NAYS—42

Alexander	Crapo	Lott
Allard	DeMint	Martinez
Barrasso	Dole	McCain
Baucus	Domenici	McConnell
Bond	Ensign	Murkowski
Brownback	Enzi	Roberts
Bunning	Graham	Sessions
Burr	Grassley	Shelby
Chambliss	Gregg	Smith
Coburn	Hagel	Stevens
Cochran	Hutchison	Sununu
Corker	Inhofe	Thune
Cornyn	Isakson	Vitter
Craig	Kyl	Warner

NOT VOTING—1

Byrd

The PRESIDING OFFICER. On this vote, the yeas are 57 and the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

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

The motion to lay on the table was agreed to.

Mr. OBAMA. Mr. President, I rise today to speak about the DC voting rights bill that the Senate just voted on. I am disappointed that this measure failed to receive the necessary 60 votes in order for the bill to be considered.

This is a bill that seeks to protect the most fundamental right of citizens in our democracy the right to vote. Different generations in our Nation's history have struggled to gain and safeguard this universal right—from the 15th amendment, which extended the right to vote to newly freed slaves, to the 19th amendment, which guaranteed the right to women, and finally to the Voting Rights Act, which gave real substance to voting laws that had been previously abused. Yet, as we speak, this most basic right in a democracy is denied to the citizens of the District of Columbia.

Our brave civil rights leaders sacrificed too much to ensure that every American has the right to vote for us to tolerate the disenfranchisement of the nearly 600,000 residents of the District of Columbia. Those who live in our Nation's Capital pay taxes like other Americans. They serve bravely in the Armed Forces to defend our country like other Americans. They are called to sit on Federal juries like other Americans. Yet they are not afforded a vote in Congress. Instead, they are granted a nonvoting Delegate who can sit in the House of Representatives and serve on committees but cannot cast a vote when legislation comes to the floor.

As a community organizer in Chicago and as a civil rights attorney, I learned that disenfranchisement can lead to disengagement from our political system. In many parts of DC, you can look down the street and see the dome of the U.S. Capitol. Yet so many of these streets couldn't be more disconnected from their Government.

If we are to take seriously our claim to a government of, by, and for the people, Washington shouldn't be just the seat of our Government, but it also should reflect the core values and fundamental promise of our democracy. Denying the right to vote to citizens who are equally subject to the laws of this Nation undermines a central premise of our representative Government. The right to vote belongs to every American, regardless of race, creed, gender, or geography.

For these reasons, I fully support this important legislation. Although today's vote is a disappointment, I will continue to work with Mayor Fenty, Congresswoman NORTON, and the sponsors of this bill until the residents of the District of Columbia achieve full representation in Congress.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008

The PRESIDING OFFICER. The Senate will resume consideration of H.R. 1585, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1585) to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:

Nelson (NE) (for Levin) amendment No. 2011, in the nature of a substitute.

Levin (for Specter/Leahy) amendment No. 2022, to restore habeas corpus for those detained by the United States.

Warner (for Graham/Kyl) amendment No. 2064, to strike section 1023, relating to the granting of civil rights to terror suspects.

Mr. SMITH. Madam President, I ask unanimous consent to call up my amendment No. 2067.

Mr. MCCAIN. Madam President, reserving the right to object, I will object. I say to my friend from Oregon, I understand this is the hate crimes bill. I appreciate his passion and commitment on this issue. There is no one more respected in the Senate who has had the situation of my distinguished friend from Oregon. But we are on the Defense bill. We have to move forward with the amendments. We have to get it done. We have both Iraq as well as the impending 1st of October date staring us in the face. At this time I object to the request by the Senator from Oregon.

The PRESIDING OFFICER. Objection is heard.

Mr. SMITH. I thank the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, we have had an informal discussion. I am sad that there is not an opportunity on this bill to bring up the hate crimes bill. I do hope there is a way, following this session, to bring up the hate crimes bill. It has broad support and deserves to be heard and, I hope, passed. I discussed with Senator MCCAIN the possibility that the Senator from Delaware would now be recognized. We agreed that he would at this time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I ask unanimous consent to set aside the pending amendment and call up amendment No. 2335.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Madam President, I reserve the right to object.

Mr. BIDEN. Madam President, I will not call it up at the moment. I withdraw the request.

I do ask unanimous consent that Senators GRAHAM, CASEY, BROWN, and SANDERS be added as cosponsors to amendment No. 2335.

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

Mr. BIDEN. I want to explain briefly what this amendment does. It adds $23.6 billion to allow the Army to replace all of its up-armored HMMWVs with mine resistant ambush protected vehicles, the so-called MRAPs. It also adds a billion dollars to increase the cost of the 8,000 MRAPs we are trying to purchase today. In terms of the specifics of this amendment, the idea is simple. If we can prevent two-thirds or more of our casualties with a vehicle that is basically a modified and armored truck, we have to do all in our power to do it, in my view.

Last, it provides $400 million for better protection against explosively formed penetrators or EFPs. These are those shaped-charges that hit our vehicles from the side and are increasingly deadly.

I want to be straight with my colleagues. This is a very expensive amendment. Twenty-five billion dollars is a lot of money. But compared to saving the lives and limbs of American soldiers and marines, it is cheap.

Our commanders in the field tell us that MRAPs will reduce casualties by 67 to 80 percent.

The lead commander on the ground in Iraq, LTG Ray Odierno, told us months ago that he wanted to replace every Army up-armored HMMWV in Iraq with an MRAP.

Instead of adjusting the requirement immediately, the Pentagon has taken its time to study this issue and just recently they have agreed that the general needs a little over half of what he asked for. 10,000 instead of approximately 18,000.

This makes no sense. Are we only supposed to care about the tactical advice of our commanders in the field when it is cheap?

I don't think that is what the American people or our military men and women expect from us.

More importantly, while we argue about the best strategy for Iraq, we must still protect those under fire. I disagree with the President's strategy in Iraq. I do not believe a strong central government will lead to a stable, self-sufficient Iraq.

I think we need a new strategy that focuses on implementing the Iraqi constitution's call for federalism and refocuses the mission of American forces on fighting al-Qaida, border protection, and continuing to train the Iraqi forces.

While we disagree on strategy, the fight continues in the alleys of Baghdad and the streets of Diyala Province. American soldiers and marines are targets every day they are there. So every day they are there, we must give them the best protection this nation has.

The American political process is designed to make change and decisionmaking a slow and deliberative process. Those of us who want a change in strategy have three options.

One, we must convince enough colleagues to sustain a veto from the President; or, two, we must convince the American people to elect enough new Senators and House Members willing to sustain a veto. Or, finally, three, we must convince the American people to elect a President willing to change strategies. That is reality. I believe in this system, which means I will not walk away from my duty to try to convince both my colleagues and the American people that there is a better path to stability in Iraq.

It also means that I will not give up on my obligation to our military men and women.

While we take the time necessary to move the political process for change, they face improvised explosive devices, rocket propelled grenades, explosively formed penetrators, sniper fire, and suicide bombers every day. We have an obligation to protect each and every one of them to the best of our ability. I agree with the Commandant of the Marine Corps, GEN James Conway when he said, ''Anything less is immoral.''

In terms of the specifics of this amendment, the idea is very simple. If we can prevent two-thirds or more of our casualties with a vehicle that is basically a modified and armored truck, we must do all in our power to do that.

Will it be a challenge to American industry to build close to 23,000 MRAPs in the next 12 to 15 months? Absolutely. Can they do it? Only if we give them a real chance. If we provide funding up front for all that is needed, we give business the ability to increase capacity to produce. If we give little bits here and there, they and their subcontractors will be limited in their ability to produce these life-saving vehicles. Less will be produced and more Americans will return injured or dead.

I gave a statement on July 19, when I first introduced this amendment, that laid out some of the history of the MRAP program. I won't go into all of that again, but I will reiterate the key choice my colleagues have to make: Do we do our best to save American lives, knowing that the only downside is the possible need to reprogram funding at the end of the year, or do we care more about some unknown topline wartime funding number than those lives?

I urge my colleagues to support this amendment.

I thank the managers of the bill and yield the floor.

Mr. LEVIN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Madam President, I have had conversations with the two managers, Senator MCCAIN and Senator LEVIN. I would hope people who feel strongly about the amendment that is pending; that is, the habeas corpus amendment, would come and speak on this amendment. The floor is open for debate on that issue. It is an extremely important amendment. No matter how you feel about it, it is important—whether you are for it or against it. I would hope Senators would come and talk about that amendment.

I have also spoken with Senator LEVIN and Senator MCCAIN about how we proceed from this point forward. We have been somewhat tepid in moving forward because we did not know how the vote would turn out on the DC voting rights. We know that now, so we are moving ahead as quickly as we can on the Defense authorization bill because that matter is out of the way procedurally.

What I have spoken to the two managers about is that we would have the Defense authorization bill, and as a sidetrack, we would have Iraq amendments—a finite number from the Democrats, a finite number from the Republicans. We would work on time agreements for those amendments. Our floor staff is trying to draw something up and submit that to the Republican leader. I have not today—even though I have spoken to him in the past about that—spoken to him about that, although we have spoken to Senator KYL, Senator MCCAIN, Senator LOTT, and others. The distinguished Republican leader was simply off the floor at the time. So our two staffs are coming up with something in writing to see if there is a way we can move forward on that; otherwise, we will offer them as part of the Defense authorization bill.

