the town. We were joined on that occasion at the Brookwood mine area by the Secretary of Labor, Elaine Chao. I want you to know how proud I was of her that night. She went over to the union hall.

She had to be up at 5 o'clock the next morning to catch a flight. But she stayed there almost 2 hours meeting and talking with the victims of that disaster. I was able to call just Friday several family members and others who were involved in that to tell them of the passage of this piece of legislation out of committee. They were very excited about it—a lawyer for the union official, families of people who were killed in that disaster. As the Senator said, the price of coal is up. The demand for energy is up. We are going to be doing more mining. This legislation will clearly be a step forward into making those mines safer. I thank him for those comments. I hope we can move rapidly.

Mr. MCCONNELL. Mr. President, before yielding the floor, I thank my friend from Alabama. I hope this legislation will clear the Senate sometime tomorrow. I know people are working on both sides of the aisle to get it cleared. It should not be controversial. After all, it came out of committee unanimously. It is supported by the National Mining Association and the UMWA. We need to get that bill passed.

I hope, also, we can get a permanent Director of MSHA. It is without a permanent Director at a very important time in the life and safety of our Nation's coal miners.

Mr. SESSIONS. Mr. President, I certainly agree with that. I just ask that when the Senator gets home tonight, he thank the Secretary of Labor for the good work she has given to the committee in helping us pass this legislation.

Mr. MCCONNELL. Mr. President, I yield the floor.

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006—Continued

The PRESIDING OFFICER (Mr. CHAMBLISS.) The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I want to speak briefly this afternoon about two amendments that I intend to offer, and I hope can be favorably considered by the Senate before this bill is completed. The first will just take a moment. It relates to forestry workers.

This is amendment No. 4055. It would make H–2B guest workers who are invited here to work in our forestry sector eligible for limited legal aid. I believe this amendment should be noncontroversial. Under current law, agricultural guest workers are eligible for legal aid with respect to employment rights provided for in their H–2A contract. This amendment would provide H–2B forestry workers with the same eligibility for legal aid. We have had hearings in our Energy Committee on the issue. We had a recent hearing where we heard that making H–2B forestry workers eligible for legal aid is the single most effective thing Congress could do to address the problem of exploitation of forestry workers.

These guest workers have been asked to come to the United States because of a labor shortage that was certified by our Government. They are here legally. They pay U.S. taxes. Currently, the law prohibits legal-services-funded organizations from providing them with any legal aid to enforce their rights under their guest worker contract. The amendment would correct this issue, and I hope that this amendment can be adopted when it is appropriate to take action on it.

Mr. President, I also want to talk about another amendment which goes to the issue of the number of employment-based immigrant visas admitted each year—the number of employment-based immigrants that we admit each year under the current version of this immigration bill as it stands in the Senate today. Let me first describe the big picture as I see it, as far as people becoming legal permanent residents under our laws.

First, let me preface this entire discussion by saying that none of what I am talking about relates to the people who are here on an undocumented basis today. There are other provisions of the law that apply to them and that give them rights under this proposed legislation to adjust their status and become legal permanent residents at some stage down the road. So that is separate. I am not in any way talking about that. I know that has been a subject of great controversy in the Senate and in the Congress in general, but that is not the purpose of my proposed amendment.

When you talk about people who are not here illegally today, there are basically two major ways that a person can become a legal permanent resident under our immigration laws. The two ways are through the family-based visa program or through the employment-based visa program. This chart shows the numbers that have been admitted into the country up until the end of 2004 through the family-based and employment-based programs combined, under both of those. You can see that those two together—it comes out to somewhere around 800,000. That is a total annual figure I am talking about for people coming and getting legal permanent residency through both of those major avenues.

Now, this legislation we are talking about would, according to the Congressional Research Service, substantially increase those numbers. You can see that their projection—and this is an estimate because, in fact, we are eliminating some caps that have been in the law previously, and I will discuss that in a minute. But these estimates from the Congressional Research Service are that we will get closer to 2 million legal permanent residents that we are accepting each year under this legislation. So that is the overall picture.

The amendment I am talking about does not try to deal with this entire picture. It just looks at the employment-based legal permanent resident visas.

Let me go to a different chart in order to describe the concern I have. Current law says there is a cap of 140,000 persons, or 140,000 visas, that can be issued under the employment-based LPR categories of our laws. That has been the case now for some time—140,000 per year. This includes family. These are people who come here and seek legal permanent status in order to take work. But it also includes their families. Each member of the family, of course, uses a visa as well. So the total number of employees under this system, and family, spouse, and children, does not exceed 140,000. That is what the law currently provides.

Now, when Senators MCCAIN and KENNEDY—this is my understanding of the history, and I am sorry that neither Senators MCCAIN or KENNEDY are here so they could correct me in case I misstated anything, but my understanding is that they concluded that we needed to reform the law, and part of the reform that we should adopt was to clear out the backlog and make more room for additional immigration under this employment-based LPR system. I agree with that. Clearly, that is one of the purposes of this legislation and one of the effects of this legislation.

They set out to do this in several different ways. Let me mention the three main ways that they set out to do it. First of all, they said let's clear out the backlog. By that, it is meant in the legislation that any visa that was available to be issued in the last 5 years that was not issued because the immigration service could not get the processing done—that any of those visas would be once again made available. And the estimate we have from the Congressional Research Service is that there are about 140,000 of those.

So we are going back for the last 5 years and saying: OK, are there visas that should have been or could have been issued? Let's bring those forward and issue them and make them available again. Clearly, I support doing that.

They also said: OK, in order to help clear out the backlog, we need to encourage some groups to come here and exempt them from any of this cap. This idea that we only allow 140,000 people to come should not apply to people we are particularly interested in bringing to this country, for whatever reason. One idea is to allow students who come here to be exempted from the cap so they can remain here and become legal permanent residents—scientists, technicians, engineers, people with careers in mathematics. We need those people to create a strong economy. Let's allow them to come.

They said also let's eliminate some of these schedule A groups; that is, people who have specialty occupations we

need to bring here. So let's take them out from under the cap. Again, I have no problem with that approach.

The one other thing they said, which is a major change in the law—this was the bill they introduced last May, the McCain-Kennedy legislation—is that we should raise the cap, that we have outgrown that. Let's raise it to 290,000, so the total number of people who are being allowed to come each year—employees and their spouses and children—will be 290,000, in addition to the ones permitted to come because of our bringing these visas forward from previous years and in addition to the people who come not subject to any cap at all.

That is how the McCain-Kennedy legislation was introduced. Frankly, my own reaction was that it sounded like a fairly reasonable approach. Then the Judiciary Committee decided to proceed with legislation, and the Judiciary Committee began to mark up the chairman's bill—Senator SPECTER's bill—and as I understand what occurred there, and in reading the record of those hearings, the Specter bill agreed with the effort to clear out the backlog that I have described, agreed with the effort to exempt certain groups from the 290,000-person cap. It agreed to keep the number 290,000, but they changed the definition of what the 290,000 applied to.

Under McCain-Kennedy, it had been a cap on the number of workers, along with their accompanying family members. Under the Specter legislation, it was defined as a cap on the workers themselves, and there was to be no cap on the spouses and family members.

If you look at this chart, you can see the progression. Current law is the first column. The second column is S. 1033, which takes it up to 290,000. Then the third column is the one that is the chairman's mark that was marked up and reported by the Judiciary Committee, and that is the one that keeps the 290,000 but says: OK, on top of that we are going to allow spouses and family members.

On this chart, you see an estimated 638,000. The reason I put that in is because the Congressional Research Service was asked how many spouses and family members they expect to come along with these people? They said, looking back at past history, they estimate perhaps at least 1.2 people per employee. So you would be talking about 638,000, roughly, under that legislation. But that is an estimate. This is the first time we have not had a cap. We have an estimate instead of a cap. So the obvious question we have to deal with is whether that is the right level.

As we all know, the legislation that came through the Judiciary Committee was changed once it got to the floor, and we then began to work on what is called the Hagel-Martinez legislation. That is the legislation pending today. That is the legislation about which we are having a great deal of discussion.

Let me recount what the Hagel-Martinez legislation does. That is the fourth of these columns. The Hagel-Martinez legislation says that we agree with the proposal to clear out the backlog, just as McCain-Kennedy did. They are saying they agree with the proposal to exempt certain categories from the cap. That was also in the McCain-Kennedy proposal. And they agree with the Specter proposal that the definition of who should be covered should not include spouses and family members. But they also believed the 290,000 was too low a figure, and they raised it to 450,000. What we have now is 450,000 workers permitted to come and no limit on the number of spouses and family members who can accompany them. That is the legislation pending before us. That continues under the bill, as it is before us, for a 10-year period, through 2016. After 2016, for the period from then on, it drops back to 290,000, plus their spouses and family members, rather than the 450,000.

Why did Hagel-Martinez insist upon going to this 450,000 instead of 290,000? That is the obvious question. They did it for a very logical reason. They did it because they were providing that a certain group of those who are currently in the country—that is, people who have been here at least 2 years and fewer than 5 years—that group of individuals would have to go through this same system, so they had to increase the amount of that cap as they saw it.

What I am suggesting we ought to do first and what my amendment will propose, once I have the opportunity to offer my amendment, is we should put a cap on the total number of people we are allowing into the country under this employment-based legal permanent residency visa program.

We have always had a cap on the number of immigrants coming into this country on an employment-based system. We have done that now for well over half a century. I think we have done it for over a century. I think it would be a fairly radical change for us to say we are giving up on having any cap on this group and instead we are going to an open-ended system, and we will work on estimates.

Part of the debate we have had in the Senate, frankly, is the result of the fact that we don't have a hard cap for how many people will actually be admitted each year. I believe that is not good public policy. It is not fair to the Immigration Service, which has to plan for the number of employees they will need and the number of applications they will receive each year. We are much better off having a cap.

I also believe we should make it clear that whatever cap we have on this group excludes those aliens who are adjusting their status because they have been here from 2 to 5 years. If they are in that category, they should not be counted in the numbers we calculate.

My amendment would try to exclude that group and would basically otherwise take the numbers that are estimated by the Congressional Research Service and say: OK, let's go ahead and put a cap, and let's make it a 650,000-person cap each year. That is slightly more than the Congressional Research Service estimated would be required or would be expected to apply. It is a substantial increase over current law, more than four times, nearly five times the current level. It is substantially more than twice what Senators MCCAIN and KENNEDY proposed in their legislation.

I think, frankly, it would be a major liberalization of our laws. I know there are those who will argue that we shouldn't have any cap at all, but I think that is not a wise course. This legislation will be improved if we can assure our constituents that we have a cap on the number of people who are coming in under this employment-based system. That is what the amendment will do.

I hope to be able to explain it further when we get closer to actually offering the amendment. I am told we cannot offer an amendment today. This would be a very useful change and improvement in the pending legislation.

I hope my colleagues will take the time to look at this issue and will educate themselves on what the effect of the current proposed legislation would be and the reasons we should put some cap on that number. I believe it would be a wise course to follow.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I compliment the Senator from New Mexico. He has approached this very contentious and very complicated issue in a very thoughtful way, looking at realities and numbers. I appreciate his observations today. His proposal, and an amendment he offered that was adopted last week, changes the numbers. I am not going to stand here on the floor as an advocate of the legislation and suggest we have gotten it right, but we spent a great deal of time attempting to get it right, recognizing the importance of the migrant labor force inside the American economy and, at the same time, recognizing the wishes of the American people to make it a transparent legal process with secured borders. That is what they are asking of us. I hope, as we finalize this legislation this week, that is the outcome of it before we send the bill to the President for his signature.

I have come to the Chamber this afternoon to talk once again about an issue that is before us. The Presiding Officer is the author of the amendment. Again, it is one that, in part, is a bit technical. I suggest this afternoon in my opposition to the amendment that it is predicated on what I hope are appropriately the unforeseen consequences of this amendment and the impact it would have on American agricultural employment.

Last Thursday night, Senator CHAMBLISS opened the debate on his

amendment, and I talked about its impact on the users of the H–2A agricultural guest worker program. To get right to the bottom line, my argument is that the Senate should keep the provision that is in the bill now and deny Senator CHAMBLISS the success of his amendment. Why? A deal doesn't necessarily have to be a deal, but at the same time, over the course of the last 4 years, in negotiating with agricultural employees and agricultural employers, we attempted to bring some rationale to a method of compensation under the H–2A program that simply in most opinions was out of touch with reality. It was escalating on an automatic basis every year, and it simply was not fitting the need, especially when more and more in agriculture were illegal and were not under that program.

Now a small minority actually, some 40,000-plus a year, are under the H–2A program and identified with the wage set by that program. It is possible—and we are not sure—but a million-plus are not and are simply out there in the marketplace bidding for a salary that, in most instances, is below the H–2A adverse wage that is proposed.

So what did we do? Recognizing that disparity, we reached back, with the agreement of all of the parties involved, and said that one of the pieces of getting this puzzle right was to freeze that wage in 2003 at the 2002 level, and that is what is in the bill. So that pushes that wage scale back substantially for a period of 3 years while we look at what Senator CHAMBLISS has attempted to do in his legislation in developing a prevailing wage for American agricultural employers and employees that fit into this guest worker category.

I don't know that we, with all of the different categories of wages, can automatically put it all under one at this time. Of course, that is what the Senator attempts to do. The agriculture section of S. 2611, as I said, immediately drops that wage down, and then over a period of 3 years, we look at it and adjust as the program is adjusting because we are not going to have everybody inside the program once it becomes law for a period of several years as the program adjusts and as we work our way through and people begin to qualify under the blue card system that we proposed to become legal workers and have permanent visas for the purpose of moving back and forth across the border as guest workers to work in American agriculture.

What I have attempted to do and what I am attempting to understand is what in the bill is now the best deal for American agriculture. That is one reason I believe a vote on the Chambliss amendment is not a good deal for American agriculture at this moment. But that is not the only reason. Let me talk about the rest of agriculture, the million-plus who will now be affected by the Chambliss amendment if it is to become law, because I see that as the rest of the story, and the rest of the story deals with the blue card and the blue card transitional program, the earned status which is a part of the whole of this program. It isn't just a matter of putting in a wage; it is a matter of how that wage ultimately affects the transition into a blue card status.

We have done a pictorial chart tonight that I think better explains what we are talking about.

We believe the blue card built within the agricultural jobs is that transitional tool which allows American agriculture to cross the chasm, if you will, and allow a reformed H–2A program, a guest worker program, to come into being. It won't happen overnight, but it will happen under the law, and it will happen with a wage scale that is pushed back as we make sure we get it right. That is under the reform program.

