labor. But there can be no doubt that with a forced labor population of at least 1.7 million, China is selling a considerable amount of prison-made goods to the United States which is the main purchaser of China's exports.

China is not the only country that produces and exports forced labor-made goods. The 2001 State Department Country Report on Human Rights Practices names Burma, Brazil, and Russia as having serious problems in this area even though it is clearly against our laws for such goods to cross our borders.

To tackle this problem, my amendment takes three actions. First, it requires all importers of goods into the U.S. to certify and the U.S. Customs Service to ensure, based upon verification of these certificates, that the goods being brought into our country have not been made with forced labor. Second, the amendment requires renegotiation of two of our agreements with China that deal with the inspection of forced labor facilities in China. Third, the amendment reauthorizes \$2 million for the Customs Service to provide additional personnel to monitor imports and enforce our anti-forced labor import laws.

Regarding the first section of my amendment, the requirement for certification of all goods coming into the U.S. to be "forced labor-free" is consistent with the practice and intent of other certifications that are required of importers. When agricultural goods are brought into the United States, importers must present certifications that the products have been appropriately inspected and have established origins and producers. The World Trade Organization has its own certification requirements for "green" products, to insure that imported items are made in an environmentally friendly manner. In fact, the WTO recognizes that certification requirements are a legitimate tool in combating deceptive trade practices, such as those engaged in by countries that try to pass off forced labor-made goods to unsuspecting consumers in other countries, by transshipment, mislabeling, or other methods.

As to the second section of my amendment, there is a need to strengthen our existing agreements with China to improve the ability of our Customs investigators to visit suspected forced labor facilities. Right now the site inspection and investigation process is beset by problems of interpretation differences and plain old stonewalling. For example, in one instance it took three and one half years for a U.S. requested inspection of a heavy duty machine factory to be carried out.

There are two agreements with China going back to 1992 and 1994 which gov-

ern our U.S. Customs agents' access to suspected forced labor sites. Those agreements are not working. The United States needs to conduct these necessary inspections and investigations in a timely manner. To effectively do so, we need to close the loopholes in the present inspection agreements.

Finally, the third section of my amendment authorizes \$2 million for Customs Service personnel to enforce our forced labor import laws. Customs already has 1,100 staff positions that are funded through the payment of fees. By authorizing an additional \$2 million for the enforcement of these laws, the Customs service will be able to hire and dedicate more personnel for the specific purpose of discouraging forced labor goods from penetrating U.S. markets.

The American consumer deserves to know what is on the shelves when they go shopping. Nobody can tell just by looking at clothes on a rack which ones were made by legitimate tradesmen and which ones might have been made in some foreign ramshackle prison. But it is clear that some countries utilize prison labor to gain a leg up in global markets. It is a sick and reprehensible practice. It hurts American business and fair-trading foreign businesses. It is an insult to our values. And it is against our law!

I urge my colleagues to vote to help put some teeth in U.S. laws that ban goods made with prison labor.

I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3128.

Mr. KENNEDY. 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 require that certification of compliance with section 307 of the Tariff Act of 1930 be provided with respect to all goods imported into the United States)

At the appropriate place, insert the following:

SEC. ____ . CERTIFICATION REGARDING FORCED LABOR.

(a) **SHORT TITLE.**—This section may be cited as the "Labor Certification Act of 2002".

(b) **CERTIFICATION REQUIRED.**—

(1) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, the Secretary of the Treasury shall require that any person importing goods into the United States provide a certificate to the United States Customs Service that the goods being imported comply with the provisions of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) and that no part of the goods were made with prison, forced, or indentured labor, or with labor performed in any type of involuntary situation.

(2) **DEFINITIONS.**—In this section:

(A) **GOODS.**—For purposes of this section, the term "goods" includes goods, wares, articles, and merchandise mined, produced, or

manufactured wholly or in part in any foreign country.

(B) INVOLUNTARY SITUATION.—The term “involuntary situation” includes any situation where work is performed on an involuntary basis, whether or not it is performed in a penal institution, a re-education through labor program, a pre-trial detention facility, or any similar situation.

