

Last October, I met with a number of Senators, including Senators CORNYN and MCCAIN, to discuss my intention to bring the immigration issue to the floor this spring. Why? Because the system is broken. There are millions of people coming across our borders, 25 percent growth last year in illegal immigrants coming across our borders. It is broken. It is broken at the borders, in the interior. And our temporary worker program is broken.

I laid out at that time a specific plan for border security where we had broad agreement and then build on the consensus of border security with a comprehensive approach that included what happens on the interior; that is, the worksite, workplace enforcement, as well as, in the third dimension, fixing the temporary worker program.

Over last week and the first part of this week, we have followed the plan laid out last October. We started with strong border control and expanded to interior and worksite enforcement, as well as what I hope will be a fair, equitable, commonsense temporary worker program. All three elements are necessary.

I am optimistic that by staying focused and by working together—again, this is not a partisan issue, as the Democratic leader knows in talking to his caucus and as I know in talking to my caucus, this is not a Republican or Democratic issue; it is a challenge for all of us to put together a workable, realistic immigration reform bill—we can forge a plan that deals effectively with our national security, that protects the rule of law, and that recognizes that our economic interests can be reflected in strong legal immigration programs.

What we cannot support, however, is amnesty. To me, amnesty is when you give someone who has clearly broken the law a leg up on the pathway to citizenship. Giving illegal immigrants a special path to citizenship essentially rewards people who have broken the law. It simply doesn't make sense when you have other law-abiding people around the world who are being disadvantaged. You are punishing people who follow the law. To give amnesty, as we did in the 1980s and as some propose to do today, simply sends a strong signal to the world or to anybody who would like to come to America that they don't need to obey the law; if you sneak into this country, eventually there is going to be another round of amnesty. That aggravates the problem. It creates a magnet to attract people to this country illegally.

Twelve million illegal immigrants now reside in the United States. We hear the figures—11 million, 12 million, or is it 21 million? We don't really know because they are illegal immigrants. We don't know what their names are. We don't know where they are. We don't know exactly what they are doing. One of the goals has to be to bring them out of the shadows.

What has become increasingly clear from our discussion in the Senate is

that this is not a monolithic group, these 12 million people. Forty percent have been here longer than 10 years. In all likelihood, they are much better assimilated, maybe fully assimilated into our society today. Forty percent have been here less than 5 years. It may be that we will need to break down this group and look at it. Maybe the 40 percent who have been here for greater than 5 years should have some access to a green card, and the 40 percent who have only been here a few months or maybe even a couple years could be dealt with differently. It is not a monolithic group. A successful, realistic immigration program has to acknowledge the different groups and treat them accordingly. Only then do I believe that we can succeed in getting the 12 million people out of the shadows, encouraging them to identify themselves and then function within the system.

In addition, I support a strong and fair temporary worker program that allows people to fill what employment needs we have, to learn a skill, to send money home, to return to their hometowns to help build and develop their communities. As I said last October, we need this three-pronged approach which begins with border security, strengthens workplace enforcement, and offers a fair and realistic temporary worker program for the hard-working men and women who come to this country to earn for their families back home. All three elements are vital. All three require action. Only a comprehensive approach will fix this broken system.

I look forward to continuing our debate this week. I am optimistic that by working together and applying a little common sense, we will come up with a plan that gets the job done and makes America safer and more secure.

Mr. DURBIN. Mr. President, I would like to respond briefly to the majority leader.

Pending before the Senate is a historic piece of legislation, maybe one of the most important bills we have considered in years. We are trying to fix a broken immigration system. It is entirely broken. Everyone concedes that our borders are out of control. At this point, we cannot control the flow of people across our borders, and we have no idea who is coming and going and staying in America. We couldn't afford that in normal circumstances. We can't afford it, certainly, when we are facing a war on terrorism where security is paramount.

The bill we have before us says: Let's fix the borders. Let's make sure we have the appropriate number of officers on the borders, the technology so that people are not coming across illegally. Let's do it right.

After 5 years of failure under this administration, we need to have borders that are better and stronger, and we need to know who is coming.

Secondly, we have to acknowledge that there are 11 or 12 million people in America who are not legally recog-

nized. They are here. They are working every day. They are an important part of our economy, but they are not legally recognized. The question before us is, How do we bring them out of the shadows to the point where we know who they are, where they live, and where they work? The only way to do that is to create an opportunity for them to reach legal status. But it is something they have to earn, not just automatically, not amnesty, no free ride. Don't put them in the front of the line but say to them: If you are willing to struggle hard for 10 or 11 years and meet those requirements, we will give you a chance for the legal pathway to citizenship. That is what this bill is all about.

I yield the floor.