The second part of the agricultural jobs is a one-time-only program, right here, a blue card. It will last for a specific period of time while we are transitioning the illegals here today into a legal status so they can continue to work and move back and forth across the border in a guest worker program.

The blue card program is a critical piece of the agricultural job solution. It is an essential transition program. Let me repeat, agriculture needs this blue card if we don't want to throw it immediately into havoc because agriculture, whether we like it or not, based on an H–2A law that didn't work at all well and a very transparent border, has grown increasingly dependent on an illegal workforce. There are no wage requirements for blue card workers in the bill. It is only the 40,000-plus H–2A we shove back. They are paid whatever the farmer is paying, whatever the current wage is in the area, and other workers are gaining. And those wages would differ from place to place and job to job, farm to farm.

What the Chambliss amendment does, however, is it says that blue card workers must be paid a prevailing wage. It pushes the base up substantially. The Chambliss amendment doesn't just deal with the wages of the H–2A program, the 40-plus, it applies the same fix to every farmer who employs a blue card transitional worker.

Now, why is that significant? Here is why: By definition, the prevailing wage is neither the lowest nor the highest wage; it is just about in the middle or between the two. It is the 51st percentile in wages. So even if a farmer is paying a lower wage for a particular job, if he hires a blue card worker, if the Chambliss amendment becomes law, he is going to have to pay the blue card worker a higher wage than he is currently paying today. And if the Chambliss amendment is adopted, the lower 50th percentile of wages, that is the figure that becomes the calculating base for the next year. While you freeze for 3 years and let the wage scale work as it is, the Chambliss amendment begins to ratchet the wages up, setting them at a 51st percentile level. I don't think American agriculture has that one figured out yet.

What could ultimately happen is that we lose the value of the transition of the blue card, especially when it comes to vegetable crops and crops that can move very quickly out of this country that aren't mechanized and are labor intensive. Already, we are beginning to lose those farmers because the worker isn't there. If all of a sudden that wage scale shoots up under the Chambliss bill, as I propose it will, to a prevailing status, my guess is not only will you not have the worker but you will not have the producer out there in the field simply because they will not be able to afford to pay that wage in a competitive way. More and more of our production, tragically enough, I believe will go south of the border in some of these areas. Much of that production today happens outside the United States.

So I think when we are talking about what sounds like a good idea, we better put it in the context of what the bill is really about; that is, the transitional time of 2 to 3 years of blue card workers who are in the market today working at a variety of wages, depending upon the particular job, the particular type of agriculture, and all of a sudden establishing a whole new wage base substantially above where they are being paid but, as the Senator from Georgia would argue, below H–2A. But remember, once again, only about 45,000 workers are in H–2A, and there are well over a million who are all of a sudden going to be affected by the blue card status and by the Chambliss amendment. So it is tremendously important that we bring this into context.

Now, that is not going to be just a couple of workers, as I said. That is nearly 70 percent of the current agricultural workforce we believe to be undocumented. Not all of those workers are going to qualify for the blue card program, but a lot of them will. Our blue card program envisions that it could go as high as, over a 3-year period, 1.5 million, and if I am not mistaken, those higher wages won't be limited to the blue card worker.

But what the Senator from Georgia is doing is setting a new, higher floor for all agricultural employment. Somehow, you are talking about inflating the wages of a large percentage of the American agricultural workforce. I am not against higher salaries. I am for a fair salary. What I am concerned about in particular is labor-intense areas, and those crops will simply cease to exist and they will go south of the border, to Chile or somewhere else. In areas of agriculture that are highly mechanized, there will be limited to no effect. And it is that which I believe we have to put into context.

So what is the result? The result is that employers, in my opinion, won't be able to afford blue card workers. Is

that the intent of the Senator from Georgia? I don't think so, but I believe it is the unintended consequence we are talking about and something I think my colleagues need to understand.

Part of that was the discussion over the last 4 years. This is something which didn't just come up yesterday. There were 4 years of negotiation between the employer and the employees as to how to get an H–2A wage right. We had the adverse wage for a lot of reasons, such as because of where agriculture was located and because housing wasn't available. There were a lot of things that were brought into that discussion. We know our country has changed since the creation of the first H–2A law. And while there are still other benefits tied to the wage, that is why we could effectively negotiate rolling that wage back and allowing American agriculture and the employers in American agriculture to effectively look at what we were doing and strike the kind of balanced margin that is necessary.

What happens? What happens if the blue card is removed? I am going to argue tonight that the Chambliss amendment has the effect of removing the blue card substantially because it inflates that lower wage base significantly. What happens if it is removed? The bridge that is the chasm we cross as we transition with American agriculture into a legal—a legal—guest worker program goes away. That is what I am worried about, dramatically worried about, and that is why I am urging my colleagues to vote against the Chambliss amendment because I think if that goes away, there is no transition. Within a very short time, even under tight labor conditions today, because our borders are getting tighter and because of shifts in the workforce, this drives that workforce even further out of the ability to be hired by much of American agriculture. I think it is tremendously important that we look at all of that and understand it.

Here is something else that is ironic. The Chambliss amendment creates a federally mandated wage base for American agriculture. Some will argue that we have done it in a couple of other areas, but most of us will say the market ought to work. It was only in the unique status of H–2A that we had a different kind of wage base. I will argue today, and I think appropriately so, that we are setting an entirely new standard for 70 percent of the American workforce. Instead of allowing us to make sure that it fits right in the program, looks at the diversity, looks at the kind of representation that is reflected all over the United States when it relates to where you are working, how you are working, the type of work you are doing—is it piecework, are you doing it by the amount produced instead of by the hour of work—all of that kind of thing works today, and I am not so sure it is not effectively distorted by the proposal which is being offered by the Senator from Georgia.

That is why I hope my colleagues would stay with us and stay with what is in the bill and in the provision that we call AgJOBS, that rolls back—on 40,000-plus workers qualified under the H–2A program, rolls their wage back to the 2002 level, freezes it for 3 years, while the Department of Labor, working with American agriculture, can get this right because I am convinced that the unintended consequences of now mandating a Federal floor, if you will, to American agriculture is not where we want to go.

If we want American agriculture to transition across this chasm, to get its workforce legalized, as it wants and as the Senator from Georgia and I want, then we have to make sure the transition which allows that to happen effectively uses this tool, the blue card, which will allow that kind of transition to go forward in a way that causes us to adjust.

We can't take the blue card off the table. I will argue that in the end, if the Chambliss amendment passes, we have taken that worker out of the workforce. That is not going to be good for American agriculture. That is not going to be good for the crops that are rotting in the fields today if, by that action, we now have a Federally mandated prevailing wage which brings that wage rate up across the board in a way that disallows American agriculture from being competitive.

I believe those are the critical points involved in the difference between where we are and where we know we need to get. We need to get there in a way that allows the worker to be treated fairly, the producer to be treated fairly, and most importantly that we have an available, legal workforce to meet the needs of American production agriculture. That workforce is at risk today, and with the passage of the Chambliss amendment, significantly changing the base rate, it will be at even greater risk as production agriculture looks where it needs to farm to be competitive in a world market. It may not be on the soil of this great country, and that would be the wrong thing for us, the wrong thing for our country, and certainly for our consumers. So I hope my colleagues will look at that and consider it as we deal with this issue.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Georgia is recognized.

Mr. HARKIN. Parliamentary inquiry, Mr. President.

Mr. CHAMBLISS. I am happy to yield to the Senator from Iowa.

Mr. HARKIN. Mr. President, my inquiry is, is the Senate under a unanimous consent agreement that it would go from one side to the other in this debate or is it just jump ball? It is just whoever gets recognized by the Chair to speak?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. I thank the Presiding Officer.

Mr. CHAMBLISS. Mr. President, I appreciate very much the arguments made by the Senator from Idaho, but there are a couple of very obvious faults in the argument relative to the wages farmers should pay to the folks who work for them.

First of all, the adverse effect wage rate, which is in the current law and is in the current bill, and is supported by Senator CRAIG, is the only provision in the labor laws of this land that uses the adverse effect wage rate, and we both recognize that this is a flawed system. By his own admission, the Senator from Idaho recognized it, and I recognize it. It is a flawed system because it was never intended to be used by the Department of Labor as a means by which wages would be set. So my response to that is, let's take what all other labor laws utilize in determining wages, and that is a prevailing wage.

You come up with a method whereby the skills that are attached to the individual laborer, the location where that laborer is going to work, and the type of job for which that person is to be hired determine how much that person is going to be paid. What happens now is there is simply a rollback in the current bill of the adverse effect wage rate to the year 2002. That is 4 years ago. And by rolling it back 4 years, there is an admission that there is a significant problem there.

I don't want to misquote my friend from Idaho, but the other night, Thursday night, when we were arguing about this on the floor—I might add, in a way that moves both of us to the same conclusion, which is to make sure we provide that quality workforce—the Senator from Idaho said that at the end of the day, what he wants to get is a prevailing wage. I am going to talk about that again in a minute. But if we want to get to a prevailing wage, let's get to it now.

Mr. CRAIG. Would the Senator yield?

Mr. CHAMBLISS. I am happy to yield.

Mr. CRAIG. Mr. President, I don't think he and I disagree. My concern is you are affecting 1.5 million workers by your immediate action, and I am affecting 40,000-plus in rolling them back. And we are giving a period of transition of 3 years to get right what you have proposed. My concern is that in getting right what you proposed, you have an immediate effect on the next phase of agricultural jobs, and that is the transitional period of time in qualifying the blue card worker to become a permanent worker or a permanent legal worker, and that immediately inflates the wage base. And then immediately upon inflating it once, you inflate it again the next year and the next year because you have lifted the base, ratcheted it up by each year's calculation. I think that is a very legitimate concern. So I ask you, is that not the impact of what you do? I am affecting 40,000-plus; you are affecting 1.5 million.

Mr. CHAMBLISS. I reclaim my time, Mr. President.

Here is the deal. The deal today is that a farmer in America, wherever he may be, whether he is in Idaho or Georgia, who goes out and hires workers to come here legally, pays the adverse effect wage rate. In my State, that happens to be about $8.37 an hour right now. In addition to that, they pay for their transportation, they pay for all their consular fees, they provide housing, so the $8.37 an hour is a little bit misleading. It is actually more in benefits than that. The neighbor next door to that farmer, which is that category of blue card worker that you address in your comments, he is paying probably $5.15 an hour to that individual. So the farmer who is trying to be legal is paying a fair wage rate, or paying a wage rate with benefits that is significantly different than the gentleman that he is competing with on the farm next door.

What the proposed legislation does is continue that difference. It takes those individuals who are here illegally today and says we are not going to guarantee them the adverse effect wage rate or the prevailing wage rate. We are going to continue to treat them as a second class citizen, and we are going to allow farmers who use them to have an advantage over farmers who use legal workers.

All my amendment says is that everybody ought to use legal workers. We ought to give farmers across America the opportunity to choose from a pool of workers to plant, tend, and harvest their crops. During the whole course of the time that they are here in a legal manner, working under that contract, before they have to go home, we want to make sure they are paid a fair wage. That wage is determined as the prevailing wage rate by the Department of Labor, and it is based, again, on the skill of that worker, on the job for which that worker is hired, and on the wages that are prevailing in the area in which that worker is hired. That is exactly what my amendment does.

We don't eliminate the blue card. You still have the blue card. The folks who hire blue card workers under the current bill are going to have an advantage over those employers, those farmers who have been legal and utilized H–2A and who want to utilize H–2A in the future.

It is a very skewed way of arriving at a wage rate that we both agree upon. The question is, How do you get from today, from May 22, 2006, to a prevailing wage rate?

I say let's do it now. What the underlying bill says is let's take 35,000 or 40,000 workers who are here currently under H–2A, and let's allow them get to a prevailing wage rate down the road, within some certain period of time. But let's take this other 1.5 million and let's keep them depressed. Let's let farmers who hire that blue card worker continue. And it is not going to go away. You better believe they will be here working because they are going to pay them a lower wage rate. It is not fair.

My amendment is all about fairness, and it requires farmers to pay a reasonable wage rate. They don't mind paying a reasonable wage rate to get an honest day's work out of an employee.

This amendment is not about numbers either. We had a lot of discussion the other night about numbers which, frankly, were developed by the American Farm Bureau. The American Farm Bureau has access to every farm in America. They have the ability to come up with what are the wage rates that are being paid by every farmer in America. That is how we arrived at our numbers. It is not about how Senator CRAIG arrived at his numbers for the adverse effect wage rate. That is not an argument on our part. This amendment is simply about fairness.

The AgJOBS portion of the underlying bill is simply not fair. It is not fair to the employers across the United States, and it is not fair to those who work on our farms—whether they are illegal, whether they are in a temporary worker program, a legal permanent resident, or a U.S. citizen.

Why? Because the underlying bill provides wage guarantees only to those foreign workers who come in under the temporary H–2A program. At present, those workers do number in—I don't know whether it is 35,000 to 40,000 or 45,000 to 50,000 this year, but that is the range it will be. The 1.5 million workers who will be legalized under the AgJOBS blue card program do not receive a wage guarantee. This is a tremendous flaw in the AgJOBS bill, in my opinion. If these blue card workers are willing to work for $5.15 an hour, then that is all their employers have to pay them. Those folks who are here legally are going to be required to be paid the adverse effect wage rate, which is significantly above that minimum wage rate of $5.15.

What is ironic to me is that these workers, whether here on a blue card or on a H–2A visa, are essentially the same. Most come from the same country, Mexico; and many from the same villages. Most are here because of the poverty that exists in their home countries. All are here to earn money to support their families and improve the quality of their lives.

Many will work in the same occupations. Shouldn't they be treated the same? I believe they should. Under the AgJOBS bill, they are not. The distinguished Senator from Idaho might argue that they are different and should be treated differently. He does, in a way, say that because those who are legalized with the blue card program will be here permanently. However, legalized blue card workers do not have permanent status. The blue card program simply allows these legal workers to stay here, employed in agriculture, until they meet all the requirements for legal permanent status.

No one can calculate how many of these transitional workers will ever become legal permanent residents. Until they achieve legal permanent resident status they should be considered temporary foreign workers and treated similarly.

From the employer's side, no difference exists between employers who utilize the H–2A program and those who use the blue card program. This applies across the board to all commodities produced and livestock raised production methods and for their need of dependable workers. There is a major difference though. H–2A workers, many of whom have been coming to the same employers for years in this country legally—the vast majority did not bring their family members, and they returned home at the end of their periods of employment, just as the law requires.