(C) PRISON, FORCED, OR INDENTURED LABOR.—The term “prison, forced, or indentured labor” includes any labor performed for which the worker does not offer himself voluntarily.

(c) INSPECTION OF CERTAIN FACILITIES.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the President shall renegotiate and enter into a new agreement with the People's Republic of China, concerning inspection of facilities in the People's Republic of China suspected of using forced labor to make goods destined for export to the United States. The agreement shall supercede the 1992 Memorandum of Understanding and 1994 Statement of Cooperation, and shall provide that within 30 days of making a request to the Government of the People's Republic of China, United States officials be allowed to inspect all types of detention facilities in the People's Republic of China that are suspected of using forced labor to mine, produce, or manufacture goods destined for export to the United States, including prisons, correctional facilities, re-education facilities, and work camps. The agreement shall also provide for concurrent investigations and inspections if more than 1 facility or situation is involved.

(2) FORCED LABOR.—For purposes of this subsection, the term “forced labor” means convict or prison labor, forced labor, indentured labor, or labor performed in any type of involuntary situation.

(d) AUTHORIZATION OF CUSTOMS PERSONNEL.—Section 3701 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 is amended by striking “for fiscal year 1999” and inserting “for each of fiscal years 2002 and 2003”.

Mr. KENNEDY. Mr. President, it is now 4:25 on Monday. We were just handed this amendment that is 3½ pages long dealing with the certification regarding forced labor, directed, as I understand, primarily, purposely, towards China and the prison force indentured labor.

No one knows better than the Senator from West Virginia the vast opportunities for amending pieces of legislation. We try to respond to our colleagues by indicating what is currently being considered on the floor so they can make some judgment and informed decision on these amendments. We are not in the position of being able to do so since we were not afforded an opportunity to see the amendment until just a couple of minutes ago.

Mr. BYRD. Will the distinguished Senator yield?

Mr. KENNEDY. I am happy to yield.

Mr. BYRD. I apologize for the amendment not having been shown to the Senator. I was under the impression my staff had discussed this amendment with the Senator. I will be happy to either withdraw the amendment for the time being or ask that it be set aside so the Senator and his staff and others may have an opportunity to look at the amendment.

Mr. KENNEDY. I appreciate that.

Mr. BYRD. This was inadvertent on my part.

Mr. KENNEDY. I have had an opportunity to talk to two of my colleagues. I conferred with them a moment or two ago. They were not familiar with this amendment, either.

AMENDMENT NO. 3128 WITHDRAWN

Mr. BYRD. Mr. President, I will withdraw the amendment now. I again apologize to the Senator. This was an inadvertent oversight on my part. I certainly do not seek to take any unfair advantage of any Senator. I never have. I will withdraw the amendment now and will offer it later after it has been discussed with the distinguished Senator.

The PRESIDING OFFICER. Will the Senator from Massachusetts yield for that purpose?

Mr. KENNEDY. I yield for that purpose.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. BYRD. I thank the Senator.

Mr. REID. Mr. President, if I could ask a question of the Senator from Massachusetts, I am wondering if the Senator from Massachusetts will allow me, through the Chair, to ask the distinguished Senator, the President pro tempore of the Senate, does the Senator from West Virginia at this stage know how many more amendments he may offer?

The reason I am making inquiry is we would like to know this evening if we are going to have more amendments offered so we know what is going to take place tonight. We would like to finish the bill in a reasonable period of time because energy is waiting whenever we finish. Does the Senator from West Virginia have an idea how many more amendments he might wish to offer? From the Republican side, we don't have any of which I am aware.

Mr. BYRD. I cannot state the number of amendments I have. They are not a great number, I can say that. I am mainly interested in having a little debate on this bill, and mainly interested in getting some answers from the proponents as to the costs that are involved. I may support this bill. I have no reason to think I won't support it, if we can arrive at some conclusion as to how much the restrictions and requirements are going to cost.

We may pass a bill here that is, on the surface at least, a good bill. Certainly, there is a compelling need to do the things that this bill seeks to do. But as an appropriator, as the chairman of the Appropriations Committee—and not only that, I should think that all Senators would be interested in knowing how much this is going to cost and what assurances we have that we will have the money with which to pay it.