On this matter, I have the greatest comfort level with Senator LEVIN's ability to manage this bill. He has, in years past, done such a remarkably good job. For many years, it has been Senator WARNER working with him. Now, because of the change in the ranking membership of that committee, it is Senator MCCAIN, who also is very experienced. So we should be able to move this legislation along, I hope, quickly.

There is a lot to do on this bill, and I would hope Members on this side would listen to what Senator LEVIN has to say and come when it is to their interest, and maybe even sometimes when it is not to their interest, but at least in an effort to dispose of this legislation.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Madam President, I ask unanimous consent that I be permitted to speak as in morning business for up to about 7 minutes.

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

(The remarks of Mr. STEVENS are printed in today's RECORD under ''Morning business.'')

Mr. STEVENS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Madam President, I would like to repeat what my friend and distinguished chairman said: We need to get opening statements done. The debate has now begun on the National Defense Authorization Act for Fiscal Year 2008. We are looking at the date of September 18, and we want to get this bill done as quickly as possible and to conference with the House so we can provide the much needed equipment, training, pay, and care for our veterans as well as our military personnel. I urge my colleagues, if they have any statements to make on this bill, that they come over and make them.

I also would like to point out, as my friend from Michigan has, that we will be working on the large number of amendments on the bill as well as the provisions on Iraq. The sooner we complete action on this legislation, the sooner we can get it to conference with the other body and to the President's desk for signature.

This is not the first time we have addressed this bill, and I hope it is the last for the National Defense Authorization Act, at least for fiscal year 2008. I again express my appreciation and admiration for the distinguished chairman, Senator LEVIN, who has not only worked closely with this side of the aisle but also has worked very hard to forge a bipartisan bill that received a unanimous vote from the committee

upon its reporting to the floor of the Senate. Obviously, we have a great debate here again on the issue of Iraq with the consideration of several amendments, so I hope we will be able to also dispose of those as quickly as possible.

As all of my colleagues know, we have received the much anticipated testimony of GEN David Petraeus and Ambassador Ryan Crocker, and the Senate now begins a debate of historic proportions. In my opinion, at stake is nothing less than the future of Iraq, the Middle East, and the security of all Americans for decades to come. The Senate faces a series of stark choices: whether to build on the success of the surge and fight for additional gains or whether to set a date for Americans to surrender in Iraq and thereby suffer the terrible consequences that will ensue. As we consider each of the Iraq-related amendments filed on this bill, let us understand the enormous consequences of decisions that are taken here.

Henry Kissinger framed the debate in a Washington Post article this weekend, saying:

American decisions in the next few months will affect the confidence and morale of potential targets, potential allies, and radical Jihadists around the globe. Above all, they will define the U.S. capacity to contribute to a safer and better world.

I ask unanimous consent to have the article by Dr. Kissinger from the Washington Post over the weekend printed in the RECORD at this time.

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

THE DISASTER OF HASTY WITHDRAWAL

(By Henry A. Kissinger)

Two realities define the range of a meaningful debate on Iraq policy: The war cannot be ended by military means alone. But neither is it possible to ''end'' the war by ceding the battlefield. The radical jihadist challenge knows no frontiers; American decisions in the next few months will affect the confidence and morale of potential targets, potential allies and radical jihadists around the globe. Above all, they will define the U.S. capacity to contribute to a safer and better world. The imperative is for bipartisan cooperation in a coordinated political and military strategy, even while the political cycle tempts a debate geared to focus groups.

The experience of Vietnam is often cited as the example for the potential debacle that awaits us in Iraq. But we will never learn from history if we keep telling ourselves myths about it. The passengers on American helicopters fleeing Saigon were not U.S. troops but Vietnamese civilians. American forces had left two years earlier. Vietnam collapsed because of the congressional decision to reduce aid by two-thirds to Vietnam and to cut it off altogether for Cambodia in the face of a massive North Vietnamese invasion that violated every provision of the Vietnam Peace Agreement.

Should America repeat a self-inflicted wound? An abrupt withdrawal from Iraq would not end the war; it would only redirect it. Within Iraq, the sectarian conflict could assume genocidal proportions; terrorist base areas could reemerge. Lebanon might slip into domination by Iran's ally, Hezbollah; a Syria-Israel war or an Israeli strike on Iranian nuclear facilities might become more likely as Israel attempted to break the radical encirclement; Turkey and Iran would probably squeeze Kurdish autonomy. The Taliban in Afghanistan would gain new impetus. Countries where the radical threat is as yet incipient, such as India, would face a mounting domestic challenge. Pakistan, in the process of a delicate political transformation, would encounter more radical pressures and might even turn into a radical challenge itself. That is what is meant by ''precipitate'' withdrawal—a withdrawal in which the United States loses the ability to shape events, either within Iraq, on the antijihadist battlefield or in the world at large.

The proper troop level in Iraq will not be discovered by political compromise at home. To be sure, no ''dispensable'' forces should be retained there. Yet the definition of ''dispensable'' must be based on strategic and political criteria. If reducing troop levels turns into the litmus test of American politics, each withdrawal will generate demands for additional ones until the political, military and psychological framework collapses. An appropriate Iraq strategy requires political direction. But the political dimension must be the ally of military strategy, not a resignation from it.

Symbolic withdrawals, urged by such wise elder statesmen as Sens. John Warner and Richard Lugar, might indeed assuage the immediate public concerns. They should be understood, however, as palliatives; their utility depends on a balance between their capacity to reassure the U.S. public and their propensity to encourage America's adversaries to believe that they are the forerunners of complete retreat.

The argument that the mission of U.S. forces should be confined to defeating terrorism, protecting the frontiers, preventing the emergence of Taliban-like structures and staying out of the civil war aspects is also tempting. In practice, it will be difficult to distinguish among the various aspects of the conflict with any precision.

Some answer that the best political result is most likely to be achieved by total withdrawal. The option of basing policies on the most favorable assumptions about the future is, of course, always available. Yet nothing in Middle East history suggests that abdication confers influence. Those who urge this course need to put forward their recommendations for action if what occurs are the dire consequences of an abrupt withdrawal foreseen by the majority of experts and diplomats.

The missing ingredient has not been a withdrawal schedule but a political and diplomatic design connected to a military strategy. The issue is not whether Arab or Muslim societies can ever become democratic; it is whether they can become so under American military guidance in a time frame for which the U.S. political process will stand.

American exhortations for national reconciliation are based on constitutional principles drawn from the Western experience. But it is impossible to achieve this in a six-month period defined by the ''surge'' in an artificially created state racked by the legacy of a thousand years of ethnic and sectarian conflicts. Experience should teach us that trying to manipulate fragile political structures—particularly one resulting from American-sponsored elections—is likely to play into radical hands. Nor are the present frustrations with Baghdad's performance a sufficient excuse to impose a strategic disaster on ourselves: However much Americans may disagree about the decision to intervene or about the policy afterward, the United States is in Iraq in large part to serve the American commitment to global order, not as a favor to the Baghdad government.

It is possible that the present structure in Baghdad is incapable of national reconciliation because its elected constituents were chosen on a sectarian basis. A wiser course would be to place more emphasis on the three principal regions and promote technocratic, efficient and humane administration in each. The provision of services and personal security coupled with emphasis on economic, scientific and intellectual development may represent the best hope for fostering a sense of community. More efficient regional government leading to a substantial decrease in the level of violence, to progress toward the rule of law and to functioning markets could over time give Iraqis an opportunity for national reconciliation—especially if no region is strong enough to impose its will on the others by force. Failing that, the country may well drift into de facto partition under the label of autonomy, such as already exists in the Kurdish region. That very prospect might encourage the Baghdad political forces to move toward reconciliation. Much depends on whether it is possible to create a genuine national army rather than an agglomeration of competing militias.

The second and ultimately decisive route to overcoming the Iraqi crisis is through international diplomacy. Today the United States is bearing the major burden for regional security militarily, politically and economically in the face of passivity of the designated potential victims. Yet many other nations know that their internal security and, in some cases, their survival will he affected by the outcome in Iraq. That passivity cannot last. These countries must participate in the construction of a civil society, and the best way for us to foster those efforts is to turn reconstruction into a cooperative international effort under multilateral management.

It will not be possible to achieve these objectives in a single, dramatic move: The military outcome in Iraq will ultimately have to be reflected in some international recognition and some international enforcement of its provisions. The international conference of Iraq's neighbors and the permanent members of the U.N. Security Council has established a possible forum for this. A U.N. role in fostering such a political outcome could be helpful.

Such a strategy is the best path to reduce America's military presence in the long run; an abrupt reduction of American forces will impede diplomacy and set the stage for more intense military crises down the road.

Pursuing diplomacy inevitably raises the question of how to deal with Iran. Cooperation is possible and should be encouraged with an Iran that pursues stability and cooperation. Such an Iran has legitimate aspirations that need to be respected. But an Iran that practices subversion and seeks regional hegemony—which appears to be the current trend—must be faced with lines it will not be permitted to cross: The industrial nations cannot accept radical forces dominating a region on which their economies depend, and the acquisition of nuclear weapons by Iran is incompatible with international security. These truisms need to be translated into effective policies, preferably common policies with allies and friends.

None of these objectives can be realized, however, unless two conditions are met: The United States needs to maintain a presence in the region on which its supporters can count and which its adversaries have to take seriously. The country must recognize that whatever decisions are made now, multiple crises in Iraq, in the Middle East and to

world order will continue after a new administration takes office. Bipartisanship is a necessity, not a tactic.