#### RESERVATION OF LEADER TIME

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

#### EXECUTIVE SESSION

#### NOMINATION OF MICHAEL A. CHAGARES TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session.

The clerk will report.

The legislative clerk read the nomination of Michael A. Chagares, of New Jersey, to be United States Circuit Judge for the Third Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided for debate.

Mr. LAUTENBERG. Mr. President, I rise to express my support for the confirmation of Michael Chagares to a seat on the U.S. Court of Appeals for the Third Circuit.

A Federal judge must be fair, impartial, and well-qualified. I strongly believe that if you look at Mr. Chagares' record and his appearance before the Senate Judiciary Committee, it is obvious that he is the right person for this assignment.

Mr. Chagares is currently in private practice, but he served in the U.S. Attorney's office in New Jersey for 14 years.

Through hard work and diligence, he rose to become the head of the civil division, where he supervised and managed all civil cases on behalf of the United States Government, its agencies and officials. He oversaw litigation, directed legal positions to be taken in court, and approved settlements.

Before he became head of the civil division, Mr. Chagares directed the Affirmative Civil Enforcement Unit of the U.S. Attorney's Office for several years. During his tenure in the U.S. Attorney's office, Mr. Chagares received a

number of awards and commendations, including two director's awards for superior performance as an assistant U.S. Attorney.

Mr. Chagares is a graduate of Seton Hall Law School in Newark, where he has also taught as an adjunct professor since 1991.

His familiarity with the Third Circuit goes back to the late 1980s, when he worked as a law clerk for the honorable Morton Greenberg.

The Third Circuit is based in Philadelphia, and it considers appeals from Federal district courts in Pennsylvania, New Jersey and Delaware. It is a vitally important court, and his is an important seat, as he will replace Michael Chertoff, who left the court to serve as Secretary of the Department of Homeland Security.

I hope my colleagues agree with me that Mr. Chagares is more than qualified for this position, and I hope they will join me in voting for his confirmation.

Mr. LEAHY. Mr. President, this morning, the Senate will confirm Michael Chagares to a lifetime appointment to the U.S. Court of Appeals for the Third Circuit. This confirmation will bring the total number of judicial appointments since January 2001 to 235, including the confirmations of 2 Supreme Court Justices and 44 circuit court judges. Of course, 100 judges were confirmed during the 17 months when there was a Democratic majority in the Senate. In the other 45 months, under Republican control, only 135 judges have been confirmed. Ironically, the Senate was almost twice as productive under Democratic leadership as under Republican leadership.

Recently, President Bush withdrew the nominations of Judge Henry Saad to the Sixth Circuit Court of Appeals and Judge Daniel P. Ryan to the Eastern District of Michigan. These withdrawals are long overdue and bring to a close a sad chapter in history of judicial confirmations when the President and the chairman of the Judiciary Committee ignored opposition to nominations by the home State Senators.

Even with negative blue slips opposing the nominations in 2003 from the home State Senators, the former Judiciary Committee chairman took the position to ignore them and proceed with hearing and to force the Saad nomination through the committee on a party-line vote. That was the first time the committee voted on a nominee with two negative blue slips and it may have been the first time any chairman and any Senate Judiciary Committee proceeded with a hearing on a judicial nominee over the objection of both home State Senators. It is certainly the first time in the last 50 years, and I know it was the first time during my 32 years in the Senate.

When Chairman HATCH chaired this committee and we were considering the nominations of a Democratic President, one negative blue slip from one home State Senator was enough to

doom a nomination and prevent a hearing on that nomination. Indeed, among the more than 60 Clinton judicial nominees who this committee did not consider there were several who were blocked in spite of the positive blue slips from both home State Senators. So long as one Republican Senator had an objection, it appeared to be honored, whether that was Senator Helms objecting to an African-American nominee from Virginia or Senator Gorton objecting to nominees from California.

The blue-slip policy in effect, and enforced strictly, by the Republican chairman during the Clinton administration operated as an absolute bar to the consideration of any nominee to any court unless both home State Senators had returned positive blue slips. No time limit was set, and no reason had to be articulated. Remember, before I became chairman in June of 2001, all of these decisions were being made in secret. Blue slips were not public, and they were allowed to operate as an anonymous hold on otherwise qualified nominees. In the 106th Congress alone, more than half of President Clinton's circuit court nominees were defeated through the operation of the blue slip or other such partisan obstruction.