Also, I want to know whether the deadlines—and there are several deadlines in the bill—can be met. If we pass legislation that cannot be enforced because it has deadlines that are not enforceable, then the American people

are going to be disappointed—if we pass legislation raising their expectations and then those expectations are not met.

I do not say this with criticism of any particular Senator, but as one who appropriates money here, and as one who sought to get appropriations last December for these very purposes, and as one who saw that those two amendments that I offered—one on one bill and the second one on the final appropriations bill—saw those amendments knocked out by virtue of 60-vote points of order. Certainly the Senator from Massachusetts supported me in those.

I wonder, now, from where the money is going to come? I want to feel that the President is going to support this, support the requests for it, support the moneys for it, and that Senators who voted against my amendments last fall—that were for border security, that were for homeland security, that were to provide defenses against biological, chemical, and radiological weapons—are going to support it this time. I want to know from where the money is going to come, how much it is going to cost. That is all. I am ready to pass it tonight if somebody can show me those things. I do have two or three amendments that deal with the deadlines. I may have a somewhat more major amendment. I may not have.

Mr. REID. I say to the Senator from West Virginia, I have conferred with the manager of the bill, Senator KENNEDY. As I indicated, we have no amendments on the Republican side and none over here. The reason we are focusing on the Senator from West Virginia is we want to be able to get to energy as soon as possible. So I hope, either through a quorum call—maybe with time for Senator KENNEDY to explain to the Senator—I know I listened to Senator KENNEDY and Senator FEINSTEIN speak at some length on this legislation.

If there are other questions to be answered, certainly the Senator from West Virginia is entitled to have answers to those questions before we vote on this important bill. Whatever the two very experienced and distinguished Senators need to do to make sure the Senator from West Virginia has the information he needs, we should do that as quickly as possible.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, just to review very quickly, since we have been asked about this once again, for the costs. That \$1.2 billion 1-year, \$3.2 billion total cost of the implementation—the \$743 million is included in the President's 2003 budget. This includes \$380 million for entry-exit data systems; \$83 million for computer infrastructure; \$34 million for land inspectors; \$51 million for air and sea port inspectors; \$145 million for border construction; \$50 million for detention construction. There is \$444 million additional appropriations needed but the legislation raises the additional fees.

The bill raises machine-readable fees to \$65, generating approximately \$100 million in additional income.

We believe we can examine the fiscal year 2003 budget, which is, for INS, \$6 billion—\$6 billion: \$2 billion in terms of the fees and \$4 billion in terms of appropriations. That is the best we can do.

But I think we have a pretty good downpayment on what we would do. We are prepared, as my colleagues have all said, to make that commitment, to try to ensure, in the remaining debate, that we would be able to get the resources.

On the question of the border security amendments, we welcome the chance to talk with the Senator—or with any other Senator—and review the deadlines and the other damage provisions in the bill to tighten up the restrictions. They include the changes in the passenger manifest provision and student monitoring provisions. I think we ought to be able to reach the agreements.

But we have set some times and some dates. We are talking about, for example, in the biometric implementation, trying to make passports and other documents so they are not subject to fraud. We now have the biometric information, but decisions have to be made as to which one offers the best possibility. We have the technology, then, to develop the machines to put them at the border. That takes some time. If we are talking about a year from this October—if is not the right time, the correct time, we want it to be done as quick as possible.

But what we have included in here represents, at least the best judgment of the Homeland Security Office; the Biometric Institute; and the NIST, the National Institute of Standards and Trade, which is the technology arm of the Commerce Department that makes the judgments, for example, in the small business innovative research, about all the new kinds of technologies. If there is other information that would support a different timeframe, we are prepared to do this, but I think we have reached that date for the reasons I have explained.

I will mention, on the question of the students, how we monitor the students when they come in here, because I think it is very important to understand exactly what we are doing on this. First of all, when the students come in, the State Department receives the first electronic evidence of acceptance from an approved U.S. institution, prior to issuing a student visa. The State Department then must inform the INS that the visa has been approved. The INS must inform the approved institution that the student has been admitted into the country. Then the approved institution notifies the INS when the student has registered and enrolled; and if the student doesn't report for classes, the school must notify the INS not later than 30 days after the deadline for the registration for classes.