Mr. McCAIN. Madam President, let us proceed with this debate, keeping in mind that the underlying bill, the National Defense Authorization Act, contains many non-Iraq provisions which constitute good defense policy and which will strengthen the ability of our country to defend itself. That is why the committee voted unanimously to report the bill, which fully funds the President's $648 billion defense budget request, authorizes a 3.5-percent pay raise for all military personnel, increases Army and Marine end-strength, reforms the system that serves wounded veterans, and provides necessary measures to avoid waste, fraud, and abuse in defense procurement. It is a good bill. It is a bipartisan bill. I believe we need to send it to the President's desk.

While the Senate moved off the bill in July and on to other things and then went on to a month-long recess, America's soldiers, marines, sailors, and airmen continued fighting bravely and tenaciously in Iraq in concert with their Iraqi counterparts. Some Senators undoubtedly welcomed the delay in considering the Defense bill, believing that General Petraeus would deliver to Congress a report filled only with defeat and despair. If this was their hope, they were sorely disappointed. As we all now know, General Petraeus and Ambassador Crocker reported what some of us argued before the bill was pulled 2 months ago: that the surge is working, that we are making progress toward our goals, and that success, while long, hard, and by no means certain, is possible. We are succeeding only after 4 years of failures, years which have exacted an enormous cost on our country and on the brave men and women who fight in Iraq on our behalf.

Some of us from the beginning warned against the Rumsfeld strategy of too few troops, insufficient resources, and a plan predicated on hope rather than on the difficult business of stabilization and counterinsurgency. We lost years to that strategy, years we cannot get back. In the process, the American people became saddened, frustrated, and angry. I, too, am heartsick at the terrible price we have paid for nearly 4 years of mismanaged war. But I also know America cannot simply end this effort in frustration and accept the terrible consequences of defeat in Iraq. We cannot choose to lose in Iraq. I believe we must give our commanders the time and support they have asked for to win this conflict.

Ralph Peters, the distinguished military strategist, summed it up best, noting that Congress's failure to support General Petraeus:

> Would be a shame, since, after nearly 4 years of getting it miserably wrong in Iraq, we are finally getting it right.

In 2 days of testimony and countless interviews, General Petraeus and Ambassador Crocker described how we are finally getting it right. We finally have in place a counterinsurgency strategy, one we should have been following from the beginning, which makes the most effective use of our strength and does not advance the tactics of our enemy. This new strategy, backed by a tactical surge in troops, is the only approach that has resulted in real security improvements in Iraq.

General Petraeus reported that the overall number of ''security incidents'' in Iraq has declined in 8 of the last 12 weeks and that sectarian violence has dropped substantially since the change in strategy. Civilian deaths nationwide are down by nearly half since December and have dropped by some 70 percent in Baghdad. Deaths resulting from sectarian violence have come down by 80 percent since December, and the number of car bombings and suicide attacks has declined in each of the past 5 months. Anyone who has traveled recently to Anbar or Diyala or Baghdad can see the improvements that have taken place over the past months. With violence down, commerce has risen, and the bottom-up efforts to forge counterterrorism alliances are bearing tangible fruit. This is not to argue that Baghdad or other areas have suddenly become safe—they have not—but such positive developments illustrate General Petraeus's contention that Americans and Iraqi forces have achieved substantial progress.

There are many challenges remaining, and the road ahead is long and tough. The Maliki government has not taken advantage of our efforts to enable reconciliation and is not functioning as it must. While violence has declined significantly, it remains high, and success is not certain. We can be sure, however, that should the Congress choose to lose by legislating a date for withdrawal, and thus surrender, or by mandating a change in mission that would undermine our efforts in Iraq, then we will fail for certain. Make no mistake, the consequences of America's defeat in Iraq will be terrible and long lasting.

There is in some corners a belief that we can simply turn the page in Iraq, come home, and move on to other things. This is dangerously wrong. If we surrender in Iraq, we will be back—in Iraq and elsewhere—in many more desperate fights to protect our security and at an even greater cost in American lives and treasure. Two weeks ago, General Jim Jones testified before the Armed Services Committee and outlined what he believes to be the consequences of such a course: ''a precipitous departure which results in a failed state in Iraq,'' he said, ''will have a significant boost in the numbers of extremists, jihadists, in the world, who will believe that they will have toppled the major power on Earth and that all else is possible. And I think it will not only make us less safe; it will make our friends and allies less safe. And the struggle will continue. It will simply be done in different and in other areas.''

Some Senators would like to withdraw our troops from Iraq so we can get back to fighting what they believe to be the real war on terror. This, too, is inaccurate. Iraq has become the central front in the global war on terror, and failure there would turn Iraq into a terrorist sanctuary, in the heart of the Middle East, next door to Iran, the world's largest state-sponsor of terrorism. If we fail in Iraq, we will concede territory to jihadists to plan attacks against America and our friends and allies. The region could easily descend into chaos, wider war, and genocide, and we should have no doubt about who will take advantage.

The Iranian President has stated his intentions bluntly. This is the same fellow who announced his dedication and his nation's dedication to the extinction of the state of Israel the same President of the country that is exporting lethal explosive devices of the most lethal and dangerous kind into Iraq, killing American service men and women. This President said this:

> Soon, we will see a huge power vacuum in the region. Of course, we are prepared to fill the gap.

We cannot allow an Iranian dominated Middle East to take shape in the context of wider war and terrorist safehavens. General Jones is just one of many distinguished national security experts who warn against the consequences of a precipitous withdrawal from Iraq. As Brent Scowcroft said, ''The costs of staying are visible; the costs of getting out are almost never discussed . . . If we get out before Iraq is stable, the entire Middle East region might start to resemble Iraq today. Getting out is not a solution.'' Natan Sharansky has, written that a precipitous withdrawal of U.S. forces ''could lead to a bloodbath that would make the current carnage pale by comparison.'' And Henry Kissinger warns that, ''An abrupt withdrawal from Iraq would not end the war; it would only redirect it.''

The proponents of withdrawal counter that none of these terrible consequences would unfold should any of their various proposals become law. On the contrary, they argue, U.S. forces could, when not engaged in training the Iraqi forces, engage in targeted counterterrorism operations. But our own military commanders say that such a narrow approach to the complex Iraqi security environment will not succeed, and that moving in with search and destroy missions to kill and capture terrorists, only to immediately cede the territory to the enemy, is a recipe for failure. How can they be so sure? It's simple—this focus on training and counterterrorism constitutes the very strategy that so plainly failed for the first four years of this war. To return to such an unsuccessful approach is truly ''staying the course,'' and it is a course that will inevitably lead to our defeat and to catastrophic

consequences for Iraq, the region, and the security of the United States.

General Petraeus and his commanders have embraced a new strategy, one that can, over time, lead to success in Iraq. They are fighting smarter and better, and in a way that can give Iraqis the security and opportunity to make decisions necessary to save their country from the abyss of genocide and a permanent and spreading war, and in a way that will safeguard fundamental American interests. They ask just two things of us: the time to continue this strategy and the support they need to carry out their mission. They must have both, and I will fight to ensure that they do.

As we engage in this debate, I hope that each of us will recall our most solemn allegiance, which is not to party or politics but to country. I have heard on this floor the claim that our efforts in Iraq somehow constitute ''Bush's war'' or the ''Republican war.'' Nothing could be farther from the truth. Presidents do not lose wars. Political parties do not lose wars. Nations lose wars and suffer the consequences, or prevail and enjoy the blessings of their success.

All of us want our troops to come home, and to come home as soon as possible. But we should want our soldiers to return to us with honor, the honor of victory that is due all of those who have paid with the ultimate sacrifice. We have many responsibilities to the people who elected us, but one responsibility outweighs all the others, and that is to protect this great and good Nation from all enemies foreign and domestic.

This is a serious debate and one we engage at a time of national peril. The Americans who make the greatest sacrifices have earned the right to insist that we do our duty, as best we can and remember to whom and what we owe our first allegiance—to the security of the American people and to the ideals upon which our Nation was founded.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Madam President, earlier in the day, there was the attempt of my friend and colleague, Senator SMITH, to at least try to propose an amendment that deals with hate crimes and try to get it into an order and to be able to have consideration of that amendment during the Defense authorization bill. There has been objection. I can understand the importance of the underlying amendment. I certainly believe that underlying amendment has great significance and importance, and we are going to have an opportunity, I believe, tomorrow to vote on it.

I wish to indicate I have every intention, with Senator SMITH, of offering at some time the hate crimes legislation. I know the question comes up: Why are we offering hate crimes legislation on a Defense authorization bill? The answer is very simple: The Defense authorization bill is dealing with the challenges of terrorism, and the hate crimes issue—to try to get a handle on the problems of hate crimes, we are talking about domestic terrorism. We have our men and women who are over in Iraq and Afghanistan and around the world fighting for American values. One of the values we have as Americans is the recognition that we do not believe individuals ought to be singled out because of their race, religion or sexual orientation and be the subject of hate attack.

This has been an ongoing and continuing issue for our country. At another time, I will get into greater detail about the nature of the challenges we are facing on this particular issue. We passed hate crime legislation at the time of Dr. King, but it was somewhat restrictive in terms of its application. We have been reminded about this challenge probably most dramatically with Mr. Shepard out in the Wyoming countryside, who was selected to be a victim of a hate crime and suffered a horrific death.

I, for one, and I think others do, understand we have voted on this on other Defense authorization bills. It has been carried on other Defense authorization bills. I know my friend and colleague, Senator SMITH, would not have taken an unreasonable period of time. We have voted on this issue. We voted in 2004 and in 2000 on this issue. Members are familiar with the substance of the issue. So we don't need a great deal of time. We are glad to cooperate with the floor managers in terms of the time.