These H–2A workers were not exploited while they were here because the employers played by the rules. Playing by the rules was expensive. The adverse effect wage rate is expensive. But those employers did it to their competitive disadvantage with a neighbor who employed illegals at a significantly lower rate, who did not pay the transportation costs of those workers, and did not provide those workers with housing.

On the other hand, illegal workers who will benefit from the blue card program broke our laws when they came here, even though they came here for the same reasons as the H–2A worker. The employers who hired them, perhaps some out of absolute necessity—and I understand that—but, by doing that, they also broke our laws. Regardless of the circumstances under which those illegal workers are employed in agriculture now, I would be willing to bet that many were exploited, underpaid, and indentured along the way.

That is why I do not understand why the underlying bill fails to protect the illegal workers, who adjust their status, and guarantee them a fair wage.

I also don't understand why the AgJOBS bill fails to protect U.S. workers who do farm work by neglecting to require employers who use foreign labor, whether they access via the H–2A program or the blue card program, to pay all workers in that occupation a prevailing wage.

Mr. CRAIG. Will the Senator yield on that point?

Mr. CHAMBLISS. I will be happy to.

Mr. CRAIG. Inside the AgJOBS Act there is a U.S. labor pool established. They would pay the going wage. They have to make sure that pool is exhausted so U.S. citizen agricultural workers are protected. You go there first before you go to hire a blue card worker or a H–2A-qualified worker.

I hope the Senator understands that they are protected in that sense, as it relates to making sure that they are the first in line, if you will, for a job that is available if they would choose to work in that field at the wage that exists at that point.

Mr. CHAMBLISS. I guess the question is, though: How many U.S. workers are out there who do take advantage of that now, or would in the future? I think you and I both know the answer. It is minimal at best.

Reclaiming my time—I am about to run out of time.

Mr. CRAIG. OK.

Mr. CHAMBLISS. We are going to have our time split at 5:15. Agricultural employers who utilize blue card workers must only pay the blue card workers the minimum wage and are not required to pay U.S. workers any more than the minimum wage. I think we can agree on that.

The H–2A program requires that employers who utilize H–2A pay all workers in the same occupations in which they employ H–2A workers the same wage guaranteed to every other H–2A worker.

Throughout this immigration debate we have heard that widespread use of foreign workers will depress wages and that employers will reject U.S. workers in favor of foreign workers who are willing to work for less. In fact, the Senate passed by a voice vote an amendment that was put forward by the distinguished Senator from Illinois, Mr. OBAMA, addressing this very issue.

Rather than trying to make the same argument that Senator OBAMA made, I simply want to quote him because it was on the same issue of prevailing wage for another program, the H–2C program. Here is what he said. It was a very good explanation. Senator OBAMA said that his amendment essentially says:

> . . . the prevailing wage provisions in the underlying bill should be tightened to ensure that they apply to all workers and not just some workers. The way the underlying bill is currently structured, essentially those workers who fall outside of Davis-Bacon projects or collective bargaining agreements or other provisions are not going to be covered. That could be 25 million workers or so which could be subject to competition from guest workers, even though they are prepared to take the jobs that the employers are offering, if they were offered at a prevailing wage. My hope would be that we can work out whatever disagreements there are on the other side. This is a mechanism to ensure that the guest worker program is not used to undercut American workers and to put downward pressure on the wages of American workers.

That is exactly what I am saying because, if we have a prevailing wage, American workers are going to be more inclined to take those jobs rather than blue card workers coming in and being willing to take $5.15 an hour. That is exactly what is going to happen if we set the prevailing wage, which is where it ought to be, rather than utilizing your blue card program, which is going to wind up in millions, or hundreds of thousands of agricultural workers being hired at minimum wage.

Let me close by saying, here is the reason that the adverse effect wage rate is so skewed. This is the chart that shows which States are used in calculating the adverse effect wage rate. In my case we use the southeast region: Alabama, Georgia, South Carolina. A farm worker job, or a worker at the State farmers market in Atlanta, GA, is compared to the same agricultural worker at the farmers market in Thomasville, GA. They are 225 miles apart. One is a very urban area, Atlanta, GA. The other is a very rural area, Thomasville, GA. It is pretty easy to see why the Senator from Idaho says this is a skewed way to calculate wages. With that we agree.

The prevailing wage rate method of calculating wages says individuals who work at the farmers market in Atlanta will be paid a wage comparable to other farm workers in the Atlanta area. That wage earner in Thomasville, GA, will receive a wage that is comparable to agricultural workers who are paid in the Thomasville, GA, region.

I am prepared to yield back, assuming that we have approached the hour where we are going to divide these last 30 minutes?

The PRESIDING OFFICER. Under the previous order, the time until 5:30 shall be equally divided between the Senator from Georgia and the Senator from Massachusetts or his designee.

Who yields time?

Mrs. FEINSTEIN. Mr. President, I have had an opportunity to listen to the discussion between Senator CRAIG and Senator CHAMBLISS on this provision of AgJOBS which we put in as part of the blue card. I congratulate Senator CRAIG on one of the most colorful charts that we have seen.

The labor provision of this bill is a compromise that was negotiated. I think it makes sense to leave it that way. It is left that way for 3 years. This has been the subject of long negotiations. After many attempts to try to find the right balance, Senators Kennedy and Craig struck an agreement that was supported by both growers and farm workers across this Nation. That is the language in this bill.

Under AgJOBS, H–2A workers are paid the greater of the prevailing rate or the adverse effect wage rate. As Senator CRAIG has said, the standard is frozen at 2003, and growers will be required to pay the prevailing wage, or what the adverse wage rate was over 3 years ago. The compromise states that this will be the wage rate just for the next 3 years. And during that time, the GAO and a commission of agricultural and labor experts will perform two studies examining H–2A wage rates and making recommendations to Congress. If at the end of the 3 years Congress fails to enact a new adverse effect wage rate, the adverse effect wage rate would be adjusted by the cost of living.

While changing AgJOBS isn't, alone, a disqualification, I think we have to be very careful before we upset what has been a very carefully crafted compromise that is supported by a broad coalition of Members from all sides of the debate.

If I might, I would like to ask Senator CRAIG a question. Since he was the one who negotiated this, is it not true that this is a broadly agreed upon solution for both farm workers as well as growers?

Mr. CRAIG. I believe it is fair and balanced. The reason it is is because we pushed a wage scale that is already there back 3 years. We do it this time to get right what the Senator from Georgia has proposed. He has shown the disparity that already exists out there—and it exists in all formulations when it relates to agriculture and agricultural jobs. We have never focused on agriculture except in the H–2A area. We believe it did get out of line, and that is why it is shoved back. Then we proceed, just as the Senator mentioned, in a methodical way to examine the country and get the wage scale rate right.

Mrs. FEINSTEIN. Is it not true that when I introduced the blue card program in the Judiciary Committee I just took that part of the H–2A program which the Senator and Senator KENNEDY had put together in the AgJOBS bill?

Mr. CRAIG. That is correct.

Mrs. FEINSTEIN. This has been a longstanding compromise that has been out there, which is a negotiated compromise.

If I might ask one other question, in the negotiations that the Senator had on AgJOBS, how long did it take to come up with this negotiated compromise?

Mr. CRAIG. Frankly, the adverse wage issue was one of the more contentious, for a variety of reasons—first of all, because producers saw it as being complicated with a lot of requirements other than just a wage, and obviously employment saw it as an advantage but limited. As a result, we were able to agree to shove it back.

As I say, that rarely happens in American history, to actually by law push the wage scale back but to do so with the understanding that we would get equity and fairness through the approach that the Senator has outlined. That was the approach we used. A coalition of well over 500, including agriculture, a lot of agricultural producers.

Mrs. FEINSTEIN. How long has this agreement been in place?

Mr. CRAIG. About 3 years—2½ years, actually, as we formulated it.

Mrs. FEINSTEIN. I thank the Senator. My time has expired.

I urge the Senate to vote no on the Chambliss amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CHAMBLISS. Mr. President, I yield myself such time as I may consume.

The Senator from California was not involved in those negotiations, and I chair the Agriculture Committee. I do not know how to respond to that other than by saying that certain segments of agriculture were involved in the negotiations, I assume. My dear friend from Massachusetts was involved, and I daresay that I have more farmers in

my home county than we have in the vast majority of Massachusetts.

My point is not that these discussions did not take place over a long period of time between farmers—I don't know who they were. But I can tell you this: The American Farm Bureau has looked at the AgJOBS provision. They have looked at my amendment. They have looked at the bill that I submitted which was somewhat contrary to AgJOBS. The American Farm Bureau—which, as I said earlier, has access to virtually every farm in America, particularly from the standpoint of the calculation of wages—has concluded that my amendment is fair and reasonable. And the American Farm Bureau is recommending a ''yes'' vote on the Chambliss amendment.

To say that this has been discussed over a period of time by a group, or a large group—whatever the term was—of farmers across America, my farmers were not involved in those negotiations. Senator CRAIG and I have had any number of conversations about the bill and about our various amendments. But we were not involved in those negotiations.

I see my friend from Iowa, Senator GRASSLEY. He comes from the Farm Belt of America. I daresay that his farmers were not involved in those negotiations. Let us be very clear about this. There was not a discussion or a negotiation by America's farmers for what they thought was best.

Mrs. FEINSTEIN. Will the Senator yield?

Mr. CHAMBLISS. I would be happy to yield.

Mrs. FEINSTEIN. I can speak for California, and California's Farm Bureau has signed off on this. I can tell the Senator that no State has as many farmers and growers as California does. This is the accepted agreement.

I thank the Senator.

Mr. CHAMBLISS. I thank the Senator from California for her comments, and I tell her that I dialog with many farmers in her State on a regular basis, particularly as chairman of the Agriculture Committee. I am hearing from a large number of her farmers in strong support of my amendment.

Again, when you say that a majority number of farmers in America think this is the way to go, you can't say that. That is simply not right. There are only—by Senator CRAIG's numbers—less than 50,000 farmers in America—and I happen to agree with him on this—who currently utilize H–2A. I daresay the rest of the farmers in America don't even know what ''adverse effect wage rate'' means. But I can tell you they know what ''prevailing wage rate'' means. They know when they hire a tractor driver in the southwest part of Texas what their neighbors are paying for a tractor driver. And that is how you calculate a prevailing wage. That is not how adverse effect wage rate says you will pay that tractor driver.

Whether farmers in California or farmers in Georgia or the northeast part of our country, the market should dictate, and the market dictates under the prevailing wage rate. It simply does not dictate under the adverse effect wage rate.

That is why, in the Senator's bill, the adverse effect wage rate is rolled back 4 years. There is a flaw in the way the wage rate is calculated. If you are going to roll back the wage rate, which is actually going to move toward the utilization of the prevailing wage rate, let's do it now. Let's require that all farmers in America pay a reasonable wage rate for their employees based upon what other farmers in that region pay for employees.

For example, I know in northern California there are different crops grown than in southern California. There are different types of jobs. But today, under the AgJOBS bill, a farmer in northern California will pay exactly the same wage rate as a farmer in southern California.

Here is the chart. This shows how wage rates under this bill are calculated. They use the entire State of California. It is a different type of farming. There is a different skill required in northern California than there is in southern California. There is a different skill required in a tractor driver versus somebody who goes into the field and cuts lettuce or cuts cabbage or cuts squash or whatever it may be.

Under the adverse effect wage rate in the base AgJOBS bill, that is not taken into consideration. Under the prevailing wage under my amendment, it is taken into consideration.

If anyone says it is difficult to determine, how do I know in my example of Thomasville, GA, what it takes to hire that worker? Let me tell you what you have to do. You simply have to go to the computer and plug into a Web site, the Department of Labor. And you designate the area. You put into the computer where you are located, what the job is, and the computer immediately gives you what the Department of Labor has determined to be a prevailing wage. It is very simple and very easy. It ensures that one farmer next door to another farmer is paying employees the same wage rate. You don't have a farmer who is paying $8.37 currently required by the adverse effect wage rate and the farmer next door paying $5.15 an hour for the same job.

This is about fairness. It is about equity. It is about ensuring that farm workers who come here under the base bill, which I, frankly, don't agree with, but if we are going to pass this, then let us be fair to those employees who come here and work in agriculture. Let us pay them the rate that is prevailing in the area in which they work.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, standing in opposition to the amendment, it is fascinating to me that we now want to play a game of what groups and whose associations. I find it fascinating that the California Farm Bureau, which supports the position, isn't quite good enough. The California Apple Commission, the California Avocado Commission, the California Association of Nurseries and Garden Centers, the California Association of Wine Grape Growers, the California Canners and Peach Association, the California Citrus Mutual—we have nearly 500 groups that have endorsed this.

The reason they have endorsed it is because they see the need to do it right and get a reasonable transition.

The Web site the Senator from Georgia is talking about has to be right. It has to be effective and reflective. It doesn't do that today. That information is now not available in that context.

Let me go back to the transition. We are talking about those who are illegal today and wanting them to come forward, get a background check, show us their credentials, qualify for a transitional status, called earned adjustment status, and a blue card, and to do so in a fair and responsible fashion.

They can stay and continue to work. While they are doing that, we are going to work to get the wage scale right. In our work over the last good number of years, literally hundreds and hundreds of agricultural groups and associations have stepped forward and said: Help us fix this. Help us use this blue card to get across, in a transitional way, for a legal workforce, in a reformed H–2A program. The compromise that the Senator from California talked about was just that. It was a transitional wage to get this fair and equitable.

What the Senator from Georgia is doing is not affecting the 40,000-plus of H–2A under adverse wage. We are doing that. We are shoving those wages back. He is affecting the 1.5 million that may cause agriculture to become noncompetitive if we don't get the wage scale rate right and involve agriculture along with the Department of Labor, as our studies would do, to make sure we get an equitable and fair wage. Fair means two sides. For the worker, it means certainty; for the producer, absolutely, the product that is produced—especially in the vegetable crops, in the intensified labor crops—has got to be competitive against a world market crop, or we will shove those producers and that kind of production out of the country.

We have to do it in a balanced way. What we have offered allows the Senator from Georgia, as the chairman of the Agriculture Committee, to participate. He did not participate in these negotiations because he did not agree with them. He did not agree with the transition of getting through what we attempted to do in AgJOBS. That was his choice. In the end, both he and I agreed on many of the provisions except this one. It is important we stay with the work product.

Literally hundreds and hundreds of farm groups and associations across

the Nation that deal with this type of workforce recognize the need of the transitional period of time and the legality of the workforce, as do we. It is reflected in the bill. I hope our colleagues continue to support it.