Perhaps the best documented abuses occurred in the Sixth Circuit, when the nominations of Judge Helene White, Kathleen McCree Lewis, and Professor Kent Markus to that court were blocked. Judge White and Ms. Lewis were themselves Michigan nominees. Republicans in the Senate prevented consideration of any of President Clinton's nominees to the Sixth Circuit for years. When I became chairman in 2001, I ended that impasse. Under Democratic leadership, in spite of the abuses by Republicans, we proceeded to consider and confirm 2 nominees to the Sixth Circuit among the 17 circuit judges we were able to confirm in our 17 months. We have continued to confirm judges, and the vacancies that once plagued the Sixth Circuit have been cut dramatically. Where Republican obstruction led to 8 vacancies on that 16-judge court, Democratic cooperation has allowed these vacancies to be filled and only 2 remain. The Sixth Circuit currently has more judges and fewer vacancies than it has had in years.

Ignoring the opposition of Michigan's Senators, President Bush renominated Judges Saad and Ryan in 2005 rather than nominate consensus nominees for those vacancies that could be easily confirmed. In fact, Judge Ryan's nomination was not withdrawn until last week even though he received a majority "not qualified" rating from the American Bar Association in March 2005. I look forward to the White House reconsidering its confrontational posture and working with the Senate to send to the Senate well-qualified nominees who can be confirmed with the support of Michigan's Senators.

These are not the only nominations the President has withdrawn recently.

Last month, the President also withdrew the nomination of James Payne to the Tenth Circuit Court of Appeals after information became public about that nominee's rulings in a number of cases in which he appears to have had a conflict of interest. Those conflicts were pointed out not by the administration's screening process or by the ABA but by online journalists.

As I discussed last month, at a minimum that case and the other withdrawals reinforce concerns about this White House's poor vetting process for important nominations which became apparent with the withdrawals of Bernard Kerik to head Homeland Security, Harriet Miers to the Supreme Court, and Claude Allen to be a Fourth Circuit judge. It was not the administration's vetting but reporting in a national magazine that doomed the Kerik nomination. It was opposition within the President's own party that doomed the Miers nomination. Democratic Senators resisted the nomination of Allen, a Virginian, because the President was seeking to appoint someone from another State to a Maryland seat on the Fourth Circuit. Unfortunately, rather than being thorough in selecting lifetime appointments of judicial officers who are entrusted with protecting the rights of Americans, all too often this White House seems more interested in rewarding cronies and picking political fights.

As today's confirmation demonstrates, Democrats in the Senate cooperate with this White House when it focuses on sending the Senate qualified consensus nominees. Unfortunately, as the recent withdrawals demonstrate, this White House too often does not want to cooperate with us.

I congratulate the nominee and his family on his confirmation today.

Is all time yielded back on the nomination?

Mr. DURBIN. I yield back all time on the minority side and ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Michael A. Chagares, of New Jersey, to be United States Circuit Judge for the Third Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Mississippi (Mr. COCHRAN).

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

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 86 Ex.]

## YEAS—98

Akaka	Domenici	McCain
Alexander	Dorgan	McConnell
Allard	Durbin	Menendez
Allen	Ensign	Mikulski
Baucus	Enzi	Murkowski
Bayh	Feingold	Murray
Bennett	Feinstein	Nelson (FL)
Biden	Frist	Nelson (NE)
Bingaman	Graham	Obama
Bond	Grassley	Pryor
Boxer	Gregg	Reed
Brownback	Hagel	Reid
Bunning	Harkin	Roberts
Burns	Hatch	Salazar
Burr	Hutchison	Santorum
Byrd	Inhofe	Sarbanes
Cantwell	Inouye	Schumer
Carper	Isakson	Sessions
Chafee	Jeffords	Shelby
Chambliss	Johnson	Smith
Clinton	Kennedy	Snowe
Coburn	Kerry	Specter
Coleman	Kohl	Stabenow
Collins	Kyl	Stevens
Conrad	Landrieu	Sununu
Cornyn	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dodd	Lugar	Wyden
Dole	Martinez	

## NOT VOTING—2

Cochran Rockefeller

The nomination was confirmed.

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

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

The ACTING PRESIDENT pro tempore. Without objection, under the previous order, the President shall be notified of the Senate's action.

## LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now return to legislative session.

## ORDER OF PROCEDURE

Mr. LEAHY. Mr. President, we have a number of people who want to speak on both sides, and the distinguished chairman is here. I was going to ask unanimous consent—let me discuss one thing first before I do—to first allow the two distinguished Senators from Florida to speak briefly on a matter not involving immigration but involving—

Mr. CRAIG. Does that have to do with basketball?

Mr. LEAHY. A group by the name of the Gators.

But before they do that—I hope to maybe go back and forth—I would like to ask to be able to lock in on this side, realizing that we will probably go the traditional way, back and forth on the bill on both sides, that it would be Senators NELSON, MENENDEZ, LIEBERMAN, SALAZAR, DURBIN, and KENNEDY.