You can say that is complicated and difficult. It is. Unless you go to the new technology, it is impossible. But we have been assured, with the new technology, that kind of process is possible.

We have been informed by the universities that they believe it is workable. Maybe there is a different way of doing this. There are different timeframes for notification. But those are the ones we have worked out with the various groups and institutions that are most involved in this.

As I say, we are glad to go down the list of the timeframes. I know my colleagues and I are glad to go down the list to at least give the justification. We have not arrived at these particular dates in a uniform way. There was some difference in terms of the time—whether it can be done in 180 days, or whether it can be done in a shorter period of time. There was some difference on that. I think there was no difference on the desire for all of us to get it done in the quickest possible time and to do it in the quickest possible responsible time. That is uniform. If there can be a change or an alteration in the establishment of the number of days, we are glad to talk about it. There is no magic on the times we set, although they do represent the agreement with our colleagues, and also with the administration I believe that had some difference as well. Those are just some of the responses.

If I could have the attention of my colleague from West Virginia, if we could know what the other amendments are as we are coming into the evening on Monday, we would be able to sort of have a chance to fully evaluate them in order to be able to accept the ones that work consistent with our legislation; we could try to work those out. Then we would be glad to have a good discussion and debate on the floor. But, as the Senator indicated to us, he has several other amendments. He just withdrew one, which we didn't have. We have no idea what the other ones are, either. We are doing the best we can. We were here on Friday afternoon. We had a good hearing on Friday morning with the Senator.

But we are here and we are prepared to try to deal with those. We will have a chance to examine this one on forced labor in China, which we did not know was going to be an amendment. If the Senator has others that he is willing to share with us, perhaps we can move this process along to try to accommodate our other colleagues.

I was here over the weekend. I plan to be here. I know my colleagues were as well. We are just trying to indicate to our colleagues what our situation is. I yield the floor.

Mr. BYRD. Mr. President, in response to the distinguished Senator, this Senator is willing to share any of these amendments with the Senator. I have already shared with the Senator the amendment which I asked to withdraw. I was under the mistaken impression

that my staff had discussed this with his staff. I am not seeking to pull any tricks here. As was said in Julius Caesar, there are no tricks in pure and simple faith. I don't have any tricks. I am not seeking to pull any fast ones on the Senator. I would be glad to show any of my amendments to him. I have but a few amendments. It was an honest mistake, and I was quick to apologize for it when he mentioned it. I hope that settles that. There are no more like that. I would be happy to discuss with the Senator the amendments that I have. That pretty much settles it. I can't say that we can do these tonight. I don't think they can be done tonight.

Mr. KENNEDY. That is fine. We had the chance to look over this first one. If we could have the other ones, if the Senator wants to share those, we would welcome the opportunity to see them. But we have not received any others from the Senator.

Mr. BYRD. Mr. President, I spoke in my speech about the problems that I have. The amendments I have deal with those deadlines. There was one other amendment that I am not sure I am going to offer, but I do need to discuss it with him. It has to do with the Office of Homeland Security. But I am not sure I will offer it on this bill. I may offer it on an appropriations bill, or I may not offer it at all, depending on how the leader feels about it and how Senator LIEBERMAN feels about it. But it can be determined overnight as to whether or not I intend to offer that. The other amendments deal, as I recall, with visa waiver deadlines, student penalties, and so on. I discussed the amendment in my statement earlier. I would be happy to discuss these with the Senator, or through my staff. On tomorrow, we can probably deal with them, if we can't deal with them tonight.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, if it would be helpful to the Senator from West Virginia, I would be happy to address the deadline issue that he discussed. The Senator from West Virginia raises a good question with respect to those deadlines. Frankly, on two of the three, there is no good answer. The Senator is absolutely correct about that.

Mr. BYRD. I didn't understand the Senator.

Mr. KYL. I am sorry. It was my understanding that the Senator from West Virginia raised a question about three of the deadlines in the bill, and on two of the three there is no good answer. I will give the best answer I can.