I didn't want to let the afternoon go by and leave any doubt. I have had the opportunity to mention this to Senator LEVIN on other occasions. I mentioned it, as well, to our majority leader, Senator REID, who has been supportive. I know Senator LEVIN has been supportive of the substance of it. It seems to me we are talking about Defense authorization and we are talking effectively about the national security and about the values of our country and why our men and women are involved in defending our country and these values. Certainly, we ought to be able to say, as we are dealing with the problem of hatred and violence around the world, that we will battle hatred and violence as it is applied here at home.

As I mentioned, at another time I will go into detail on the history of the legislation and, again, the reasons for it and the facts on this particular issue in recent times.

At a time when our ideals are under attack by terrorists in other lands, it is more important than ever to demonstrate that we practice what we preach, and that we are doing all we can to root out the bigotry and prejudice in our own country that leads to violence here at home.

Crimes motivated by hate because of the victim's race, religion, ethnic background, sexual orientation, disability, or gender are not confined to the geographical boundaries of our great Nation. The current conflicts in the Middle East and Northern Ireland, the ethnic cleansing campaigns in Bosnia and Rwanda, or the Holocaust itself demonstrate that violence motivated by hate is a world-wide danger, and we have a special responsibility to combat it here at home.

This amendment will strengthen the Defense Authorization Act by protecting those who volunteer to serve in the military. The vast majority of our soldiers serve with honor and distinction. These men and women put their lives on the line to ensure our freedom and for that, we are truly grateful. Sadly, our military bases are not immune from the violence that comes from hatred.

In 1992, Allen Schindler, a sailor in the Navy was viciously murdered by two fellow sailors because of his sexual orientation. Seven years later, PFC Barry Winchell, an infantry soldier in the Army, was brutally slain for being perceived as gay. These incidents prompted the military to implement guidelines to prevent this type of violence, but there is more that we can do. We have to send a message that these crimes won't be tolerated against any member of society.

A disturbing trend has also been discovered in the military. Last year, the Southern Poverty Law Center reported that members of hate groups have been entering into the military. As recruiters struggle to fulfill their quotas, they are being forced to accept recruits who may be extremists, putting our soldiers at higher risk of hate motivated violence. This can't be tolerated. We must stem the tied of hatred and bigotry by sending a loud and clear message that hate crimes will be punished to the fullest extent of the law.

Since the September 11 attacks, we've seen a shameful increase in the number of hate crimes committed against Muslims, Sikhs, and Americans of Middle Eastern descent. Congress has done much to respond to the vicious attacks of September 11. We have authorized the use of force against terrorists and those who harbor them in other lands. We have enacted legislation to provide aid to victims and their families, to strengthen airport security, to improve the security of our borders, to strengthen our defenses against bioterrorism, and to give law enforcement and intelligence officials enhanced powers to investigate and prevent terrorism.

Protecting the security of our homeland is a high priority, and there is more that we should do to strengthen our defenses against hate that comes from abroad. There is no reason why Congress should not act to strengthen our defenses against hate that occurs here at home.

Hate crimes are a form of domestic terrorism. They send the poisonous message that some Americans deserve to be victimized solely because of who they are. Like other acts of terrorism, hate crimes have an impact far greater

than the impact on the individual victims. They are crimes against entire communities, against the whole nation, and against the fundamental ideals on which America was founded. They are a violation of all our country stands for.

Since the September 11 attacks, the Nation has been united in our effort to root out the cells of hatred around the world. We should not turn a blind eye to acts of hatred and terrorism here at home.

Attorney General Ashcroft put it well when he said:

> Just as the United States will pursue, prosecute, and punish terrorists who attack America out of hatred for what we believe, we will pursue, prosecute and punish those who attack law-abiding Americans out of hatred for who they are. Hatred is the enemy of justice, regardless of its source.

Now more than ever, we need to act against hate crimes and send a strong message here and around the world that we will not tolerate crimes fueled by hate.

The Senate should not hesitate in condemning countries that tolerate crimes motivated by the victim's race, religion, ethnic background, sexual orientation, disability, or gender. Hate is hate regardless of what nation it originates in. We can send a strong message about the need to eradicate hate crimes throughout the world by passing this hate crimes amendment to the Defense Department Authorization Bill.

We should not shrink now from our role as the beacon of liberty to the rest of the world. The national interest in condemning bias-motivated violence in the United States is great, and so is our interest in condemning bias-motivated violence occurring world-wide.

The hate crimes amendment we are offering today condemns the poisonous message that some human beings deserve to be victimized solely because of their race, religion, or sexual orientation and must not be ignored. This action is long overdue. When the Senate approves this amendment, we will send a message about freedom and equality that will resonate around the world.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEVIN. Madam President, first, I concur with something Senator MCCAIN said which is that the floor is open now for people to come down and speak, either on the bill, on the pending habeas corpus amendment, or on any other matter on which they wish to speak. There will be no more votes today, I am authorized to say. Also, there will be a cloture vote tomorrow at approximately 10:30 a.m. on the Specter-Leahy-Dodd amendment. Then we hope to take action relative to the Graham amendment. There are some discussions going on relative to that amendment. Then, hopefully, we would promptly move to take up the Webb amendment. It is the intention of this manager that the Webb amendment then be called up immediately after the disposition of, first, the Specter-Leahy-Dodd cloture vote and then the Graham amendment, and it is my intention that Senator WEBB then have his amendment called up. I believe Senator WEBB will be ready to proceed at that time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, will the distinguished chairman yield for a question?

Mr. LEVIN. I will be happy to yield.

Mr. MCCAIN. Madam President, it is my understanding in my conversations with the chairman, we are moving forward in narrowing down amendments so we have an additional managers' package so we have a manageable number of amendments that need to be debated and voted on, and we will try to get time agreements on those, as well as the Iraqi amendments.

Mr. LEVIN. The Senator is correct. I did fail to mention that the leaders are meeting to see if there can't be a unanimous consent agreement worked out relative to the Iraq amendments. Senator REID described that proposed unanimous consent agreement, but that is going on.

The Senator from Arizona is correct, we are going to seek to reduce the number of amendments that require rollcalls. We are going to seek time agreements. We have a huge number of amendments which have been filed, in the two hundreds. We made some progress because we disposed of 50 amendments the other day.

We very much thank Senator MCCAIN, by the way, and his staff, and Senator WARNER, for the efforts they are putting into this legislation. Senator MCCAIN is a very easy person with whom to work. We are used to having people on the committee who are both chairman and ranking member, regardless who is in control of the committee, work on a bipartisan basis. Senator MCCAIN is surely in that tradition. We are grateful for that effort.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I thank the distinguished chairman for his kind remarks. All things considered, I would rather the situation be reversed, but I certainly do appreciate the opportunity.

One of the nice things about this body is that over a 20-year period, the Senator from Michigan and I have had the honor of working together on behalf of this Nation's defense on this very important committee, the Armed Services Committee. One of the previous chairman's statues presides in the office named after him—the office in which we both work and where we spend our time on the committee. I believe given our past history, I say to the chairman, that it is very possible we could dispose of this bill by the end of the week. One of the reasons why the chairman and I both made the argument to our colleagues to get it done is because we have to go to conference with the House, the other body, which has a number of different provisions that have to be reconciled. Then we have to get it to the President's desk, and October 1 is the beginning of a new fiscal year. So I hope our colleagues all appreciate the urgency.

One of the provisions of this legislation is the Wounded Warriors. We were all appalled at the conditions at Walter Reed. That is why we in the committee, with some guidance from a distinguished commission—a lot of guidance from a distinguished commission, headed by Senator DOLE and former Secretary Shalala. These are very important issues for the medical care of the men and women who are serving. It will not happen unless we get this legislation passed. So we are kind of asking for a higher calling here to understand the necessity to get this bill to the President's desk before the October 1.

Of course, we can have a continuing resolution. We have done that, not on the DOD bill, as I recall. I don't know if the chairman recalls it. That, obviously, does not do what these thousands of hours of hard work on our part and on the part of the military leaders and the members of staff do.

It is my fine hope, I say to the chairman, that we are able to finish this bill this week with the cooperation of all involved.

I yield the floor.

Mr. LEVIN. Madam President, while we hope the Senator from Arizona is right and we can complete the bill this week, we also are aware of the fact that on Friday, we do have to leave here somewhat early because of the Jewish holidays. That will be only part of the day. I hope we can make tremendous progress this week. It may be a bit optimistic in terms of finishing it this week. That is going to depend on the cooperation of our colleagues. We have hundreds of amendments. We need colleagues who can clear many of them, and we need time agreements on the rest. It depends on our colleagues.

We are going to do everything we can to continue a great tradition here. May I say, this is the 46th year in a row that the authorization bill has come to the floor, and we are not going to break the record of having an authorization for every one of those previous 45 years. We always had it because of the provisions of the bill which are so important—the pay and benefits and the support of not only our troops but also their families.

When the Senator from Arizona made reference to the Wounded Warriors legislation, I know our Presiding Officer, Senator MCCASKILL, because of her active role and participation in that legislation, understands precisely what we

are saying. That legislation is so important that it is not only in the bill but it is in a separate bill which was passed that is now awaiting, hopefully, a resolution between the Senate and the House. But in any event, the Senator is correct, the presence of that legislation in this bill may be the greatest assurance we have that legislation is going to become law. There are a lot of reasons, hundreds of reasons, why we need this authorization bill passed. That is surely one of the most important ones, one that has had the support of so many of our Members. So many of our Members and our Veterans' Affairs Committee have been so active with that legislation as well.