Mr. LEAHY. Mr. President, the Comprehensive Immigration Reform Act includes a subtitle known as AgJOBS, a bill that has long been championed by Senator CRAIG, Senator KENNEDY, and a broad bipartisan group of Senators. I strongly support this bill because it will help both farmers and farm workers in Vermont and around the Nation.

AgJOBS contains a package of reforms that are badly needed in the seasonal agricultural worker program, called H–2A visas. AgJOBS was negotiated with the full participation of agribusiness and farmworkers' unions, and it reflects a fair and thoughtful balance of the needs of both farmers and workers.

The version of AgJOBS contained in S. 2611 protects business by ensuring a steady flow of legal workers. It assists agricultural workers by preventing wage stagnation in a growing economy and by providing labor protections. It helps both business and labor by giving trained and trusted foreign agricultural workers a path to permanent immigration status if they meet the requirements in the bill, such as paying fines and taxes, keeping a clean criminal record, and working the requisite number of hours.

The Chambliss amendment is an attack on wages for agricultural workers who are among the lowest paid laborers in America. By unfairly favoring the growers over foreign workers, the Chambliss amendment would upset the careful balance on wages and labor protections that were negotiated with the participation of agribusiness and unions in the AgJOBS bill.

The Chambliss amendment requires employers to pay workers the highest of two wage rates: the prevailing wage in the area of employment, which may be determined by an employer who conducts his own local survey, or the applicable State minimum wage. Basing wages on the higher of these two rates could result in deep cuts to wages. Some State minimum wages are very low, such as Kansas, which requires only $2.65 per hour. Senator CHAMBLISS previously acknowledged that farm wages could fall by roughly $3 per hour under his proposal. His proposal almost guarantees that no U.S. workers could afford to accept agricultural jobs and that foreign agricultural workers, who are already among the most poorly paid workers in America, would be paid miserly wages for their labor.

The Chambliss formulation does not include the well-balanced provisions of AgJOBS. Under AgJOBS, an employer must pay the highest of three wage rates: (1) the prevailing wage, (2) the Federal or State minimum wage, (3) or the ''adverse effect wage rate,'' or AEWR, a regional weighted average hourly wage rate for agricultural workers. The AEWR was established under the Bracero guest worker program for Mexican workers that ended in the 1960s. It was created to ensure that guest workers would not adversely affect American workers by depressing wages. Removing AEWR from the wage equation drives wages downward, which hurts all workers—American and foreign. It is no secret that our agricultural industries depend on cheap labor, and some estimate that 70 percent of agricultural workers presently working in the U.S. are undocumented. For all the of national security reasons I have cited throughout this debate, we need to bring agricultural workers out of the shadows. But we must also recognize that vulnerable populations deserve our support and protection. Farm workers are among the most vulnerable laborers in the Nation and I cannot support an amendment that would slash their wages further.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CHAMBLISS. How much time remains?

The PRESIDING OFFICER. The Senator from Georgia has 7½ minutes. The Senator from Massachusetts has 6½ minutes.

Mr. KENNEDY. I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thought there were certain values in this Senate upon which we could agree. If you work hard in this country, you shouldn't live a life of poverty. We have been trying to raise the minimum wage—which is $5.15 an hour—trying to raise that for over 9 years, and our Republican friends, including the Senator from Georgia, have been opposed to it.

Look what this bill does. The current farm wage is $10.11; for an agricultural job, it is $7.86; and the Chambliss amendment is below the minimum wage. Not only is it below the minimum wage, but he specifically writes in his amendment that it will be below the minimum wage and State minimum wages will apply when they apply. But Georgia does not have a State minimum wage.

I don't know what the Senator from Georgia has against someone working for $7.86 an hour. The cost of gas has gone through the roof. The cost of food has gone through the roof. A gallon of milk is $3.09 a gallon; eggs, $1.39; a loaf of bread is $3.29; a pound of hamburger is $3.99. And the Senator from Georgia, if we follow his suggestion, is driving wages down, not up.

This is $7.86 an hour to try to get along. What we are trying to do is reduce the disparity. The Senator from Georgia said we were not involved in this. Well, we have 400 different organizations indicating to the Senate their support. We have broad support. More than 60 Members, Republicans and Democrats, cosponsored it, to bring it up to $7.86. But no, the Senator from Georgia wants this down to what some people have said is paid to pieceworkers, $3 or $4 an hour. Three or four dollars an hour? We might not have many farmers in Massachusetts, but whoever we have in Massachusetts understands below poverty wages, and $3 or $4 an hour for piecework is a poverty wage. It is wrong.

If it is so troublesome that they are going to get paid $7.86, if Members are so worked up about that, if Members think that is too much for someone who works hard, for someone who does some of the most difficult work in this country, go ahead and vote for the Chambliss amendment.

Mr. President, $7.86, when these workers have to pay $3 to get a gallon of gasoline? Talk about fairness. I listen to the Senator from Georgia. Let's talk about fairness. Let's talk about equity. Let's talk about treating everyone the same. They will be treated the same, but they will be treated mighty shabbily. This is a question of respect for those workers. Do you respect them in the United States, these hard-working people? Finally, about 20 percent of agricultural workers are Americans. You will depress their wages, too? Evidently. I hope we are not going to be about that at this time in this debate and discussion.

I noticed that on page 2, the Senator talks about the prevailing wage, the occupation, and the applicable State minimum wage. Is there a State minimum wage in Georgia, I ask the Senator?

Mr. CHAMBLISS. The minimum wage in Georgia is $5.15 an hour.

Mr. KENNEDY. In agriculture?

Mr. CHAMBLISS. Yes.

Mr. KENNEDY. The State minimum wage in agriculture is $5.15 an hour. Am I right that there is no way that even those who are picking per bushel would go below $5.15 an hour?

Mr. CHAMBLISS. What happens is these wage earners in the fields in Georgia and all over the country go out and they take a bucket out into the field. They cut squash, cucumbers, or they cut whatever the crop may be, they put it in that bucket, they dump that bucket in a bin, and they are given a chip. At the end of the day, those chips add up to dollars. They are required to be paid the minimum of either the minimum wage or, in this case, the adverse effect wage rate.

Mr. KENNEDY. I understand I may be wrong, and I wish the Senator from Georgia would correct me, the State minimum wage does not apply to agricultural workers. That is my understanding. If I am wrong, I hope the Senator will correct me. My understanding is the State minimum wage does not apply to agricultural workers.

I withhold the remainder of my time.

Mr. CHAMBLISS. I yield 3 minutes to the Senator from Georgia, my colleague, Senator ISAKSON.

Mr. ISAKSON. Let me respond to the distinguished Senator from Massachusetts.

Something he said—I am sure unintentionally—was very incorrect. He said we are going to force people, by what the Senator is trying to do, to earn less than the minimum wage. What we are, in fact, trying to do is to ensure that those who are working in the fields, who are illegal and are being abused and are not being paid the adverse effect wage rate, prevailing rate, or anything else, all those—maybe 1.8 million—will now get a pay raise under what the Senator is trying to do. He is saying they will be paid the higher of the minimum wage or the prevailing wage.

I ran for the Senate in the years 2003 and 2004. Although I worked farms in the 1950s, I had not been on a farm in a long time, and I spent a lot of time in south Georgia, slept in a lot of barns on farms. I got to know the onion folks, the peanut folks, and the row crops.

I spent the night in a farmer's barn—a mighty nice barn, I might add, with a nice double bed—I spent the night in the barn, and he complained about what happened. He hired H–2A workers, as he should, legal workers. According to the law, he paid them the adverse effect wage rate, and the farmer down the road from him hired illegals and paid them the minimum. They got away with paying much less for picking the same crop he was because he was obeying the law.

The circumstances the Senator has right now in the United States of America are the following: The unintended consequence of the adverse effect wage rate is that you are driving farmers to hire illegally rather than hire legally and pay them at adverse effect wage rates. That is what the Senator is trying to correct.

But it is absolutely incorrect to allege or to say that the bill of the Senator from Georgia, the chairman of the Agriculture Committee, would force people to be paid below the minimum wage. It will, in fact, ensure that workers will be paid the higher of the minimum wage or the prevailing wage; is that not correct?

Mr. CHAMBLISS. That is correct.

Mr. ISAKSON. Facts are stubborn things. We can argue about a lot of things, but treating people right is something Senator CHAMBLISS has been doing in Georgia, what I have grown up in Georgia doing, and I am sure what the Senator from Massachusetts does. The argument here is about repealing a law that has the unintended consequence of making it attractive to hire illegal aliens to work. What this bill is supposed to be doing is fostering legal immigration and equitable treatment for all.

I commend the distinguished Senator from Georgia. I commend the chairman of the Agriculture Committee. I pledge my support to this amendment and congratulate him on this effort.

I yield back the balance of my time.

Mr. KENNEDY. How much time do we have?

The PRESIDING OFFICER. The Senator has 1 minute 34 seconds.

Mr. KENNEDY. I yield a minute to the Senator from Idaho. I will reserve 34 seconds for myself.

Mr. CRAIG. Mr. President, as of April of 2006, the average fieldworker in the United States was paid $8.96 an hour. The average livestock worker was paid $9.30 an hour. The minimum wage is $5.15. Do the math. That is why, when we put this bill together, we said we have to get it right for all parties involved.

I agree with the Senator from Georgia, producers are willing to pay a fair wage. And they should. And workers who work as hard as agricultural workers ought to be paid a fair and good wage. At the same time, we compete in a world market, and I hope we stay there.

I don't think you can meet with one farm organization and establish what the prevailing wage is going to be. That is why we mandated in our bill that the Department of Labor work with agriculture to get it right because we conclude that the H–2A adverse effect wage rate got out of line. I don't know what the right wage is. I wager that the Senator from Georgia probably doesn't know where it ought to be, either, in every segment of agriculture in our country.

I wish the Senators would stay with the bill and vote down the Chambliss amendment because in the end we want to get it right for all involved. We want to keep American agriculture competitive in a world market.

Mr. KENNEDY. Mr. President, no matter how you slice it, this is a major cut for workers with the Chambliss amendment, No. 1.

No. 2, we are trying to remedy the situation between documented and undocumented workers. We hear we have to do this because we are forced to have illegal workers. We are changing all of that. We are putting in place a system so we will have verification.

We do believe this figure, the $7.86, for workers who work hard, play by the rules, and are trying to provide for their families, is not unfair, at a minimum. That is why I hope the Chambliss amendment will be defeated.

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

Mr. CHAMBLISS. Mr. President, I simply say to my friend from Massachusetts, I hear what the Senator is saying relative to the numbers the Senator just addressed, but here is what you are doing. You are taking 40,000 agricultural employees who now operate under H–2A and you are reducing their wages immediately. The chart Senator CRAIG had up here Thursday night showed what the numbers are. I don't remember what they are, but it is a significant reduction because you are rolling that wage back to what it was 4 years ago. Now, that is 40,000 agricultural workers.

Here is what you are doing to 1.5 million agricultural workers under your bill. You are going to allow farmers across America who do not participate in H–2A to pay those blue card workers $5.15 an hour. We can argue whether minimum wage is high enough, whether it ought to be more, but that is the effect of what you are doing with your blue card workers. So if the $7 number is good enough for H–2A or not good enough for H–2A, whatever it is, it ought to be good for those 1.5 million workers who will have a blue card. That is what fairness in my amendment is all about.

When Senator CRAIG says let's get it right, let's do get it right. We agree the adverse effect wage rate is wrong. There is no disagreement about that. The question is, How do we correct it? How do we get to the point where it is fair? The way we get to the point where it is fair is we take the same method of calculation we do under every other labor bill, including the one we just passed last week, the H–2C bill that Senator OBAMA said: Let's put a prevailing wage rate on H–2C. I say let's put a prevailing wage rate on H–2A.

We understand we are not the ones to calculate that. It is calculated by the Department of Labor. It is calculated by the Department of Labor based upon the fair and accurate wages paid to individuals in different parts of the country who perform different jobs within agriculture. It is very easy to ascertain by the farmer what that wage rate ought to be.

It will remove the ability of the next door neighbor to come in and undercut that farmer, whether he is a blue card worker or whether they continue to be here illegally. It will depress the wages for those farmers rather than raising the standard for all workers to be paid a fair wage. It will encourage farmers—this is what we want to do—to participate in the H–2A program. If we had every farmer in America doing that, they would have a quality supply of labor from which to choose. They would have to pay those workers a reasonable rate, and America would never be in a position of being dependent upon foreign imports for our food supply.

We cannot afford to get there. This is a national security issue. We need to make sure farmers have those workers from whom to choose to make sure their crops are harvested.

Mr. President, I yield back my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Wyoming (Mr. ENZI), the Senator from Arizona (Mr. MCCAIN), and the Senator from New Hampshire (Mr. SUNUNU).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. DAYTON), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN), would vote ''yea.''

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

The result was announced—yeas 50, nays 43, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—50

Akaka	Durbin	Martinez
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murray
Bingaman	Hagel	Nelson (FL)
Boxer	Harkin	Obama
Byrd	Inouye	Pryor
Cantwell	Jeffords	Reed
Carper	Johnson	Reid
Chafee	Kennedy	Salazar
Clinton	Kerry	Sarbanes
Conrad	Kohl	Schumer
Craig	Landrieu	Shelby
Crapo	Lautenberg	Specter
DeWine	Leahy	Stabenow
Dodd	Levin	Voinovich
Domenici	Lieberman	Wyden
Dorgan	Lincoln	

NAYS—43

Alexander	DeMint	Murkowski
Allard	Dole	Nelson (NE)
Allen	Ensign	Roberts
Bennett	Frist	Santorum
Bond	Graham	Sessions
Brownback	Grassley	Smith
Bunning	Gregg	Snowe
Burns	Hatch	Stevens
Burr	Hutchison	Talent
Chambliss	Inhofe	Thomas
Coburn	Isakson	Thune
Cochran	Kyl	Vitter
Coleman	Lott	Warner
Collins	Lugar	
Cornyn	McConnell	

NOT VOTING—7

Biden	McCain	Sununu
Dayton	Menendez	
Enzi	Rockefeller	

The motion was agreed to.

Mrs. FEINSTEIN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4076, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the pending question is now amendment No. 4076, as modified, of the Senator from Nevada.

Mr. ENSIGN. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. ENSIGN. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. ENSIGN. I thank the Chair.

The PRESIDING OFFICER. There is now 2 minutes equally divided for debate on the amendment.