On the first one, I think there is a good answer. That has to do with the so-called standards for biometrics. On that, there seems to be a pretty good consensus. That can be developed within the year timeframe that we have in the bill. The Biometric Foundation has provided that information to us.

But the Senator is absolutely correct about the readers—the machines—that

will have to read the passports or other documents that have this data embedded in them.

As to precisely how long it will take to get those online, there is not a good specific answer, nor is there an answer as to when we can have the interoperable system developed, which is one of the central features of the bill. That is the system that takes data from the FBI, the CIA, and others and makes it available to the consular offices that have to issue the visas.

In fact, I was just speaking with the FBI Director this afternoon about what we can do to make this happen as quickly as possible. As Senator KENNEDY said, everybody wants to make it happen as soon as possible. The question is how to do that. I will share with the Senator from West Virginia some of thinking that went into our putting in those dates. If the Senator has other ideas, we can certainly discuss them. I regret to say that there has been an attitude among some people at the INS that perhaps it has not been—to use the military phrase—as forward leading as some of us would like to see in terms of their willingness to tackle some of these problems. I am trying to say it nicely. There are a lot of people who work at INS who really work hard, and they are trying to do things on time. But I must say that there hasn't necessarily been the so-called can-do attitude that some of us would like to see. When we asked them can you do this, or could you do that, what you get back in response is that may take a long time. That is going to be really hard.

Naturally, we would like to see them take the bull by the horns and say, We will do our best to get that done as quickly as we can. That is the answer we are looking for. We don't necessarily get that.

Frankly, what went into some of our thinking in putting some of these deadlines in—they may be pretty tough deadlines to meet—was let us get those deadlines in there so the people at INS are going to have to work hard to try to meet the deadlines. They know that we mean business and we are trying to get this done as soon as we can. They may not be able to meet the interoperable system deadline or the readers deadline, both of which are October 26, 2003.

Mr. BYRD. Will the Senator yield?

Mr. KYL. Our thinking in putting those deadlines in was to try to give them something to shoot for so we could at least get them going to try to get it done as soon as possible.

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

Mr. KYL. Yes.

Mr. BYRD. Mr. President, what suggestion does the distinguished Senator have as to how we might deal with this problem that I referenced?

Mr. KYL. Mr. President, the Senator partially answered that question in previous comments he made. The first is to put a deadline in there that they

have to shoot for rather than just, in effect, saying, "well, whenever you can," because that will probably result in delay. Second, we have to fund the programs adequately. The Senator from West Virginia made the point at a hearing we had the other day—he made the point earlier, and he made the point again today, and the Senator from West Virginia is absolutely correct—that we have an obligation, as the Senate then, to fund this to the extent that will be necessary.

We think we have the elements of that built in here, but that will be the other half of what has to be done.

Mr. BYRD. Mr. President, if the Senator will yield further?

Mr. KYL. I certainly will continue to yield.

Mr. BYRD. Well, it has been said on the floor, more than once today, that the anticipated cost of the bill, as I understand it, would be about \$1.1 billion the first year and \$3—

Mr. KYL. About \$3.2 billion.

Mr. BYRD. That is \$3.2 billion for 3 years.

Mr. KYL. If I could, Mr. President, specifically, \$3.132 billion. But almost \$3.2 billion, yes.

Mr. BYRD. And it has also been said that the President asked for \$743 million, is that it? Is that the figure?

Mr. KYL. Yes, Mr. President, the Senator is exactly correct.

Mr. BYRD. Well, my problem is, if you multiply the \$743 million by 3, that is going to be roughly \$2.1 billion. And yet the figure that has been used on this floor for the third year is \$3.1 billion. So right there we are \$1 billion short.

So my question is, How do we bridge these gaps? How do we assure the Senate today that we will be able to appropriate that kind of money? And if we do not appropriate that money, these deadlines are not going to be met, I don't believe.

Mr. KYL. Mr. President, I am happy to yield to the Senator from Kansas.