What I was going to recommend is we ask people to be able to speak in 15-minute blocks, each one of them speaking for 15 minutes, realizing that if we work it this way, I would imagine the distinguished chairman would want 15 minutes on his side, and go back and forth.

So I would propound that following discussion by Senators NELSON and MARTINEZ, recognizing the significant accomplishment for Florida, we have 15 minutes a side for discussion and that the Senators on our side in the slotted times be Senator NELSON of Florida, Senator MENENDEZ, Senator LIEBERMAN, Senator SALAZAR, Senator DURBIN, and Senator KENNEDY.

Mr. SPECTER. Mr. President, reserving the right to object, and I may well object, the question that comes to my mind is, When are we going to proceed to consider amendments and try to move the bill? When the distinguished ranking member says to give the chairman a chance to speak—I have spoken enough. We went on this bill on Wednesday afternoon and we spoke all day Thursday, and there weren't too many speakers around on Friday, but there was an opportunity to speak. And we were here yesterday afternoon, and not too many speakers pursued an opportunity to speak.

So the question that I have—and perhaps I can better talk to Senator LEAHY about it privately—when are we going to move to amendments? We need to finish this bill this week, and I would like to move to amendments.

Mr. LEAHY. Mr. President, I have the floor.

Mr. SPECTER. Wait a minute. I don't know who has the floor, but I will yield to you.

Mr. LEAHY. No, no. Finish what you were saying.

Mr. SPECTER. Mr. President, Senator KYL is ready to offer an amendment. Senator ALLARD is ready to offer an amendment. I see Senator KENNEDY with his portfolio; maybe he has an amendment. I would like to move to amendments to try to move the bill.

Mr. LEAHY. Mr. President, I know there are amendments on both sides. I have already stated my admiration for the way the Senator from Pennsylvania moved this bill through the committee and on to the floor. I would like to have finished the bill last week, and I share his sense of urgency to finish. I suspect there will be discussions about this in both the caucuses this noon. I wonder if possibly the Senator from Pennsylvania and I, and whomever else he would like, could try to sit down and work out an order for amendments so that we can move forward. But that probably will not happen until after the caucuses, and I thought we could at least have others speak. I have spoken, and I will include another statement for the legislative record this morning. But I think if we get Senators down here to talk about it, we can also work out the time for amendments.

Mr. KYL. Mr. President, would the Senator from Vermont yield for a question from me regarding this unanimous consent request?

Mr. LEAHY. Of course.

Mr. KYL. That would not preclude the offering of an amendment by unanimous consent?

Mr. LEAHY. Mr. President, for offering an amendment, it would require, of

course, unanimous consent. I have not included, just because it gets too complicated—that is why I wanted to work out with the distinguished chairman when such amendments might be offered. It would allow Senators to speak, but any Senator speaking, if they wanted to offer an amendment, would still require unanimous consent then. Rather than trying to micro-manage this all the way down the line, I will let each Senator make that request.

Mr. KYL. I thank the Senator. I just wanted to get an amendment pending but not to speak on it.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. SPECTER. Mr. President, we are only going to move ahead if we come to an understanding; I recognize that. If the Senator from Vermont wants to have a speaking sequence, I will not object, and we can retreat from here into his cloakroom to try to figure out when we are going to move the bill. We are giving up almost 2 hours; perhaps we can work this evening to make up that time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ALLARD. Mr. President, I have an amendment I am ready to offer, and I would like to speak to that amendment. So the way the agreement is being put together now, I will be expected not to offer that amendment until after we have had more discussion between both sides; is that correct?

Mr. SPECTER. Mr. President, I think Senator ALLARD accurately states it. When he has his 15 minutes, nothing will stop him from talking about the amendment.

Mr. LEAHY. That is right.

Mr. SPECTER. And he can lay the groundwork so that when he does offer the amendment later, he will not have to speak quite as long.

Mr. LEAHY. Mr. President, the Senator from Pennsylvania states it accurately. A number of Senators, I suspect, on both sides are going to talk about amendments they intend to offer. Unanimous consent will not be given for anybody to offer an amendment on either side during this time, but I would encourage Senators to talk about the amendments they intend to offer.

Mr. KYL. Mr. President, I object to the request.

The ACTING PRESIDENT pro tempore. The objection is heard.

Mr. LEAHY. Mr. President, any Senator can object. I have been told that there are those on the Republican side who would object to a Democrat offering an amendment, so I suspect there would be similar objections here. But any Senator can speak about his or her amendment. Any Senator can offer an amendment. Any Senator can make an objection. But insofar as there are going to be objections on the Republican side to some Democratic amendments, and vice versa—there is a