The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, very briefly, to inform my colleagues, this amendment is basically the President's proposal to use the National Guard to secure our borders as an interim step as we are adding to our Border Patrol agents on our southern border.

We all know we cannot have a commonsense, comprehensive immigration policy without having secure borders. It is going to take us years to get enough Border Patrol agents down there. In the meantime, we need to have the National Guard to supplement and to multiply the force of the Border Patrol agents down there. That is what this amendment does. I believe it is an important step toward making sure we know who is coming into this country, making sure terrorists are not coming into this country.

Mr. President, the Ensign amendment would codify the President's proposal to deploy the National Guard to the border. The President's proposal strikes a careful balance.

Over the next year, they would send up to 6,000 guardsmen. The following year, they would decrease this to a maximum of 3,000 guardsmen. As the guardsmen stand down, the Border Patrol would stand up, and in the end, we would have 6,000 more Border Patrolmen securing the border.

I remain concerned about the strain on the Guard. It is reassuring that the deployment will be limited in number and duration. I hope the administration will work closely with the Pentagon to ensure that we are not putting greater strain on those specialties that are needed in Iraq and Afghanistan.

Also, I applaud the President's decision to use the Guard in a supporting role and not for direct law enforcement missions. The Guard is not trained for the civilian Border Patrol missions and its complex combination of law enforcement, civil rights, and human rights issues. Nor should we ask them to be, for this is not their mission. They should provide support to the Border Patrol.

We must also ensure that any Guard activity is coordinated with the Governors. I agree with the border State Governors that securing our borders, particularly for the long term, is a law enforcement function. We should not militarize the borders. And, in the short term, we should respect the desires of the border State Governors regarding the utilization of the Guard along the border.

I urge that my colleagues support this amendment.

Mr. WARNER. Mr. President, I rise to add my support to this very important amendment offered by my good friend and colleague from Nevada, Senator ENSIGN.

Last Monday evening, a week ago, the President addressed this Nation, forcefully and articulately making the case that one of the necessary steps in undertaking comprehensive immigration reform is to secure our national borders, particularly along our Southwestern States.

Following the President's speech by little more than a day, the Armed Services Committee held a hearing during which we closely questioned senior members of the Department of Defense, Joint Chiefs of Staff, the Chief of the Border Patrol, and the Chief of National Guard Bureau on the President's plan.

I strongly support the President's plan, and, on the basis of our hearing and subsequent discussions, I strongly believe that the National Guard is capable of providing this temporary support to the Bureau of Customs and Border Protection without degrading either its readiness for combat or its ability to respond to domestic emergencies.

I also believe that this amendment is important to show that the Congress is behind this effort to secure our borders as part of comprehensive immigration reform, and that we will provide the resources and legislation to do so. This amendment provides specific authority for deployment of the National Guard, and does so in a way that is careful to authorize both the types of activities, the duration of the training rotations, a limit on the authority to use the Guard for direct participation in law enforcement consistent with the President's intent, and a sunset date for the authority.

I commend my colleague from Nevada, who serves with me on the Armed Services Committee, for this important amendment that puts the full force of Congress behind the President's initiative to secure our borders and support our Border Patrol with the National Guard.

Mr. LEVIN. Mr. President, I intend to vote in favor of the Ensign amendment to authorize the National Guard to assist in securing the southern border of the United States. The National Guard has been used in a State status to perform Federal missions in the past—for counterdrug and counterterrorism missions—but Congress provided express statutory authorization for these efforts.

I believe that it is essential that we provide a similar statutory authorization here. This authorization gives Congress an appropriate opportunity to define the circumstances in which it is appropriate to provide Federal reimbursement for the National Guard in State status and the types of activities for which Federal reimbursement will be provided.

The key to the Ensign amendment, in my view, is that it makes it clear that the National Guard of a State will perform this mission only if ordered by the Governor of the State to do so. This provision makes it clear that the Governors retain control of the National Guard when it acts in a State

status. For these reasons, I support the Ensign amendment and urge my colleagues to support it as well.

Mr. BYRD. Mr. President, the Senate will soon vote on an amendment to authorize the use of the National Guard along the Southwest border of the United States. Last week, in hearings before the Appropriations Committee and the Armed Services Committee, I asked senior administration officials from the Department of Defense, the Border Patrol, the National Guard Bureau, and other military leaders about my concerns that this mission would detract from the ability of the National Guard to respond to emergencies in their home States.

Secretary of Defense Donald Rumsfeld, Chief of the National Guard Bureau General Steven Blum, and other witnesses gave their assurances that this plan to deploy troops to the border would not create a new, strenuous deployment of the Guard, it would not leave our States in a bind should a disaster strike while troops were on deployment, and it would allow Governors to make the final call as to whether National Guard units from their States should be used in support of the Border Patrol. Those witnesses also testified that National Guard units would only be used in missions and roles for which the troops are already trained.

I expect the administration to hold firm to these assurances, and the amendment before the Senate would help to limit the scope of the missions for which the Guard may be deployed.

While I still have questions about how the National Guard will carry out the missions that are assigned to it, we must not overlook the fact that the administration has missed many opportunities to tighten controls at our borders without depending on our citizen-soldiers to do the job. Since September 11, I have offered nine amendments to provide more funds to hire more Border Patrol agents, strengthen security at our borders, and stop the flow of illegal immigrants and contraband into our country. The administration opposed each one of my amendments, labeling them to be ''extraneous,'' ''unnecessary'' spending that would ''expand the size of government.'' If my amendments had been approved and supported by the administration, there would be thousands more Border Patrol agents on the job today.

Real homeland security cannot be found in a patchwork of quick fixes. Sending troops to the border is at best a Band-Aid solution to a serious problem. I will support this amendment, but I will also continue my efforts to provide the funds that are needed to provide lasting improvements to our border security.

ACTION CONSISTENT WITH PRESIDENT'S PLAN

Mrs. BOXER. Mr. President, the Bush administration has announced a plan that includes the use of National Guard forces to temporarily support Federal border patrol operations. While I support additional efforts to secure our borders, it is disappointing that nearly 5 years after the attacks of September 11, 2001, there are still insufficient U.S. Border Patrol personnel to adequately maintain the southern land border.

I appreciate the efforts by the Senator from Nevada to clarify the role of the National Guard in implementing the President's plan to secure the border. It is my understanding that the National Guard is being utilized under title 32 of the United States Code, which means that command and control rains with the Governor and the State or territorial government even though the Guard forces are being employed in the service of the United States for a Federal purpose. I also understand that under title 32, the Federal Government will reimburse States for costs, including the logistical costs, incurred during the mission. Finally, I understand that the National Guard will not directly participate in any law enforcement function, including search, seizure, arrest or similar activity.

Does the Senator from Massachusetts share my understanding that the Ensign amendment is consistent with the President's plan?

Mr. KENNEDY. Mr. President, the Senator from California is correct.

Mrs. BOXER. Mr. President, I thank the Senator from Massachusetts.

Mr. KENNEDY. Mr. President I ask unanimous consent that the following letter be printed in the RECORD.

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

MAY 18, 2006.

DEAR SENATOR: We the undersigned write to strongly oppose the Chambliss amendments aimed at gutting the ''AgJOBS'' compromise contained in the Hagel-Martinez bill before the Senate. The AgJOBS language is the product of the hard work of Senators Craig, Feinstein and Kennedy in collaboration with agribusiness employers, farmworker organizations, and a bipartisan group of Members of the House. We strongly support these needed reforms for the agricultural industry and its workers and we oppose changes that would turn this balanced package into a Bracero program.

In particular, we oppose the Chambliss amendment to lower the wages for farmworkers. Amendment 4009 would change the AgJOBS compromise on wage rates and slash the H–2A program's already inadequate wage rates by eliminating the protection of the adverse effect wage rate and the federal minimum wage from H–2A workers.

Currently, H–2A employers must pay the highest of three wage rates—the state or federal minimum wage, the ''Adverse Effect Wage Rate'' (AEWR), or the local prevailing wage. The AEWR was created under the Bracero guestworker program as a necessary protection against depression in prevailing wages (wage rates often stagnate because the guestworkers have little ability to demand higher wages). Sen. Chambliss himself described the effect of his provision as cutting H–2A program wage rates by roughly $3.00 per hour!!

The AGJOBS compromise already addresses the H–2A wage issue. AgJOBS would reduce the adverse effect wage rates for each state by about 10% by setting them at the rates in effect on January 1, 2003, and would then freeze the AEWR's for three years, while two studies are performed to examine H–2A wage rates and make recommendations to Congress. If Congress were to fail to enact an adverse effect wage rate formula within 3 years, the AEWRs would be adjusted at the end of 3 years by the cost of living. The AEWR issue is a complex one and is best left to the studies agreed to in the AgJOBS compromise.

Congress should not approve amendments that will encourage the agricultural industry to hire guestworkers at depressed wages—and that is exactly what the Chambliss amendments would do. This will harm both foreign workers and U.S. workers)and the effort should be opposed.

Thank you for your consideration of this matter.

Sincerely,

American Federal of Labor-Congress of Industrial Organizations (AFL–CIO); American Federation of State County and Municipal Employees (AFSCME); Catholic Charities USA; Change to Win; Evangelical Lutheran Church in America; Farmworker Justice; Hebrew Immigrant Aid Society (HIAS); International Brotherhood of Teamsters; The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW); Laborers' International Union of North America; League of United Latin American Citizens (LULAC); Mexican American Legal Defense and Educational Fund (MALDEF); National Council of La Raza (NCLR); National Farm Worker Ministry; National Immigration Forum; National Immigration Law Center; Service Employees International Union (SEIU); UNITE HERE; United Farm Workers of America (UFW); United Food and Commercial Workers International Union (UFCW).

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I believe most of us strongly support deploying the National Guard to our borders. I appreciate very much the sentiment and the direction this amendment goes. Unfortunately, it limits their ability and puts limitations on the time and on the mission the Guard provides. When you are sending troops into a difficult assignment, whether it is war or not, we should not be saying the Guard can only stay so long, the Guard can only do this or the Guard can only do that.

The President has outlined how he wishes to use the Guard. I support that. I believe it is a bad idea for Congress to say how we should be using our troops, whether it is in national security or homeland defense. Therefore, I urge a ''no'' vote.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I wholeheartedly support what the Senator from Missouri has said.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I ask unanimous consent for an additional 30 seconds to respond.

Mr. LEAHY. I ask unanimous consent that Senator BOND also have an additional 30 seconds.

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

Mr. ENSIGN. Mr. President, briefly, regarding the limitations the Senator from Missouri has brought up, a third of the forces the President has envisioned would not have any limitations. Two-thirds would basically be on their annual missions of 21 days, and they are specifically for the perception that they are there for police enforcement and are doing what the Border Patrol agents do. We put in the bill specifically what they would be doing.

There is all the flexibility in the world for the Guard to do the mission they are being sent down there to do. I think the concerns being raised are unfounded.

Mr. BOND. Mr. President, I appreciate the effort the Senator from Nevada is making. The problem is, some on the training missions may have to spend longer than that. They may want to spend longer than that. It may have the effect of having a different percentage of the Guard used for more than 15 days. It specifies limits on it.

I believe that while we support the general purpose of using the Guard, Congress should not be putting limitations on how it is used. I disagree with my colleague.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nevada. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Wyoming (Mr. ENZI), the Senator from Arizona (Mr. MCCAIN), and the Senator from New Hampshire (Mr. SUNUNU).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. DAYTON), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware (Mr. BIDEN) would have voted ''yea.''

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

The result was announced—yeas 83, nays 10, as follows:

[Rollcall Vote No. 137 Ex.]

YEAS—83

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

NAYS—10

Bennett	Harkin	Stevens
Bond	Hatch	Voinovich
Cochran	Jeffords	
Conrad	Leahy	

NOT VOTING—7

Biden	McCain	Sununu
Dayton	Menendez	
Enzi	Rockefeller	

The amendment (No. 4576), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that when the Senate resumes the bill tomorrow morning, there be 60 minutes for the Feinstein amendment, with Senator FEINSTEIN in control of 30 minutes, 20 minutes to the chairman, and 10 minutes for the ranking member; provided further that on the expiration of that debate, the Senate proceed to a vote on the Feinstein amendment No. 4087, with no intervening action or debate or second-degree amendments. We will vote on the Feinstein amendment at 10:45 a.m. tomorrow, since the Senate will be coming in at 9:45 a.m.

The PRESIDING OFFICER. Is there objection?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, reserving the right to object, I would like to ask of the chairman of the committee, Senator CANTWELL and I have an amendment that has been pending. We were willing to move forward last week, we were willing to move forward today, and we are willing to move forward tomorrow. I am wondering if the chairman can give us a sense of when our amendment can be brought up so we can be heard and whether we can get a commitment from the chairman that we will have a reasonable amount of time, if not an excessive amount of time to debate it—say, an hour or 2 hours.

Mr. SPECTER. Mr. President, my sense is we will be able to reach it tomorrow. We are juggling a great many considerations. I had discussed the issue with the Senator from New Hampshire earlier. We talked about 1 hour equally divided.

Mr. GREGG. That would be fine with me if the other side is agreeable to that.

Mr. SPECTER. That would be my proposal when we come to it. I know the Senator from New Hampshire is waiting, and he is entitled to have his amendment heard. We will try to get to it tomorrow, and we will try to work out a time agreement of 1 hour equally divided.

Mr. GREGG. I appreciate the chairman making that representation. My concern, of course, is that it not end up in a vote-arama, should we get to a vote-arama, and that we have time to debate it. With that representation, I will not object.

Mr. SPECTER. Mr. President, I do not expect vote-arama on this bill. This is not the budget resolution. The Senator from New Hampshire is familiar with budget resolutions.

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

The Senator from California.

AMENDMENT NO. 4087

(Purpose: To modify the conditions under which aliens who are unlawfully present in the United States are granted legal status)

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 4087.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. HARKIN, proposes an amendment numbered 4087.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mrs. FEINSTEIN. Mr. President, this is an amendment to modify the conditions under which aliens who are lawfully present in the United States are granted legal status. It is submitted on behalf of Senator HARKIN and myself. We have a half hour to argue the amendment tomorrow, but I would like to just raise a few points about it tonight. I did have the opportunity to speak about it earlier, but I recognize many Members were not yet back and available.