Mr. BROWNBACK. If I could respond briefly on this, Senator KENNEDY and I have the subcommittee with the primary jurisdiction on this. As to the figures being put forward, one is the first-year cost and the other is the total cost of implementation. Much of the cost involved here is for equipment because we are getting the biometric equipment up. We are getting it in position, in place, and that is why there is the difference in the figure. It is not an even figure over each of the 3 years. That is what is involved in that question that you raise.

If I could also respond on the deadline dates because I think the Senator from West Virginia has put his finger on a very important topic. This was a matter of extensive negotiation between the various people involved because these are very aggressive dates. A number of people in the administration raised the concern saying: This is too aggressive. We don't think we can meet this. Other people within the ad-

ministration were saying: It may be too aggressive, but we need to meet it, and we are going to push to meet it. There were differences of opinion on that.

We, as the Members who were negotiating and trying to work this out, decided to go with the earlier date because of the importance of the issue. It is just critical we get this interoperable equipment in place, and that we get it done as quickly as possible, and not be left in a calendar position further down the road than it needs to be or just open-ended, saying, "just do it as soon as you can." A number of the Members did not feel comfortable with that "do it as soon as you can" possibility, even though we thought there was a pretty strong commitment from the administration to do it just that way, to do it as soon as you can.

But a lot of our colleagues said: No. We want a hard date, an aggressive date. If we have to come back and work with it again, we will, but we want this thing done; and we want it done now.

That is why the aggressive dates, and that is also why the budgetary figures are different for year 1 than being equal throughout the 3 years.

I yield the floor to my colleague from Arizona.

Mr. KYL. Mr. President, the main point is, on the question of the deadlines, the Senator from West Virginia raises an absolutely valid point. The question is, What should we do with regard to two of the dates? I think we can pretty clearly meet the first one. And we have a choice of setting a later date and, therefore, maybe not spurring them to action within a timeframe that really we need to, or setting a more aggressive date which, of course, we can always extend if we are not able to meet it.

But there is one other point; that is, the Senator is also correct, we are going to have to get another request from the administration in the final year in the administration's budget to adequately support this. Having the earlier date focuses, then, on getting that money in their budget, so the chairman of the Appropriations Committee has the ability to then plan and incorporate that into the overall budget.

So that is part of the rationale. It is nothing more magic than that.

If the Senator agrees with us—and I think he does—that it is important for us to get going as soon as possible, then perhaps he can accept that rationale, at least for this first year, and then we can, of course, see what happens after that.

Mr. BYRD. I certainly can understand what the distinguished Senator is saying and the reasoning behind the decisions that were made. I am only saying, as I said at the very beginning, if we pass legislation that creates unreasonable expectations on the part of the American people, we lose credibility, our Government loses credibility, and the people lose faith in their

Government. That is what Hamilton was worrying about in the Federalist Paper No. 25, which I read earlier this afternoon.

But now about this money that I talked about, it has been said here there is \$743 million in the President's request. But we are talking about 3 years—3 years; that if it were \$743 million a year, that would be something like \$2.1 or some such billion. Yet the estimated cost for the third year here, as I am told, as I am hearing here, is \$3.1 or \$3.2 billion. So it seems to me that is \$1 billion short there.

Mr. KYL. If I could respond to the Senator, the \$3.2 billion is the estimated total cost over the 3-year period of time. And as Senator BROWNBACK said, the request would not come in three equal tranches. So you would not multiply \$743 million times 3. The administration would have to include in its next budget an amount of money to make up the difference.

Now, there is, we are informed, \$327 million not yet expended from the \$40 billion supplemental, some or all of which might be made available in the first year, which comes close to meeting the \$1 billion amount. But the Senator from West Virginia is correct, there will have to be an amount included in the budget in the subsequent year to reach the \$3.2 billion. That is correct.

Mr. BYRD. I do not have any assurance that money is going to be included. We do not have any assurance it will be. The President only requested \$37 million, I believe it was, in his supplemental, out of \$27 billion; \$35 million for border security—I mean, for the INS. So there we are.