I join in the comments of my good friend from Arizona and hope our colleagues will come to the floor now. We can take up matters. We can get unanimous consent. We can even set aside pending matters. There are things we can do this afternoon. I do hope our colleagues will come to the floor and give their speeches on habeas corpus or other subjects.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Madam President, I rise today in the course of this Defense authorization bill to discuss an amendment which I am working on and preparing to offer. It is an important amendment to this bill. It is a critically important amendment for our Nation. It is an amendment known as the DREAM Act.

The DREAM Act is a narrowly tailored bipartisan measure that I have sponsored with Republican SENATOR CHUCK HAGEL of Nebraska, Republican Senator DICK LUGAR of Indiana, and in past years with Senator ORRIN HATCH of Utah. It would give a select group of students in America a chance to become permanent residents only if they came to this country as children, are long-term U.S. residents, have good moral character, and enlist in the military or attend college for at least 2 years. The DREAM Act is supported by a large coalition in the Senate, and also by military leaders, religious leaders, and educators from across the political spectrum and around the country.

During the 109th Congress, the DREAM Act was adopted unanimously as an amendment to the immigration reform legislation that passed in the Senate. In the 108th Congress, the DREAM Act was the only immigration reform proposal reported to the Senate floor on a bipartisan 16-to-3 vote by the Senate Judiciary Committee.

Now, obviously, in the midst of the Defense authorization bill, some people question why one might bring up an immigration issue. The answer is simple: The DREAM Act would address a very serious recruitment crisis facing our military. Under the DREAM Act, tens of thousands of well-qualified potential recruits would become eligible for military service for the first time. They are eager to serve in the armed services, and under the DREAM Act, they would have a very strong incentive to enlist because it would give them a path to permanent legal status.

First, let us look at the recruitment crisis we face today. Largely due to the wars in Iraq and Afghanistan, the Army is struggling to meet recruitment quotas. Because of these recruitment difficulties, the Army is accepting more applicants who are high school dropouts, have low scores on military aptitude tests, and, unfortunately, have criminal backgrounds.

The statistics tell the story. In 2006, almost 40 percent of Army recruits had below-average scores on the military aptitude test. That is the highest rate of students with low scores since 1985. In 2006, almost 20 percent of Army recruits did not have a high school degree. This is the highest rate of high school dropouts enlisting in the Army since 1981. By comparison, from 1984 to 2004, 90 percent or more of Army recruits had high school diplomas. Why does this matter? The Army said itself that high school graduation is the best single predictor of ''stick-to-itiveness'' that is required to succeed in the military and in life.

Charles Moskos, a Northwestern University sociologist, is an expert in military culture, and he says:

> The more dropouts who enlist, the more discipline problems the Army is likely to have.

Even more disturbing, the number of so-called moral waivers for Army recruits who have committed crimes has increased by 65 percent in the last 3 years, from 4,918 in 2003 to 8,129 in 2006. Many of these waivers are for serious crimes—aggravated assault, burglary, robbery, and even vehicular homicide. In fact, individuals with criminal backgrounds were 11.7 percent of the 2006 recruiting class. Now, in contrast, under the DREAM Act, all recruits would be well-qualified high school graduates with good moral character.

Let me tell you how the DREAM Act would work. Currently, our immigration laws prevent thousands of young people from pursuing their dreams and really becoming part of America's future. Their parents brought these children to the United States when they were under the age of 16. For many, it is the only home they know. They are fully assimilated into American society. They really don't want much more than just to be Americans and to have a chance to succeed. They have beaten the odds all of their young lives. The kids who would be helped by the DREAM Act face a high school dropout rate among undocumented immigrants of 50 percent. So it is a 50–50 chance that they would even qualify to be part of this act.

Incidentally, the dropout rate for legal immigrants is 21 percent and for native-born Americans, 11 percent. So already these young people would have to beat the odds and graduate from high school to even qualify to be considered.

They have also demonstrated the kind of determination and commitment that makes them successful students and points the way to significant contributions they will make in their lives. They are junior ROTC leaders, honor roll students, and valedictorians. They are tomorrow's soldiers, doctors, nurses, teachers, Senators, and Congressmen.

Over the years, I have had a chance to meet a lot of these DREAM Act kids. That is what they call themselves, incidentally. Let me give you one example. Oscar Vasquez was brought to Phoenix, AZ, by his parents when he was 12 years old. He spent his high school years in Junior ROTC and dreamed of one day enlisting in the U.S. military. At the end of his junior year, the recruiting officer told Oscar he was ineligible for military service because he was undocumented. He was devastated.

But he found another outlet for his talent. Oscar, because of the help of two energetic science teachers, was enrolled in a college division robot competition sponsored by the National Aeronautics and Space Administration. With three other undocumented students, Oscar worked for months in a windowless storage room in his high school and tested their invention at a scuba training pool on the weekends. Competing against students from MIT and other top universities, Oscar's team won first place in this robot competition.

Oscar has since graduated from high school. You know what he does? He is not in the military. He is not using his scientific skills. He is an undocumented person in America. He hangs sheetrock for a living. It is the best job he could get without a college education or the opportunity to enlist in the military. He wants to save his money in hopes that someday—just someday—the door will open and give him a chance to be part of this Nation, the only Nation he has really ever known. Couldn't we use his talent? Couldn't the military use someone like Oscar? The DREAM Act would help students just like him. It is designed to assist only a select group of students who would be required to earn their way to legal status.

Now, the fundamental premise of the DREAM Act is that we shouldn't punish children for the mistakes their parents made. That isn't the American way. The DREAM Act says to these students: America is going to give you a chance. It won't be easy, but you can earn your way into legal status. We will give you the opportunity if you meet the following requirements: if you came to the United States when you were 15 years old or younger, if you

have lived here at least 5 years, are of good moral character, and you graduate from high school and then serve in the military or attend college for at least 2 years.

The DREAM Act doesn't mandate military service. There is a college option. A student who is otherwise eligible could earn legal status that way. It would be inconsistent with the spirit of our volunteer military to force young people to enlist as a condition for obtaining legal status, but the DREAM Act creates strong incentives for military service.

Many DREAM Act kids come from a demographic group that is already predisposed to serve the United States in the military. A 2004 survey by the RAND Corporation found that 45 percent of Hispanic males and 31 percent of Hispanic females between ages 16 and 21 were very likely to serve in the Armed Forces, compared to 24 percent of White males and 10 percent of White females.

It is important to note that immigrants have an outstanding tradition of service in the military. There are currently 35,000 noncitizens serving in the military and about 8,000 more will enlist each year. These are not citizens; they are legal residents who are willing to serve our country.

I have met them. The second trip I made to Iraq was to a Marine Corps base west of Baghdad. They lined up a group of young marines from Illinois to whom I could say hello. It was a hot and dusty day. They stood there waiting for this Senator to show up. The last one of them in line was a young Hispanic man from Chicago named Jesus. Jesus had with him a brown envelope. He said: Senator, I would like to ask you a favor. He said: I enlisted in the Marines and I am glad to be a marine, but the one thing I would like to do someday is to vote. I am not a citizen and, he said, I need a chance. He said: I hope you can help me get a chance to become a U.S. citizen.

I said to myself, what more could we ask of this young man? He volunteered for the U.S. Marine Corps to go to a battle zone and risk his life for America.

I listen to speeches on the floor here. My friend from Alabama, Senator SESSIONS, comes to the floor on a regular basis and criticizes the DREAM Act. He criticizes this bill that would give young people who are undocumented and graduate from high school, of good moral character, without a criminal background, who want to serve our Nation in the military on their path to becoming legal. He criticizes this bill. He calls it amnesty.

Do you know what, an amnesty is a giveaway. Amnesty is a card to pass ''Go'' and collect $200 in America. Do you think those who would volunteer for the military, who are willing to risk their lives for our country, are going to receive amnesty? Is this a gift? It is a gift to America that they are willing to risk their lives for our country. It is a gift to America that once having served, they will come back as proud Americans, voting and living in this country. It is a gift to America that they will use their skills and talent to make this a greater nation. For my colleagues to come to the floor and call this amnesty is to, in some ways, denigrate the fantastic sacrifice these young people would be willing to make, who serve in the military to become citizens.

I will concede this is not the only path to citizenship under this DREAM Act. Those who finish 2 years of college would also have a chance. I think that is only fair. To make this contingent only on military service I think would create a situation which is not consistent with a volunteer military. I hate to see us lose these young men and women who want to be part of America and are willing to risk their lives for that opportunity.

A recent study by the Center for Naval Analysis concluded ''non-citizens have high rates of success while serving in the military—they are far more likely, for example, to fulfill their enlistment obligations than their U.S.-born counterparts.''

The study also concluded there are additional benefits to enlisting noncitizens. For example, noncitizens ''are more diverse than citizen recruits—not just racially and ethnically, but also linguistically and culturally. This diversity is particularly valuable as the United States faces the challenges of the global war on terrorism.''

The DREAM Act is not just the right thing to do; it would be good for America. The DREAM Act would allow a generation of immigrants with great potential and ambitions to contribute to the military and other sectors of American society.