This amendment creates an orange card, a replica of which is on my left. This would streamline the process for earned legalization. It would create a more workable and practical program than exists in the Hagel-Martinez compromise, and it would dedicate the necessary dollars to cover the costs of administering this program. This amendment builds on compromises already agreed to under the McCain-Kennedy and Hagel-Martinez proposals, and it incorporates the amendments already adopted on the floor, but it eliminates what I consider to be a very unworkable three-tier program. This amendment only deals with the earned legalization parts of the bill. It does not change any of the border security provisions, the guest worker program, or any other component of the bill. It would simply eliminate the program created by Hagel-Martinez and replace it with this orange card program.

Under Hagel-Martinez, there are three tiers. Now, note this: We have not voted on Hagel-Martinez. Hagel-Martinez was an arrangement put together by Members of this body and it was brought up by using rule XIV. We have not voted on it. It essentially takes the 11.1 million people now in this country—working in this country, living in this country, raising their families in this country, but doing so in a clandestine way—and divides them into three different categories. For the 6.7 million who have been here more than 5 years, it would provide a transition to achieve earned legalization. For the 1.6 million who have been here less than 2 years or the 2.8 million who

have been here from 2 to 5 years, it creates two different tiers, and this is the bone of contention, these two different tiers.

I would say for anyone here as of the first of the year, we should provide this orange card process which I will describe in a moment. The problem doing it the Hagel-Martinez way is that it opens the door for fraud and for manipulation because you essentially have 4.4 million people here less than 5 years who would come forward and produce, in all likelihood, fraudulent documents, or simply remain in a clandestine status because they are working and they have families here.

The 2.8 million who have been here 2 to 5 years are then subject to leave the country, to touch back and enter into the country through a visa program, most likely the H–2C worker program which has 200,000. We lowered the cap for the H–2C program from 325,000 to 200,000 in an earlier amendment offered by Senator BINGAMAN and myself. But what people haven't realized is that the cap would be waived for individuals coming in from this tier, which would raise the guest worker program to 3 million people. And then here is the rub with the guest worker program: they would have to return after a period of time to their country. Therefore, there is no automatic path to earned legalization for these people, unless they can get an employer to petition for them for a green card. I think that is an unusual responsibility placed on an employer for so many people, and I think it is not fair for the employee, either.

Therefore, we have put forward a three-step process under the orange card amendment, which has received the support of 115 organizations and groups.

Under this amendment, all undocumented aliens who are in the United States as of January 1 would immediately register a preliminary application with the Department of Homeland Security.

At the time of the registration, they would submit fingerprints to the Customs and Immigration Services facility so that criminal and national security background checks could commence. It would create a more precise registration that would allow this to proceed electronically. That is a major key—proceed electronically so that DHS would have time to do the necessary processing and vet the application in an orderly manner. Then they would submit a full application for their orange card.

Once they have passed the security background check, they have paid their back taxes, they have paid the $2,000 fine, then they would be issued the orange card. The orange card would have biometric identifiers, would have the history of the individual, and would have a number, and this number would be designed so that those who have been here the longest would be first in the line for the green card at the end of the work period.

As everyone recalls, there are 3.3 million people back in their own countries waiting for green cards. None of this goes into play until that green card list is expunged. It is estimated that could take anywhere from 6 to 11 years. So during that period of time, individuals in this country would have an identifier: the orange card. This would be their identification. They could come and go with it. It is fraud-proof, it is biometric, it has a photo, it has a fingerprint, and therefore provides a safe methodology. As long as individuals fill out the annual reports required by the program which attest to their work history, pay the fine, and pay their back taxes, they would keep the orange card effectively in place.

I wish to comment that first of all, Senators HAGEL and MARTINEZ have done a service. They have tried to work out a compromise. I find fault with that compromise only when you read the small print of the bill language. When you read the bill language, you see that it is a huge program with 4.4 million people having to be found, having to be sought out. If they are here for less than the 2 years, they are deported. Who would deport them? How would they be found? You are going to find 2 million people? I think that is very difficult to do. We know employer sanctions haven't worked. In 2004, total convictions under employer sanctions for the tens of thousands of employers who employ these people was a total number of 47.

So I believe the orange card would serve us well. It is a streamlined process. It has the ability to consider all people to avoid the problem of deportation but to create a system which is secure, where people are checked out, where they are held accountable for their work, held accountable for their payment of back taxes, held accountable for the payment of a fine so they can then come out of the shadows and live a more normal and more productive life.

This goes back to the original McCain-Kennedy formula, but in essence it essentially provides that there is an orderly process connected with this.

As I said earlier, I think there is a critical flaw in Hagel-Martinez, and that is those people who fall into the second tier can remain in the United States legally for up to 3 years, and then they must leave the country and find a legal program from which they may reenter the United States. This is the flaw because this would subject people to, once again, going back into a clandestine lifestyle rather than running the risk that they leave their families, go home, can't get into a program, and then can't come back again.

The other problem with the Hagel-Martinez program is that if an individual doesn't work for 60 consecutive days, they are out. There is no provision for injury, there is no provision for illness, and when you are dealing with 6 million people, that is a problem. Some people are going to be the victims of bona fide injuries or bona fide catastrophic circumstances and not able to work for a period of time. So if they become injured or ill and effectively can't be on the job for 60 consecutive days at any given time during the year, they are then subject to deportation.

I believe we have an opportunity, through the border patrol with 12,000 additional agents, 2,500 additional inspectors, the money in the supplemental appropriations bill for the border, the National Guard doing logistical support and physical work on the border, and the fence to be built on the border, to make a major step forward in securing our borders. The next step and the most important part of the bill is what is the proper handling of the 10 million to 12 million people who are here illegally in our country at this time.

I would respectfully submit to this body that the fair handling of these people is creating a pathway to an earned—not an amnesty—but an earned legalization where people have to document over a consequential period of time that they are working, they are good citizens, they are learning English, they are paying their taxes, and they are paying the fine. All of the proceeds from this fine would go to support the costs of the program. If there are 10 million people, at $2,000, that produces $20 billion for the additional hires that are necessary to run this program and hopefully run it well.

So we will continue to argue this tomorrow, and I ask that the amendment be set aside at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I would like to speak briefly on my amendment, which will hopefully be reached at some point here in the next day or so. It is an amendment I sponsored with Senator CANTWELL from Washington, and it addresses what we see as an issue that, although not major in the context of the overall immigration debate, remains rather significant.

There is today something called a lottery system. It is euphemistically called the diversity lottery system, which really I don't understand why it has picked up that name because it is really nothing like that. It is simply a lottery system. It says essentially that 50,000 people will get the right to become American citizens if they win a lottery and they are from countries which are deemed underrepresented. Most of those countries represent Eastern Europe and Africa. They don't have to do anything other than have a high school education or, alternatively, have worked for 2 out of the last 5 years in order to participate in this lottery. So the essential effect of this lottery system is that we are taking from around the world 50,000 people

who simply got lucky. There is no real reason we should take them. There is no policy reason to take them.

There is no such thing as an underrepresented country really in our immigration system because of the fact that there are so many illegal immigrants in the country already. For example, if you were to take Poland, there are 47,000 people in this country who under this bill are presently illegal—that is the estimate—who may become legal. From Russia, there are about 46,000 people who qualify in that area. From Africa, there are 120,000 people who fall into that category. So these countries have a lot of people already here—some legally, a lot illegally, and they don't need representation.

Mr. FEINSTEIN. Mr. President, may I interrupt the Senator just for one brief change?

Mr. GREGG. As long as I will not lose the floor.

Mr. FEINSTEIN. Mr. President, I ask that instead of setting aside the amendment, it will be continuing in a pending status.

The PRESIDING OFFICER. The amendment is pending.

Mr. FEINSTEIN. Thank you very much.

Mr. GREGG. So this lottery system, which was created back a while ago—I think in the early 1990s—in a sense of good will or political correctness, really is not all that productive to us as a nation. So Senator CANTWELL and I have taken a look at it and said: Listen, if we are going to have a lottery system, why don't we at least apply it to people we actually need in this country to assist us in being a stronger nation, a more vibrant nation, a more economically successful nation?

We know that in our Nation today, we are missing—or not missing, but we know we are not producing and creating enough people in the sciences which are energizing economic activity in this world: the maths, math doctorates, the science doctorates. We know we have a real lack of technical ability in many arenas and that we are falling well behind other nations, such as China, in our ability to produce people in the sciences and math subjects.

Why not take this lottery system and say, rather than making it available to the cabdriver in Kiev, whom we may or may not really need in the United States, let's make it available to the physicist in Kiev. Why not say to the doctor in Poland or the doctor in Nigeria: You will have a chance to become an American citizen and have the opportunity to participate in this lottery, rather than saying to the street sweeper in Poland or the miner in Nigeria: It is your chance to participate in the lottery. So we have taken this proposal, which is 50,000 names thrown in a hat from these countries which are allegedly underserved, which are not underserved, and we changed it so that two-thirds of the names thrown in this hat will be of people who have advanced science degrees, which our Department of Commerce and Department of State determine are in need here in the United States. Two-thirds of those lottery winners will have those degrees. The other third will remain people who only need to have a high school education or have worked 2 out of the last 5 years.

Basically the lottery system will be changed from being one of, we don't know who is coming in the country and we don't know what they are going to contribute to our society as they come in—we hope they will be people who will be hard-working and committed people, but they may actually be people who are not. In fact, if a person has only worked 2 out of the last 5 years and doesn't have a high school education, they can literally qualify for the lottery. Now I ask you, is that the kind of person we want to have qualified for the lottery? A person who may have been unemployed for 3 of the last 5 years, doesn't have a high school education, but they can get into the United States under the lottery. I think it makes much more sense to say let's have folks who have shown their energy, shown their commitment, shown their willingness to strive within their own communities by obtaining these advanced degrees, let's have those folks participate in the lottery.

Some will say the H–1B program already solves this because it is greatly expanded in this bill, and that allows people with advanced degrees to come into this country. That is true. That is good. This bill is excellent in that manner. But as a practical matter, this lottery would go to people who do not qualify for H–1B. In other words, to get an H–1B visa, you have to have a sponsor or, in other words, an employer here in the United States who is going to hire you or you have to have a family member who will sponsor you to come into the country.

There are a lot of people out there in these allegedly underserved countries who do not have somebody who is going to employ them because the groups that employ foreign nationals who have advanced science degrees don't go to those countries. They don't recruit in those countries, for all intents and purposes. And they don't have a family member here. So they are out of it. They can't get in. So it makes sense to take the lottery system and convert it to something that is going to be an add-on to America's success.

We hear a lot in this Chamber, especially from some of our colleagues, that we are outsourcing jobs, we are outsourcing our jobs to other countries. What this proposal does is it insources people who will create jobs in our country. It says let's go out and find the best and the brightest people around the world and say: Listen, we would like to have you live in the United States and create jobs in the United States, use your ability to produce in the United States. If you don't have a person who wants to employ you and you don't have a spouse here who is willing to sponsor you or a family member who is willing to sponsor you, we still would like you to have a shot at coming here, because most would like to, and we have a lottery system that says you can win it and get into this country.

I note that under the present lottery system, we have seen abuses. In fact, the report of the inspector general of the State Department found significant fraud and mismanagement of this program and the fact that people were coming into the country who really should not have come into the country, but they won the lottery or they were relatives of people who won the lottery. Obviously, the most egregious example of that was the terrorist individual who attacked the L.A. airport and shot up the El Al counter. He was in the United States because his spouse had won the lottery. Not a good decision for us.

It seems to me that rather than just flipping a coin and saying: Hey, listen, if you are out there and you want to come to work and you are from one of these countries which are allegedly underserved—which, by the way, they are not underserved, as I pointed out in the early part of my statement—you have a chance to come here. Let's at least say for the majority of the people who have won the lottery that you have to have done something, you have to have shown something, you have to have produced something, you have to have been willing to go out there and show you have the character and the energy and the intelligence to actually be an addition to our society, an add-on, a creator of jobs in our society, a creator of economic activity, a creator of a stronger society rather than just have the good fortune of having drawn a lucky number.

That is what this bill does. I cannot really understand the opposition to it. A lottery system—I am not sure it ever really had a good time to exist, but clearly now is not a good time for it to exist. We have 12 million people in this country who arguably won the lottery by coming into this country illegally. I guess you could say that. Under this bill, some of them are really going to win the lottery because they are going to go to the back of the line, but they are getting on the line and obtaining what is called earned citizenship, as the Senator from California was saying. But the simple fact is, we don't need to add to that great mass of people. They are here already. If we are going to add people to our culture from the immigration standpoint, let's add people who we know on the face of it are likely to contribute significantly to making us a stronger and more vibrant nation, especially economically.

If we are going to have a lottery, let's just not make it an arbitrary event. Let's make it something that assists not only the person who wins but also our Nation, so that both sides

are winners under the lottery, not just one side.

The House took a look at the lottery. In their bill, they determined it was so inappropriate, they simply abolished it altogether. So it seems to me if we take this position we will be strongly positioned in conference to present the case that the lottery can work for us as a nation, rather than be a loss leader. That is why this amendment has picked up considerable support. It is bipartisan support.

I look forward to having a more extensive debate on it with my cosponsor, Senator CANTWELL, who understands. She comes from Washington State where they understand the need to get some top-quality people in our country in the area of science, as the home of Microsoft, which is clearly the engine of the Internet, the engine of the expansion of technology over the Internet and in computer science that has driven the world, not only the United States. They understand uniquely in Washington State, as we all hopefully do, the need to bring smart, intelligence people from across the world into our Nation and keep us competitive with countries such as China that are turning out four or five or six times the number of scientists we are turning out annually.

That is why this is important. It is not, obviously, the biggest vote on this stage. There have been a lot of votes dealing with the substance of this bill which has huge implications relative to the numbers of people who come into this country and how they come into this country and how we protect our borders, but it is one part of the system we have to make more rational, better, but to be a system where not only does the immigrant win but America wins.

With that, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I wish to speak in support of the amendment of Senator GREGG to deal with the lottery provision that is currently in the code involving immigration. We have many odd and curious provisions in our immigration law, but I suppose the lottery provision is one of the most odd and most curious. It seems to me to be unprincipled, without any real thought as to how it would effect a policy that is good for America. What kind of thing is this, that you do a lottery to let people come in from around the world?

His approach would be to say: Let's focus two-thirds of those slots on people with higher skills and higher education. I want to speak in favor of that and say, really, we need not only to do this two-thirds, but it would be better, in my view, to do the whole lottery program in this fashion. In addition, we need to reevaluate entirely this bill which is before us today to ask ourselves with some thoughtfulness how we can make future immigration policy beneficial to our country. It ought to benefit us. Everybody who comes here, no matter how poor or uneducated, according to the witnesses we heard at our one hearing, is benefited economically.