Mr. KYL. If I could respond to that, to some extent, it is a chicken-and-egg proposition. You have to have an authorization before you can have an appropriation. And the administration merely has the benefit of both. It can put something in the budget which then encourages us to do an authorization or it can respond to an authorization which the Congress passes.

The intent here, since we have been working with the administration, is for the Congress to authorize a program which the administration then is supposed to carry out, and that would include an inclusion in the next budget of an amount of money sufficient to fund the authorization that we provide.

Then the chairman of the Appropriations Committee would have the jurisdiction to determine how much of that to fund in the appropriations request.

But the idea here is to authorize the program, which gives direction to the administration as to what we want it to do. Hopefully, that direction would be then to include that money in the budget. I certainly would be encouraging them to do that.

Mr. BYRD. I am sure the Senator would.

If I may, Mr. President, just take a further minute.

For fiscal year 2003, the President has proposed increasing nondefense

programs by only 1 percent. He has threatened to veto appropriations bills that have "excessive spending." For the INS, he has proposed an increase of only \$150 million or about a 2-percent increase.

That is not even enough to cover inflation. So if we must do more for the INS, what are we supposed to cut? What are we going to cut if we do more than that for the INS? Veterans programs? Are we going to cut veterans programs? Are we going to cut education programs, highways, programs to promote our energy independence, programs dealing with the environment? What do we cut? If we don't do that, we run afoul of the President's threat to veto appropriations bills.

I thank all Senators for listening. I yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Arizona.

Mr. KYL. Mr. President, I inquire of the Senator from West Virginia, is it correct that it was not only defense but homeland security that is above and beyond the 1 percent; and if that is the case, then could not this money be included within the homeland security part of the budget?

I am not certain, but I believe the 1 percent does not include the homeland security requirements.

Mr. BYRD. The Senator is correct, but if we do more for homeland defense, then we are restricted by the President's figures, what he has asked. Then we have to take the money out of something else. So what does it come out of? Veterans programs, education, the environment, energy? That is our dilemma. I thank the Senator.

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

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that at 5:30 today, the Senate proceed to executive session to consider Executive Calendar No. 579, Terrence L. O'Brien to be a United States Circuit Judge; that the Senate immediately vote to confirm the nomination; that upon confirmation the motion to reconsider be laid upon the table, and the President be immediately notified of the Senate's action; that the Senate return to legislative session, with the above occurring without intervening action or debate.

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

Mr. REID. Mr. President, I ask that it be in order to request the yeas and nays on this nomination.

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

Mr. REID. I do request the yeas and nays on the confirmation of Terrence L. O'Brien.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. 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 that the order for the quorum call be rescinded.

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

PRO-ISRAEL RALLY

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly about a rally which was held this afternoon on the west side of the Capitol, a pro-Israel rally. Some estimated the gathering at 100,000. I believe the group was substantially larger than 100,000. There were many people of all denominations represented—all colors, creeds, and racial diversity.

The purpose of the rally was to support Israel's right of self-defense. The gathering was attended by many luminaries. I had not seen so many people wait so long to speak so briefly at any time that I could recall.

I stood, as a matter of fact, with Governor Pataki. We waited an hour and a half in the blistering sun to make our presentations.

The spirit of the gathering was very emotional, very strong. The essential issue at hand was Israel's right of self-defense.

In the brief remarks that I made, I emphasized the basic point that the suicide bombers who are plaguing Israel today are identical with the suicide bombers who attacked the United States on September 11. The only difference was that the suicide bombers who attacked the United States were more sophisticated. They hijacked planes and they crashed them into the World Trade Center towers. One of the planes was, I think, headed for this very building, the Capitol, which went down in Somerset County, PA, my home State. It was speculative, to some extent, as to where it was headed, but many indicators say it was headed for the Capitol. The plane which struck the Pentagon, by many indicators, was headed for the White House.

The people of the United States were outraged by that terrorist attack, just as the people of Israel are outraged by the suicide bombers that have attacked civilian populations. The United States responded, as is well-known, by mounting a powerful military offense, which went to Afghanistan and crushed the Taliban and al-Qaida in a matter of a few weeks—an undertaking that the Soviets could not accomplish in 10 years and the Brits could not accomplish many years before. Just as we