I am not just speaking for myself here, as the sponsor of this legislation. The Department of Defense recognizes it, and we have worked with them. Bill Carr, the Acting Under Secretary of Defense for Military Personnel Policy, recently said the DREAM Act is ''very appealing'' to the military because it would apply to the ''cream of the crop'' of students, in his words. Mr. Carr concluded the DREAM Act would be ''good for [military] readiness.''

On the Defense authorization bill, I don't believe it is unusual or improper for us to consider a bill that a leader in the Department of Defense said would be good for military readiness.

Last year at a Senate Armed Services Committee hearing on the contributions of immigrants to the military, David Chu, the Under Secretary of Defense for Personnel and Readiness, said:

> There are an estimated 50,000 to 65,000 undocumented alien young adults who entered the United States at an early age and graduate from high school each year, many of whom are bright, energetic and potentially interested in military service. They include many who participated in high school Junior ROTC programs. Under current law, these young people are not eligible to enlist in the military . . . Yet many of these young people may wish to join the military, and have the attributes needed—education, aptitude, fitness and moral qualifications. . . .

The Under Secretary went on to say:

> . . . the DREAM Act would provide these young people the opportunity of serving the United States in uniform.

Military experts agree. Margaret Stock, a professor at West Point, said:

> Passage of the DREAM Act would be highly beneficial to the U.S. military. The DREAM Act promises to enlarge dramatically the pool of highly qualified recruits for the U.S. Armed Forces . . . passage of this bill could well solve the Armed Forces enlistment recruiting woes.

Do you know what we are offering to young people now to enlist in our military? For many of them, a $10,000 cash bonus, right out of high school, if they will enlist in the military. And if they will show up within 6 weeks, we double it to $20,000, the largest cash incentive we have ever offered. These young people aren't looking for a cash incentive. All they want is a chance to fight for America, to defend our country and to become part of our Nation's future.

Conservative military scholar Max Boot agrees. When asked about the DREAM Act, he said:

> It's a substantial pool of people and I think it's crazy we are not tapping into it.

These experts are right. The DREAM Act kids are ideal recruits. They are high school graduates, they have good moral character, and they desperately want to serve America. At the time when the military has been forced to unfortunately lower many of its standards to meet recruitment targets, we should not underestimate the significance of these young people as a national security asset.

This is the choice the DREAM Act presents us. We can allow a generation of immigrant students with great potential and ambition to contribute more to America, or give them the future of living in the shadows, uncertain about what they can do, uncertain about where life will lead them.

I am going to urge my colleagues to support this legislation and I hope they will, for a moment, pause and reflect. There have been a lot of things said about immigration during the course of this debate. I look back on this issue as one who doesn't come to it objectively. I am the son of an immigrant. My mother came to this country as a young girl at the age of 2 from Lithuania. Her naturalization certificate sits behind my desk upstairs. She became a naturalized citizen at the age of 25. She lived long enough to see me sworn into the Senate, and I was so proud of that day and so proud to be a Senator from the State of Illinois.

I believe in immigration. I believe the diversity of America is our strength; that Black, White, and Brown, from every corner of this Earth we have come together to create something no nation on Earth can rival.

There are those who will always see immigration differently, those who

will question it, and those who will be critical. For those people, I ask them to step back and take an honest look at this. Step back and take an honest look at these young people, meet them, sit down with them, as I have. They will bring tears to your eyes when they talk to you about how hard they are working to make it in this country. They don't get many of the breaks which other kids get, but they keep on trying.

One of my friends is getting his graduate degree in microbiology at the University of Chicago. He keeps going to school because, as he said: Senator, I don't know what to do when I get out of school. I am not a legal American. I am undocumented. My dream is to work for a pharmaceutical company, to do medical research one day. Can we afford to let him go? Can we afford to turn our back on what he will bring to America?

It is interesting to me, before the end of this year we are likely to debate H–1B visas. The debate behind H–1B visas is that we don't have a large talent pool in America. We need to bring the best and brightest from India, from Asia, from Africa, and from Europe. We need to bring them in so our companies in America, starved for talent, that can't find it here, could find it in these visa holders coming in from foreign countries. We will let them work for 3 years or 6 years. Some them may try to stay. Some of them will go home.

But if we are at a point where we don't have a large enough talent pool in America, can we honestly say that these young people, the people who would be benefitted by the DREAM Act, are a talent we can waste? I don't think so.

Just last year I was eating in a restaurant in Chicago. It is a pretty famous breakfast place called Ann Suther's. Tom Tully is an alderman for the city of Chicago, and his family owns the restaurant. He introduced me to a young man with an apron on. He called him Juan and he said: Juan, come over and meet the Senator. He explained to me that Juan, who came to this country illegally, was allowed to stay and become a citizen under the amnesty that was offered by President Reagan 20 years ago. Juan went on to get an engineering degree and went on to work with an engineering firm, but because he remembers that this restaurant offered him a chance to wash dishes when nobody else would give him a job, he shows up every once in a while on a Saturday and works for a few hours for nothing, just to be around his old friends.

Those are heart-warming stories and there are many of them out there. I know there are people who seriously question whether immigration can be debated successfully on the floor of the Senate. I am hoping it can be and I am hoping my colleagues on the Democratic side and the Republican side will join me in this bipartisan effort for these young people, to give them a chance to serve and a chance to excel. It will make their lives better and make America a better nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

(The remarks fo Mr. CONRAD and Mr. GREGG pertaining to the introduction of S. 2063 are printed in today's RECORD under ''Statements of Inroduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, first of all, let me say I applaud both of the Senators who are working in an exemplary way to try to achieve something that is very difficult to achieve. I applaud them for their effort.

Madam President, what is the pending business?

The PRESIDING OFFICER. The pending amendment is amendment No. 2022 offered by the Senator from Michigan.

Mr. INHOFE. All right. Madam President, I ask unanimous consent to set the pending amendment aside for the purpose of considering my amendment No. 2271 and then to revert back to this pending amendment. It is my understanding that this amendment is one of 10 amendments that is going to be considered.

The PRESIDING OFFICER. Is there objection?

The Senator from North Dakota.

Mr. CONRAD. Madam President, I am constrained to object on behalf of the managers of the bill.

The PRESIDING OFFICER. Objection is heard.

Mr. INHOFE. All right.

Mr. President, I ask unanimous consent that I be recognized as in morning business.

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

Mr. INHOFE. Mr. President, there has been a lot of discussion since last week when MoveOn.org, with a very liberal antiwar stance—which we understand has been their position for quite some time, raising millions of dollars for various Democratic Party candidates—ran an ad. Up until the September 10 ad in the New York Times calling General Petraeus ''General Betray Us,'' MoveOn.org seemed to be in line with the Democrat's public statements supporting the troops but opposing the war.

It is my understanding my good friend, the junior Senator from Texas, is going to be having a resolution that will be coming up shortly. I want a chance to talk a little bit about that resolution.

I believe that MoveOn.org's ad crossed the line by attacking the character and integrity of America's top military leader in Iraq.

General Petraeus is a man of honor, honesty, and integrity. He is a West Point graduate. He has held leadership positions in airborne, mechanized, and air assault infantry units in Europe and the United States, including command of a battalion in the 101st Airborne Division, as well as a brigade in the 82nd Airborne Division.

He was the aide to the Chief of Staff of the Army; battalion, brigade, and division operations officer; he has done it all. He was the Executive Assistant to the Chairman of the Joint Chiefs of Staff.

He was the top graduate—not one of the top graduates, but the top graduate—of the U.S. Army Command and General Staff College. He earned M.P.A. and Ph.D. degrees from Princeton University. We are talking about a Ph.D. from Princeton University. This is not an ordinary officer. This is a man with incredible credentials.

He has won multiple awards and decorations, including being recognized by US News & World Report as one of America's 25 best leaders in the year 2005.

He is our top military commander in Iraq and commander of the Multi-National Force-Iraq, confirmed by the Senate as the right man for the job. He was confirmed, I might add, unanimously by the Senate.

The very day General Petraeus sat before Congress to offer his latest report, MoveOn.org ran a full-page ad in the New York Times attacking his message before they even heard his message.

The ad accused General Petraeus of ''Cooking the Books for the White House'' and called him ''a military man constantly at war with the facts.'' Their shameless attack on his character did not stop there. They accused him of being a traitor, calling him ''General Betray Us.''

Well, anyway, MoveOn.org's attempt to discredit General Petraeus is deplorable, and I join with other Members of the Senate in condemning its actions.

I have no issue with news agencies or individuals offering and debating opposing views. That is what we do on this floor every day. However, MoveOn.org crossed the line when they ran the ad attacking the motives and honor of our No. 1 commander on the ground in Iraq.

I support Senator LIEBERMAN's condemnation of MoveOn.org's attempt at character assassination, and I call on them to retract their scurrilous ad with another full-page ad apologizing for their error in judgment. But they would not do it. You know they would not do it. Still, we can try. They don't have the character to do it.

While no American is above scrutiny, this was clearly a calculated move on the part of this organization to undermine the noble efforts of this patriot to execute his duties that we in Congress unanimously sent him to accomplish.

It amazes me how far some will go to root for American failure in Iraq. MoveOn.org clearly placed their political agenda ahead of the best interests of the United States and particularly the men and women of the military when they chose to run that ad.

Now, something interesting happened. A reporter from the Washington Post came up with this, did a little research. According to the director of public relations for the New York Times, the open rate for an ad of that size and type is $181,000. According to a September 14 Washington Post article, the New York Times dramatically slashed its normal rates for the full-page ad.