The poorer they are the more they benefit. They benefit, but the question is, What about the United States? Do we benefit? Is it a net gain for the United States?

We had a number of professors who testified—Professor Freeman, Professor Siciliano, Professor Chiswick, and others whose names escape me—and talked about this quite openly. These are the fundamental facts that should be part of any thoughtful, comprehensive reform of immigration in America.

The facts are these: People with college credit, people with a college degree uniformly contribute more to this country in taxes than they take out in benefits. The people who come to our country with less than a high school education, a high school dropout or somebody who just didn't have the opportunity, they don't have a high school degree—and over 50 percent of illegal immigrants entering our country today are without a high school degree—those people, it is uniformly agreed by professional economists who studied this issue, most of whom testified at our committee, strongly favor immigration but they all agree they will on average—not every single one but on average—draw more from the U.S. Treasury and U.S. coffers than they put in.

Does that tell us anything? What is happening in Canada? What is happening in France right now? What has already happened in Britain, Australia, Switzerland, and the Netherlands? These countries have reevaluated their immigration policy. They are focusing on bringing in people who benefit the country.

We cannot accept everybody. Isn't it a simple principle? There is no way this country can accept everybody who would like to come.

The leading expert on immigration—I think universally agreed on immigration—such as Professor Voorhas from the Kennedy School at Harvard, he himself is an immigrant. He immigrated here from Cuba. The name of his book, probably the most authoritative book on the entire subject, is entitled ''Heaven's Door.'' What is that? ''Heaven's Door'' is entry into the United States.

For a poor person in the Third World who has been abused by a legal system that does not work, who does not have clean water, who does not have a legitimate job, who does not have electricity, getting to the United States, the title of his book, is like going through Heaven's door. It is a tremendous thing.

But the world has a lot of people in it. We already have a lot of people in the United States. We have to ask ourselves: How many can we welcome? What people will achieve their dreams and aspirations most successfully here, people who are high school dropouts or people who have a greater education?

We also need to ask, as Canada does: Do they speak English? Australia does. They ought to speak English before they come here.

What is it about letting in hundreds and hundreds of thousands of people on the theory that they might one day learn English, and that would be a requirement for citizenship. But if we have gotten more applicants than we can accept, why would we not want to ask ourselves whether we should give extra points, a higher listing on the list, if they already speak English? They would be guaranteed to be more successful here and more likely to assimilate, more likely to be promoted, more likely to be a boss over other people. If you can't speak the language, how can you ever rise to be a supervisor?

Those are important things, I submit, and not considered in the legislation before us at all.

Senator CRAIG's amendment is a very good amendment. It focuses on a critical matter. Let me tell you what my staff has concluded from their careful study of the bill. We believe that as it is presently written today only 30 percent of the people coming into this country will come in as a result of their skills or education. That is a pretty stunning number. Only 30 percent coming into our country will have their entry evaluated, their skill level or their education level, whereas 70 percent will come into our country for other reasons.

For example, if a young man came to our country under the new guest worker program that would be made law today, and that guest worker program would allow him to come into the country to file for a green card the first day he arrived here, within 5 years from that he can apply for and obtain as of right his citizenship in the United States. That will happen under the bill. Within 6 years, the person could possibly be a citizen of the United States coming in under a program which the bill says is a temporary guest worker provision. They say it is a temporary guest worker section of the bill. It has big letters, ''Temporary Guest Worker.''

But on the first day they get here, their employer can ask for a green card. A green card means you have legal permanent residence. Within 5 years of getting that card, they can become a citizen. A legal permanent resident means if you never seek citizenship you can stay in the country once you get that green card for the rest of your life.

What I am saying is, under this provision a young man can come in—and he is 20 years of age. If he works 5 or 6 years, he becomes a citizen. Now he is 30, and he has a 50-year-old brother, a 60-year-old, a 70-year-old mother and father. They can be brought into this country under chain migration, whether or not they have any skills or any education that would be relevant to their success in the United States of America.

Think about this: Let us say they are both from Honduras. Let us say this is a young man who was valedictorian of his school in Honduras, who had a chance to take an English course and took English and learned it well, was able to go to a technical college and became skilled in electricity, and he applies at age 21 to come to the United States. Would he not have the advantage over a 50-year-old brother or a 70-year-old mother of someone who is already here when those people who may or may not have any skills which would be beneficial to the country could likely became a drain on the Nation's resources?

That is how we have 70 percent of the people coming into our country under the new provision who are supposed to be in a comprehensive reform of the immigration system? That does not make sense. We need to focus more on providing opportunities for people to enter our country who have the greatest potential to succeed. It is perfectly proper and legitimate for us to ask: What is the worker status, the wages that are being paid in a given area, and do we have a shortage?

In my view, the Department of Labor should not allow surging immigration when we have certain fields in the United States where there are more workers than there are jobs and you let a bunch of people come in from out of the country to take what few jobs there are leaving Americans unemployed.

We need to consider all of those things. But, fundamentally, when you make a choice between two individuals—a younger person, a person who speaks English, a person who has skills—who is going to be far more successful? If they are successful here themselves, and if they benefit and if they are blessed by the great freedoms and economic prosperity and the free market we have in America, if they are blessed by that, they will pay more taxes to the Government than they draw from the Government. That is a pretty good thing, I submit.

One reason I have been so critical of this legislation—and I remain steadfastly convinced that it is not worthy of the Senate of the United States—is the legislation seems to have given no thought to these issues whatsoever. We certainly never had a hearing to deal with it, to my knowledge. A lot of things we haven't done that we could have done. We could have studied more, we could have had more experts come in and testify and help us craft the legislation. We should have brought in immigration people who work for the Government of the United States to find out what is working and what is not working.

I talked to the person in the Dominican Republic, the American consulate official who meets with those people in the Dominican Republic who would like to come to the United States. He seemed like a very nice guy. He made some mention about sham marriages. So we talked about that.

As a U.S. attorney prosecuting a case where people created a sham marriage for immigration purposes, he said they won't even talk about prosecuting a case in the Dominican Republic. And he has seen lots and lots of sham marriage cases that were never prosecuted.

Why do they have a sham marriage? Because if you are married to somebody who is in the United States, they can take their wife and their children. That is the way to get people here. So they create a sham marriage.

But he told me that 95 percent of the people in the Dominican Republic who were approved to come to the United States were approved under the chain migration or family connection provisions in our code.

Fundamentally, almost no one coming from the Dominican Republic to the United States is coming because they have a skill that would benefit us and that would indicate their likely success in our society. They come in because some other family member of a qualified relation is here as a citizen or even a green card holder. That is how they get to come. They are creating a false document to show these are relatives or their spouses and they are married when it is not so.

As I have said a number of times on the Senate floor, 60 percent of the people in Nicaragua in a recent poll said they would come to the United States if they could, and I understand 70 percent of the people in Peru, when polled, said they would come to the United States if they could.

What does that mean? Think about it.

Mexico, all of Central America, Haiti, the Dominican Republic, Jamaica, Morocco, all of the African nations, the Middle East, Bangladesh, China, India, Taiwan, the Philippines—all these nations around the world with great people in them—wonderful people but in each one of those countries are significant numbers of people, I submit, who would come to the United States if they could. Wouldn't it be a good policy for our Nation? Wouldn't it be the right thing to think seriously about who should come, like Canada and Britain, and as France did last week, and refocus our attention on accepting a certain number of people but making sure those people bring skills and talents with them to indicate they would be a positive benefit to our society rather than a net drain on society?

That is a challenge. We simply cannot accept everyone who wants to come. It is painful to bring people who are not able to speak English or effectively take advantage of the opportunities our country has. When they do not do that, they do not do well. They tend to pull themselves apart and continue to speak their own language. They do not advance and assimilate and become part of the great melting pot we are so proud of as Americans.

It is a big step forward to take this lottery, to put two-thirds of those people who are in it, who are now chosen by random chance, without any regard to skills or abilities or language or those matters, to at least set them aside for high-skilled positions for education, science, mathematics. It would be a great benefit to our country.

I yield the floor.

Mr. LEAHY. Mr. President, when the Senate resumed its consideration of comprehensive immigration reform last week I began by expressing my hope that we would finish the job the Judiciary Committee started in March and the Senate began in April. We need to fix the broken immigration system with tough reforms that secure our borders and with reforms that will bring millions of undocumented immigrants out of the shadows. I have said all along that Democratic Senators cannot pass a fair and comprehensive bill alone. Last week we got some help.

We got some words of encouragement from President Bush last Monday night when he began speaking out more forcefully and in more specific terms about all of the components needed for comprehensive legislation. For the first time, he expressly endorsed a pathway to earned citizenship for the millions of undocumented workers now here. I thank him for joining in this effort. We will need his influence with the recalcitrant members of his party here in the Senate, and especially in the House, if we are ultimately to be successful in our legislative effort. Without effective intervention of the President, this effort is unlikely to be successful and the prospects for securing our borders and dealing with the hopes of millions who now live in the shadows of our society will be destroyed. Those who have peacefully demonstrated their dedication to justice and comprehensive immigration reform should not be relegated back into the shadows.

Last week the Senate made progress. We made progress because Democratic and Republican Senators working together rejected the most strident attacks on the comprehensive bill that we are considering. We joined together in a bipartisan coalition in the Judiciary Committee when we reported the Judiciary Committee bill. Democratic Senators were ready to join together in April and supported the Republican leader's motion that would have resulted in incorporating features from the Hagel-Martinez bill, but Republicans balked at that time and continued to filibuster action. Last week, Republicans joined with us to defend the

core provisions of that bill, and we defeated efforts by Senators KYL and CORNYN to gut the guest worker provisions and to undermine the pathway to earned citizenship. Instead, we adopted the Bingaman amendment to cap the annual guest worker program at 200,000 and the Obama amendment regarding prevailing wages in order to better protect the opportunities and wages of American workers.

I spoke last week about the need to strengthen our border security after more than 5 years of neglect and failure by the Bush-Cheney administration. A recent report concluded that the number of people apprehended at our borders for illegal entry fell 31 percent on President Bush's watch, from a yearly average of 1.52 million between 1996 and 2000, to 1.05 million between 2001 and 2004. The number of illegal immigrants apprehended while in the interior of the country declined 36 percent, from a yearly average of roughly 40,000 between 1996 and 2000, to 25,901 between 2001 and 2004. Audits and fines against employers of illegal immigrants have also fallen significantly since President Bush took office. Given the vast increases in the number of Border Patrol agents, the decline in enforcement can only be explained by a failure of leadership.

The recent aggressive and well-publicized enforcement efforts to detain illegal immigrants seem to be election-year posturing that does little to improve the situation. We need comprehensive reform, backed up by leadership committed to using the tools Congress provides, not to piecemeal political stunts.

Once again the administration is turning to the fine men and women of National Guard. After our intervention turned sour in Iraq, the Pentagon turned to the Guard. After the government-wide failure in responding to Hurricane Katrina, we turned to the Guard. Now, the administration's long-standing lack of focus on our porous Southern border and failure to develop a comprehensive immigration policy has prompted the administration to turn once again to the Guard. I remain puzzled that this administration, which seems so ready to take advantage of the Guard, fights so vigorously against providing this essential force with adequate equipment, a seat at the table in policy debates, or even adequate health insurance for the men and women of the Guard.

I have cautioned that any Guard units should operate under the authority of State Governors. In addition, the Federal Government should pick up the full costs of such a deployment. Those costs should not be foisted onto the States and their already overtaxed Guard units.

Controlling our borders is a national responsibility, and it is regrettable that so much of this duty has been punted to the States and now to the Guard. The Guard is pitching in above and beyond, balancing its already demanding responsibilities to the States, while sending troops who have been deployed to Iraq. The Guard served admirably in response to Hurricane Katrina when the Federal Government failed to prepare or respond in a timely or sufficient manner. The Vermont Guard and others have been contributing to our national security since the immediate aftermath of 9/11. After 5 years of failing to utilize the authority and funding Congress has provided to strengthen the Border Patrol and our border security, the administration is, once again, turning to the National Guard.

It was instructive that last week President Bush and congressional Republicans staged a bill-signing for legislation that continues billions of dollars of tax cuts for the wealthy. Instead of a budget with robust and complete funding for our Border Patrol and border security, the President has focused on providing tax cuts for the wealthiest among us. Congress has had to step in time and again to create new border agent positions and direct that they be filled. Instead of urging his party to take early and decisive action to pass comprehensive immigration reform, as he signaled he would in February 2001, the President began his second term campaigning to undercut the protections of our Social Security system, and the American people signaled their opposition to those undermining steps. While the President talks about the importance of our first responders, he has proposed 67 percent cuts in the grant program that supplies bullet-proof vests to police officers.

Five years of the Bush-Cheney administration's inaction and misplaced priorities have done nothing to improve our immigration situation. The Senate just passed an emergency supplemental appropriations bill that allocated nearly $2 billion from military accounts to border security. The Democratic leader had proposed that the funds not be taken from the troops. But last week the President sent a request for diverting a like amount of funding, intended for capital improvements for border security, into operations and deployment of the National Guard. The Republican chairman of the Senate Appropriations Subcommittee on Homeland Security came to the Senate floor last week to give an extraordinary speech in this regard.

In addition, last week the Senate adopted a billion-dollar amendment to build fencing along the Southern border without saying how it would be funded. We also adopted amendments by Senators BINGAMAN, KERRY, and NELSON of Florida to strengthen our enforcement efforts.

Border security alone is not enough to solve our immigration problems. We must pass a bill—and enact a law—that will not only strengthen the security along our borders, but that will also encourage millions of people to come out of the shadows. When this is accomplished we will be more secure because we will know who is living and working in the United States. We must encourage the undocumented to come forward, undergo background checks, and pay taxes to earn a place on the path to citizenship.

Last week we defeated an Ensign amendment to deny persons in legal status the Social Security benefits to which they are fairly entitled. I believe that most Americans will agree with that decision as fair and just. It maintains the trust of the Social Security trust fund for those workers who contribute to the fund.