A spokesman for MoveOn.org confirmed to the Post they paid only $65,000 for the ad. The Post reporter called the Times advertising department without identifying himself and was quoted a price of $167,000 for a full-page black-and-white ad on a Monday. The New York Times refused to offer any explanation for why the paper would give them a rate one-third of their published rate.

Now, my first visit to Iraq was in August of 2003, and my latest visit was on the August 30, 2007. The Iraq I saw last time is not the Iraq I visited in 2003. I would like to say also that between those years I have actually been to the Iraqi AOR, area of operations, some 15 times. During that period of time I have seen these things.

I knew what General Petraeus was going to say when he came here last week because I was with him a few days before that. I read General Petraeus's and Ambassador Crocker's prepared statements and listened intently to their testimonies. I compared their assessment with the assessments I have made over the past 4 years visiting Iraq. It appears our assessments are based on similar events that have occurred in Iraq.

I watched Ramadi as it changed. You might remember a year ago they claimed Ramadi was going to become the terrorist capital of the world. Ramadi is now totally secured.

I visited Fallujah. I have been there several times. I was there during all the elections. I watched those Iraqi security forces go and vote. I watched the American marines go door to door World War II style. Fallujah now—which was the hotbed in Anbar Province of Iraq—is now under total security, and not with U.S. forces but with Iraqi security forces.

I visited Patrol Base Murray, south of Baghdad, and met with local Iraqis who came forward and established provisional units of neighborhood security volunteers. These individuals heard the Americans were coming and were there and cheering, waiting for them to arrive.

I watched these Neighborhood Watch and Concerned Citizens groups take root in Anbar Province and slowly make their way to other cities spreading across Iraq—local civilians willing to stand up and take back their neighborhoods, their cities, and province.

Citizens are marking IEDs with orange paint—undetonated IEDs and PRGs—identifying al-Qaida in their towns and testifying against them. It is something that was not happening a few months before or prior to the surge. They are guarding critical infrastructure and working side by side with the U.S. forces.

I saw the anti-American messages at the mosques. Our intelligence goes into the mosques for each of their weekly meetings. Up through December of this past year, they averaged that 85 percent of the messages were anti-American messages. Since April of this year, there have been no anti-American messages. I guess I learned something that no one else seems to agree with; that is, we spend entirely too much time talking about the political leaders, when the religious leaders are the ones responsible for these major changes. These are the ones who are standing in the mosques and talking about Americans and the coalition forces as their allies, not as adversaries, as they were before.

I visited the Joint Security Stations in Baghdad. It used to be our kids would go out on a mission during the daytime, and they would come back at night to the green zone. They do not do that anymore. These Joint Security Stations—even as to the report that came in, our goal was to have 34, and there are now 32 of those Joint Security Stations. These guys go out, and instead of coming back, they sit and become friends with the Iraqis and actually sleep in the homes of the Iraqi security forces.

I watched the surge operations take effect, visited a former al-Qaida sanctuary, and saw a strengthening of Iraqi forces resulting in an increase in burden sharing.

I observed a steady decrease in the number of attacks in Anbar from 40 to less than 10 a day.

I visited the markets. There is a lot of talk about that. A lot of people go and visit the markets with all kinds of protection. I went to the markets without any protection, and I talked, through an interpreter, to people. I picked out people holding babies, and they were all glad to see us.

I met with U.S. and coalition leaders and commanders, Iraqi leaders and commanders, and local civilian groups on each trip.

I watched the political, economic, and diplomatic growth over time. It has been uneven and frustrating, but it has been a movement in the right direction.

I guess the bottom line is Iraq is achieving progress. No one can debate that. It is not just General Petraeus. It is what the Iraqis say. It is what they are saying, the religious leaders and the political leaders. It is happening, happening since the surge. The surge is clearly working.

The coalition forces are handing back control of Iraq to the Iraqis and to the Iraqi security forces. Local leaders who want better lives for their people are bravely standing up and rejecting the fatalist, cynical, and hate-filled diet fed to them by al-Qaida and other extremists.

Iraqis are realizing that al-Qaida does not offer a long-term vision of hope or an opportunity for them any more than it would for the average Californian or New Yorker or Oklahoman.

A backlash and rebellion against al-Qaida has been going on over the last 6 months in places such as Anbar Province and Babil Province south of Baghdad. When the tribal leaders and clerics in Anbar made the conscious decision to reject al-Qaida, they virtually overnight transformed their province into a model for the rest of the country to emulate. The ''concerned citizens'' of Babil Province—I was there—recognized the progress made in Anbar and decided they wanted to do the same thing. So it is spreading. It is spreading into areas even up toward Tikrit, the hometown of Saddam Hussein.

So al-Qaida understands the importance of the collective American will when it comes to prosecuting the war on terror. They understand they have absolutely no chance of winning this war over the long run militarily. They understand their only chance of achieving victory is to get the American people to call for a withdrawal. If we pull out of the fight, they win. There is no other way to characterize it. This is a strategic military objective for them. Like with any military objective, they have developed a tactic to achieve it. Their tactic in this case is to tear away the American will to win by committing horrific and brutal attacks against innocent victims. They understand that Americans agonize over the pictures and the news reports of those atrocities.

Let there be no doubt about it, our will as Americans to fight for freedom and democracy around the world is under attack by a brutal and ruthless enemy. That enemy would be emboldened by a victory in Iraq. Iraq would become a safe haven for terrorists and extremists from which they can launch their wicked atrocities around the world.

We could accept the offer of Iran's President to step in and fill the vacuum. He has clearly said: If the Americans pull out, we go in. However, this offer comes from a man who has vowed the extermination of the Jewish State of Israel, and he has vowed to expand his nuclear program and clearly puts us in jeopardy of being held hostage.

It is not in the American ethic to turn our back on people who are striving for a better way of life for their children. It is not in our national interest to leave a failed Iraqi State.

The surge is working, largely due to the leadership of one great American—GEN David Petraeus. MoveOn.Org should just once retreat from their attack on America and apologize to that great American hero, GEN David Petraeus.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. Mr. President, I see Senator SPECTER on the floor. I ask unanimous consent that after Senator SPECTER is recognized, if Senator GRAHAM is on the floor, he be recognized for debate only on the bill, and then that Senator CHAMBLISS be recognized, if he is on the floor, for debate only, and that then the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes.

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

Mr. LEVIN. I thank the Chair and my friend from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I ask unanimous consent to speak for up to 20 minutes as in morning business.

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

Mr. SPECTER. Mr. President, I have sought recognition to comment on the amendment to restore the constitutional right of habeas corpus—an amendment that is pending before the Senate and will be voted on tomorrow morning at 10:30 on a motion to invoke cloture.

The issue of the availability of habeas corpus for the detainees at Guantanamo is a matter of enormous importance. It is a matter of a fundamental constitutional right that people should not be held in detention unless there is an evidentiary reason to do so, or at least some showing that the person ought to be in detention. It is a constitutional right that has existed since the Magna Carta in 1215, and it has been upheld in a series of cases in the Supreme Court of the United States.

In the decision of Hamdi v. Rumsfeld, Justice O'Connor, speaking for a plurality, said that they ''all agree that, absent suspension, the writ of habeas corpus remains available to every individual detained within the United States.'' What Justice O'Connor was referring to was the express constitutional provision in Article I, Section 9, Clause 2, that habeas corpus may not be suspended except in time of invasion or rebellion. Obviously, if there cannot be a suspension of the writ of habeas corpus, there is a provision in that clause recognizing the existence of the constitutional right of habeas corpus. You cannot suspend a right that doesn't exist.

As amplified by Justice Stevens, in the case of Rasul v. Bush, the statutory right to habeas corpus applies to those held at the United States Naval Base at Guantanamo Bay, Cuba. Although Guantanamo Bay is not within the territory of the United States, it is under the complete jurisdiction and control of the United States.

In that case, Justice Stevens noted that ''application of the [writ of] habeas corpus to persons detained at the base is consistent with the historical reach of the writ of habeas corpus. At common law, courts exercised habeas jurisdiction over the claims of aliens detained within sovereign territory of the realm, as well as the claims of persons detained in the so-called 'exempt jurisdiction,' where ordinary writs did not run, and all other dominions under the sovereign's control.'' That is obviously a conclusive statement of the Supreme Court that in Guantanamo, under the control of the United States, the writ of habeas corpus would apply in accordance with the historic reach of habeas corpus under the common law. Although Justice Stevens wrote as to statutory habeas, his historic analysis implicates the right to habeas under the common law and the Constitution

Justice Stevens went on to point out:

Habeas corpus is, however [citing from Williams v. Kaiser] ''a writ antecedent to statute, . . . throwing its root deep into the genius of our common law.''

And continuing, he said that the writ had ''received explicit recognition in the Constitution, which forbids suspension of '[t]he Privilege of the Writ of Habeas Corpus . . . unless when in Cases of Rebellion or Invasion the public Safety may require it.' ''

Obviously, the exceptions—Rebellion or Invasion—do not apply in the Guantanamo situation.

Justice Stevens went on to say:

[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.

Justice Stevens then went on to note this—referring to the opinion of Justice Jackson, concurring in the result in the case of Brown v. Allen:

The historic purpose of the writ has been to relieve detention by executive authorities without judicial trial.

And he goes on to say:

Executive imprisonment has been considered oppressive and lawless since John, at Runnymede, pledged that no free man should be imprisoned, dispossessed, outlawed, or exiled save by the judgment of his peers or by the law of the land. The judges of England developed the writ of habeas corpus largely to preserve these immunities from executive restraint.