The opponents of our bipartisan bill have made a number of assaults on our comprehensive approach. Senators KYL, SESSIONS, and CORNYN opposed the Judiciary Committee bill. Senators VITTER, ENSIGN, and INHOFE have been very active in the amendment process, as well. I hope that they recognize how fairly they have been treated and the time they have been given to argue their case against the bill and offer amendments. We have adopted their amendments where possible. A narrowed version of the Kyl-Cornyn amendment disqualifying some from seeking legalization was adopted. The Sessions amendment on fencing was adopted. The Vitter amendment on documents was adopted. The Ensign amendment on the National Guard is being considered. Over my strong objection and that of the Democratic leader, Senator SALAZAR and others, a modified version of the Inhofe amendment designating English as our national language was even adopted. This amendment is wrong and has understandably provoked a reaction from the Latino community as exemplified by the May 19 letter from the League of United Latin American Citizens, the Mexican American Legal Defense and Educational Fund, the National Association of Latino Elected Officials Educational Fund, the National Council of La Raza, the National Puerto Rican Coalition, and from a larger coalition of interested parties as reflected in a May 19 letter from 96 national and local organizations. I will ask copies of these two letters be printed in the RECORD following my statement.

I trust that with so many of their amendments having been fairly considered and some having been adopted, those in the opposition to this measure will reevaluate their previous filibuster, that they will vote for cloture, and, I will hope, support the compromise bill.

Immigration reform must be comprehensive if it is to lead to real security and real reform. Enforcement-only measures may sound tough but they are insufficient. The President has acknowledged this truth. Our bipartisan support of the Senate bill is based on our shared recognition of this fact. In these next few days, the Senate has an opportunity, and a responsibility, to pass a bill that addresses our broken system, with comprehensive immigration reform.

I ask unanimous consent that the aforementioned letters be printed in the RECORD.

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

MAY 19, 2006.

DEAR SENATOR: On behalf of the undersigned national Latino organizations, we are writing to express our grave concern at the passage of the Inhofe Amendment to the immigration reform bill currently under consideration in the Senate. We believe this amendment jeopardizes the health and safety of all Americans by undercutting federal, state, and local government's capacity to provide vital information and services to immigrants and Americans who are speakers of other languages. This amendment has nothing to do with immigration reform, and it does nothing to help immigrants learn English. We believe it has no place in this bill and urge you to reconsider it.

Upon review of the language of this amendment, we have reached the conclusion that it would undercut policies that facilitate communication with people who are speakers of other languages. If this amendment becomes law, it would jeopardize the delivery of public health and safety messages that are intended to protect all Americans. The amendment would make it more difficult for agencies like the Federal Emergency Management Agency (FEMA) and the Centers for Disease Control and Prevention (CDC) to respond to a flu pandemic, another hurricane disaster like Katrina, or another terrorist attack. If some portion of the community does not receive information about immunizations or other health threats in a language they can understand. then the entire public is at risk.

We are also offended by the premise reflected in the amendment and the debate which took place on the Senate floor that the English language is somehow ''under attack'' in the United States. Immigrants and all Americans understand that English is our common language. If there is a challenge to the integration of immigrants. it is that there are insufficient English classes available to meet the demand from immigrants who are eager to take them; the Inhofe Amendment does not help a single immigrant learn English. We stand ready to join in a debate on how to create new resources and options to facilitate English classes and the full integration of immigrants into our society. We deeply regret that the Senate failed to choose this course of action and instead voted on a counterproductive proposal that would do real harm while doing nothing to promote English-language acquisition.

The presence of this amendment in the immigration reform bill calls into question our community's support of the immigration reform package. We urge you in the strongest possible terms to reconsider this damaging vote.

Sincerely,

Hector Flores, National President, League of United Latin American Citizens (LULAC).

John Trasviña, Interim President and General Counsel, Mexican American Legal Defense and Educational Fund (MALDEF).

Arturo Vargas, Executive Director, National Association of Latino Elected Officials Educational Fund (NALEO).

Janet Murguia, President and CEO, National, Council of La Raza (NCLR).

Manuel Mirabal, President and CEO, National Puerto Rican Coalition (NPRC).

MAY 19, 2006.

DEAR SENATOR: We, the undersigned 96 national and local organizations, understand that the Senate voted yesterday to approve an amendment offered by Senator Inhofe which affirms English as the nation's national language and which could undercut policies which facilitate communication with people who are speakers of other languages. We are alarmed at this development and urge you to reconsider this ill-advised vote.

There is no question that English is the common language of this Nation; many of our organizaions offer English-language classes and can testify to the fact that the demand for instruction far exceeds the supply. If there is one single issue that stands in the way of immigrants learning English, it is a lack of resources to provide sufficient classes for those seeking to take them. We are sorely disappointed that the Senate debate on language focused on a proposal to limit communication with immigrants rather than on increasing access to programs that can actually assist immigrants as they attempt to learn English while working, raising families, and contributing in multiple ways to the vibrancy of this country.

In addition, the Inhofe Amendment undermines the health and safety of all Americans by undercutting federal, state, and local government's capacity to provide vital information and services to immigrants and Americans who are speakers of other languages. It would jeopardize the delivery of public health and safety messages that are intended to protect all Americans. The amendment could make it more difficult for agencies like the Federal Emergency Management Agency (FEMA) and the Centers for Disease Control and Prevention (CDC) to respond to a flu pandemic, another hurricane disaster like Katrina, or another terrorist attack. If some portion of the community does not receive information about immunizations or other health threats in a language they understand, then the entire public is at risk.

This amendment has nothing to do with immigration reform, and it does nothing to help immigrants learn English. We believe it has no place in this bill and urge you to reconsider it.

Sincerely,

ACORN; American Immigration Lawyers Association; Americans for Democratic Action, Inc.; Arab Community Center for Economic and Social Services; Asian American Justice Center; Asian American Institute; Asian and Pacific Islander American Health Forum; Asian Pacific Islander Coalition of King County; Asian Communities for Reproductive Justice; Asian Law Alliance; Asian Law Caucus; Asian Pacific American Legal Center of Southern California; ASPIRA; Bell Policy Center-Denver; Break the Cycle; Carter and Alterman; CASA of Maryland, Inc.; Center for Justice, Peace and the Environment; Center for Law and Social Policy; Central American Resource Center/CARECEN-L.A.; Centro de la Comunidad, Inc.

Centro Hispano of Dane County; Chinese for Affirmative Action/Center for Asian American Advocacy; CHIRLA; Coalition of Limited English Speaking Elderly; Community Legal Services, Inc.; Cross-Cultural Communications, LLC; Cuban American National Council; District of Columbia's Fellowship of Reconciliation; Escuela Tlatelolco Centro de Estudios; Fuerza Latina; Greater New York Labor-Religion Coalition; Immigrant Legal Resource Center; Immigration Law Office of Kimberly Salinas; Institute of the Sisters of Mercy of the Americas; Korean American Voters Alliance; Korean Resource Center—Los Angeles; La Causa Inc.; La Clinica del Pueblo; Latino and Latina Roundtable of the San Gabriel Valley and Pomona Valley; Latino Leadership, Inc.;

Law Center For Families; Lawyers' Committee for Civil Rights Under Law; League of United Latin American Citizens; Legal Momentum; Luther Immigration and Refugee Service; Mary's Center for Maternal and Child Care, Inc.; Mexican-American Council; Migrant Legal Action Program; Minnesota Immigrant Freedom Network; NAACP; National Advocacy Center of the Sisters of the Good Shepherd; National Association of Latino Elected Officials; National Association of Social Workers; National Council for Community and Education Partnerships; National Council of La Raza; National Health Law Program; National Immigration Law Center; National Korean American Service & Education Consortium; National Latina Health Network National Organization for Women.

National Network for Arab American Communities; National Network to End Domestic Violence; National Network to End Violence Against Immigrant Women; National Partnership for Women & Families; National Puerto Rican Coalition; New York Asian Women's Center; New York Immigration Coalition; OCA Greater Seattle Chapter; PeaceAction Montgomery; People for the American Way; Presbyterian Church (USA); Resource Center of the Americas; Rio Grande Centers, Inc.; SEIU Local 21—Louisiana; SEIU Local 32BJ; Service Employees International Union; Sexual Assault Services Organization; South Florida Jobs with Justice; Southeast Asia Resource Action Center; SSG/PALS for Health Program—SSG/ALAS para tu Salud.

Tahirih Justice Center; Teachers of English to Speakers of Other Languages, Inc.; The American-Arab Anti-Discrimination Committee; The California Pan-Ethnic Health Network; The Fair Immigration Reform Movement; The Korean American Resource & Cultural Center—Chicago; The Mexican American Legal Defense and Educational Fund; The National Asian Pacific American Women's Forum; The National Capital Immigration Coalition; UFCW Region One; UNITE HERE; United Methodist Church, General Board of Church and Society; WA State Coalition Against Domestic Violence; Women's Committee of 100; YKASEC—Empowering the Korean American Community—New York.

Mr. FRIST. Mr. President, we have had a good process to this point on the immigration bill. I thank the bill managers for their hard work. We are now, as I outlined this morning, in our final week prior to our recess. We have a lot of legislative and executive items we need to complete before that recess. Therefore, in a moment, I will be filing cloture on the immigration bill to ensure we will complete action before the Memorial Day recess, by the end of this week. In doing so I hope we can still have a fair process and continue to work through amendments.

There are a number of germane amendments that may be in order postcloture. I hope Senators will have the opportunity to have votes on them.

Having said that, we also have a lengthy list of important executive nominations that I will be discussing with the Democratic leader. It is my hope we can reach time agreements on these so we can schedule those nominations for votes this week, as well.

One of the nominations we will consider is the nomination of Brett Kavanaugh to be a U.S. circuit court judge. I understand we would not be able to reach a time limit for that nomination for this week. Therefore, it

is my intention to file cloture on that nomination, as well.

CLOTURE MOTION

I now send a cloture motion to the desk on the comprehensive immigration bill.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 414, S. 2611: a bill to provide for comprehensive immigration reform and for other purposes.

William H. Frist, Arlen Specter, Larry Craig, Mel Martinez, Orrin Hatch, Gordon Smith, John Warner, Pete Domenici, George V. Voinovich, Ted Stevens, Craig Thomas, Thad Cochran, Judd Gregg, Lindsey Graham, Norm Coleman, Mitch McConnell, Lamar Alexander.

Mr. FRIST. I ask that the live quorum under rule XXII be waived.

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

EXECUTIVE SESSION

BRETT M. KAVANAUGH TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mr. FRIST. I now move to proceed to executive session and the consideration of Calendar No. 632, the nomination of Brett Kavanaugh.

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

The clerk will report.

The assistant legislative clerk read the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

CLOTURE MOTION

Mr. FRIST. I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 632, the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Arlen Specter, Saxby Chambliss, Larry Craig, Mel Martinez, Elizabeth Dole, Johnny Isakson, Pat Roberts, Ted Stevens, Craig Thomas, Thad Cochran, Chuck Grassley, Judd Gregg, Tom Coburn, Richard Shelby, Lindsey Graham, Orrin Hatch.

Mr. FRIST. I ask unanimous consent the live quorum be waived, and the Senate resume legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

KAVANAUGH NOMINATION

Mr. FRIST. Mr. President, the last action was filing cloture on the nomination of Brett Kavanaugh, the President's nominee for the DC Circuit Court of the Appeals. I have been discussing with the minority leader the nomination this morning and over the course of the day and will continue to work with him as we try to reach a time agreement with respect to getting an up-or-down vote later this week. It is because we have not been able to agree to that, that I filed cloture to ensure we have a vote on this nomination.

I expect the full Senate to vote on this nomination. I don't know exactly what the schedule will be. It will depend on the outcome of the immigration bill.

I did have the opportunity to meet with Mr. Kavanaugh today. He is an outstanding candidate, a candidate who has stellar credentials, both in the private sector and the public sector, working as counsel and adviser to the President. He has had a distinguished legal career that has had him argue before the Supreme Court and appeals courts around the country. He is a graduate of Yale University and Yale Law School where he served on the law journal. He has, on three separate occasions, received the American Bar Association stamp of approval.

He was nominated 3 years ago. He has waited 3 years for the vote we will have later this week, for that fair up-or-down vote. It is time the Senate fulfills its constitutional duty, the advice and consent, by giving Mr. Kavanaugh that vote he deserves. I look forward to moving ahead on his nomination and upholding the confirmation process.

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006—Continued

Mr. FRIST. Mr. President, I will be closing shortly, but I do want to comment briefly on the immigration bill today. I want to make a few remarks on where we are and then where we will be going.

Mr. President, we began debate on the comprehensive immigration reform before the Easter recess. The majority was at that time set to strengthen the underlying bill by having debate and amendment on the underlying bill to be able to toughen the border security aspect, but at the 11th hour, the other side said: No, we are not going to allow that open debate and amendment process. So what had come to the floor under the leadership of Chairman SPECTER was a bipartisan bill that did need continued work, and that bipartisan effort was scuttled for a period of time.

The Democratic leader and I agreed to a process whereby we could bring that bill back to the floor, which was the beginning of last week, where we, in a bipartisan way, would have that opportunity to offer amendments and attempt to improve or adjust or modify that bill. That is the process we are in the middle of right now.

I am pleased where we are today, but as I said 2 weeks ago or 3 weeks ago, we do need to complete this bill before the Memorial Day recess. Resuming consideration in the early part of last week, we have made real progress. And I do not know the exact number of amendments, but we have had amendments every day come to the floor for those up-or-down votes from both the Republican and the Democratic side of the aisle.

We allowed discussion and debate, and I think the country's understanding of this legislation, which is complex, has improved over the course of the several weeks we have had it on the floor. We are all looking closer at what is in the underlying bill, with the proposing of amendments to modify that, and having good debate—Democrat and Republican—on the issue.

The more time we spend with it, the more time we come to understand there are some very good things about the bill, things that still need some correction. And we will have the opportunity to do that, with the cloture motion filed tonight, over the course of voting in the morning, tomorrow afternoon, Wednesday over the course of the day, and once cloture is in effect, still have germane amendments come to the floor. So that process needs to continue. What it will do is allow us to complete that bill before Memorial Day.

We have had a number of amendments that have been interesting to watch as we have gone forward. Mr. SESSIONS, the Senator from Alabama, had an amendment early on to strengthen our southern border, to build those 370 miles of triple-layered fence, and 500 miles of vehicle barriers at strategic locations—a clear-cut improvement on the bill, strengthening the bill along the border consistent with our first priority; that is, to secure that border.

The Senate also approved the amendment by Senators KYL, GRAHAM, CORNYN, and ALLEN to close a loophole in the bill that would allow criminal aliens to obtain legal status. Once people looked at that, they said that is only common sense. Again, it became overwhelmingly supported in a bipartisan way—again, an important demonstration of why it was important to have open debate and amendment. That amendment clarifies that any illegal alien who is ineligible for a visa or who has been convicted of a felony or three misdemeanors is ineligible for a green card—again, just common sense.