Going on, Justice Stevens pointed out:

Consistent with the historic purpose of the writ, this Court has recognized the federal court's power to review applications for habeas corpus in a wide variety of cases involving Executive detention, in wartime as well as in times of peace.

In a very curious decision, in Boumediene v. Bush, the Court of Appeals for the District of Columbia ignored the historic common law analysis of the Rasul case in concluding that the Supreme Court's decision was based solely upon the statutory provision for habeas corpus. The Boumediene court reasoned that Rasul could be changed by an act of Congress, the Military Commissions Act, which was passed in 2006. In that case, instead of looking to Rasul, as noted in the New York Times article by Adam Liptak on March 5 of this year, the Boumediene court looked to case law decided before Rasul. Liptak points out:

Instead of looking to Rasul, which was recent and concerned Guantanamo, the appeals court, reverting to the Court of Appeals for the District of Columbia, justified its decision by citing a 1950 Supreme Court decision, Johnson v. Eisentrager. That case involved German citizens convicted of war crimes in China and held at a prison in Germany. The court ruled that they had no right to habeas corpus.

Liptak points out the inapplicability of the Eisentrager case, stating:

The Court's reliance on Eisentrager was curious. Both Antonin Scalia, dissenting in Rasul, and John Yu, an architect of the Bush administration's post-9/11 legal strategy, have written that they understood Rasul to have overruled Eisentrager.

The Boumediene decision seemed to ignore the finding in Rasul that the Naval Base at Guantanamo Bay fell within the jurisdiction and control of the United States. If detainees at Guantanamo Bay fall within United States jurisdiction, as Rasul found, the aliens held at Guantanamo have a greater claim to habeas corpus rights. For example, Courts have held that aliens within the United States cannot be denied habeas corpus without violating the Suspension Clause.

Following its discussion of Rasul and Eisentrager, the Boumediene decision relied upon the proceedings in the Combatant Status Review Tribunals which, realistically viewed, are totally insufficient. The procedures of the Combatant Status Review Tribunals were taken up by the U.S. District Court for the District of Columbia in a case captioned: In re Guantanamo Detainees Cases, 355 F.Supp.2d 443 (2005).

Beginning on page 468 of the opinion, the district court noted a proceeding in the Combatant Status Review Tribunal where an individual was accused of associating with al-Qaida personnel. The court noted:

''. . . [T]he Recorder of the [Combatant Status Review Tribunal] asserted, 'While living in Bosnia, the Detainee associated with a known Al Qaida operative.' ''

The detainee then said:

''Give me his name.''

The Tribunal President said:

''I do not know.''

The detainee then said:

''How can I respond to this?''

The detainee went on to say:

''÷. . . I asked the interrogators to tell me who this person was. Then I could tell you if I might have known this person, but not if this person is a terrorist. Maybe I knew this person as a friend. Maybe it was a person that worked with me. Maybe it was a person that was on my team. But I do not know if this person is Bosnian, Indian or whatever. If you tell me the name, then I can respond and defend myself against this accusation.''

Later in the court's opinion, the detainee is quoted to the following effect:

''That is it, but I was hoping you had evidence that you can give me. If I was in your

place—and I apologize in advance for these words—but if a supervisor came to me and showed me accusations like these, I would take these accusations and I would hit him in the face with them.''

And at that, everyone in the tribunal room burst into laughter.

This is illustrative of what goes on in the Combatant Status Review Tribunals. They charge someone with being an associate of al-Qaida, but they cannot even give the person a name.

There was a very informative declaration filed by Stephen Abraham about what goes on in a Combatant Status Review Tribunal.

I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks this declaration.

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

(See Exhibit 1.)

Mr. SPECTER. Colonel Abraham identified himself as a lieutenant colonel in the U.S. Army Reserves who served as a member of a Combatant Status Review Tribunal and had an opportunity to observe and participate in the CSRT process.

Among other things, Colonel Abraham points out:

On one occasion, I was assigned to a CSRT panel with two other officers. . . .We reviewed evidence presented to us regarding the recommended status of a detainee. All of us found the information presented to lack substance.

What were purported to be specific statements of fact lacked even the most fundamental earmarks of objectively credible evidence. Statements allegedly made by percipient witnesses lacked detail. Reports presented generalized statements in indirect and passive forms without stating any source of the information or providing a basis for establishing the reliability or the credibility of the source. Statements of interrogators presented to the panel offered inferences from which we were expected to draw conclusions favoring a finding of ''enemy combatant'' but that, upon even limited questioning from the panel, yielded the response from the Recorder, ''We'll have to get back to you.'' The personal representative did not participate in any meaningful way.

On the basis of the paucity and weakness of the information provided both during and after the CSRT hearing, we determined that there was no factual basis for concluding that the individual should be classified as an enemy combatant.

The details of Colonel Abraham's statement are very much in line with the opinion of the U.S. District Court for the District of Columbia in the matter captioned: In re Guantanamo Detainee Cases. They had charges but presented absolutely no information. Consequently, there can be no contention that Combatant Status Review Tribunals are an adequate and effective alternative approach to Federal court habeas corpus. There must be a type of review which presents a fair opportunity for determination as to whether there was any basis to hold a detainee. For such a purpose, Combatant Status Review Tribunals are totally inadequate.

It is for that reason that I urge my colleagues to legislate in the pending Department of Defense authorization bill to reinstate the statutory right of habeas corpus. It is my judgment that the Supreme Court of the United States will act on the case now pending there to uphold the constitutional right, disagreeing with the decision of the Court of Appeals for the District of Columbia in Boumediene v. Bush.

Initially, the U.S. Supreme Court had denied to take certiorari in the case, and it was curious because Justice Stevens did not vote for cert. where three other Justices had. But then after the declaration by Colonel Abraham was filed on a petition for rehearing, which required five affirmative votes by Supreme Court Justices, the petition for rehearing was granted, and the Supreme Court of the United States now has that case.

I have filed a brief as amicus curiae in the case, urging the Supreme Court to overrule the District of Columbia case and to uphold the decision in Rasul v. Bush, which holds that there is a statutory right to habeas corpus and that is rooted in historic common law that predates the Constitution, tracing its roots to the Magna Carta with John at Runnymede in 1215. But pending any action by the Supreme Court of the United States, which is not by any means certain, notwithstanding my own view that the Supreme Court will reaffirm Rasul and reverse the Court of Appeals for the District of Columbia's ruling in Boumediene, the Congress should now alter the statutory provision in 2006 and make it clear that the statutory right to habeas corpus applies to Guantanamo because of the total inadequacy of the fairness of the procedures under the Combatant Status Review Tribunal.

EXHIBIT 1

DECLARATION OF STEPHEN ABRAHAM
LIEUTENANT COLONEL, UNITED STATES ARMY RESERVE

I, Stephen Abraham, hereby declare as follows:

1. I am a lieutenant colonel in the United States Army Reserve, having been commissioned in 1981 as an officer in Intelligence Corps. I have served as an intelligence officer from 1982 to the present during periods of both reserve and active duty, including mobilization in 1990 (''Operation Desert Storm'') and twice again following 9–11. In my civilian occupation, I am an attorney with the law firm Fink & Abraham LLP in Newport Beach, California.

2. This declaration responds to certain statements in the Declaration of Rear Admiral (Retired) James M. McGarrah (''McGarrah Dec.''), filed in Bismullah v. Gates, No. 06–1197 (D.C. Cir.). This declaration is limited to unclassified matters specifically related to the procedures employed by Office for the Administrative Review of the Detention of Enemy Combatants (''OARDEC'') and the Combatant Status Review Tribunals (''CSRTs'') rather than to any specific information gathered or used in a particular case, except as noted herein. The contents of this declaration are based solely on my personal observations and experiences as a member of OARDEC. Nothing in this declaration is intended to reflect or represent the official opinions of the Department of Defense or the Department of the Army.

3. From September 11, 2004 to March 9, 2005, I was on active duty and assigned to OARDEC. Rear Admiral McGarrah served as the Director of OARDEC during the entirety of my assignment.

4. While assigned to OARDEC, in addition to other duties, I worked as an agency liaison, responsible for coordinating with government agencies, including certain Department of Defense (''DoD'') and non-DoD organizations, to gather or validate information relating to detainees for use in CSRTs. I also served as a member of a CSRT, and had the opportunity to observe and participate in the operation of the CSRT process.

5. As stated in the McGarrah Dec., the information comprising the Government Information and the Government Evidence was not compiled personally by the CSRT Recorder, but by other individuals in OARDEC. The vast majority of the personnel assigned to OARDEC were reserve officers from the different branches of service (Army, Navy, Air Force, Marines) of varying grades and levels of general military experience. Few had any experience or training in the legal or intelligence fields.

6. The Recorders of the tribunals were typically relatively junior officers with little training or experience in matters relating to the collection, processing, analyzing, and/or dissemination of intelligence material. In no instances known to me did any of the Recorders have any significant personal experience in the field of military intelligence. Similarly, I was unaware of any Recorder having any significant or relevant experience dealing with the agencies providing information to be used as a part of the CSRT process.

7. The Recorders exercised little control over the process of accumulating information to be presented to the CSRT board members. Rather, the information was typically aggregated by individuals identified as case writers who, in most instances, had the same limited degree of knowledge and experience relating to the intelligence community and intelligence products. The case writers, and not the Recorders, were primarily responsible for accumulating documents, including assembling documents to be used in the drafting of an unclassified summary of the factual basis for the detainee's designation as an enemy combatant.

8. The information used to prepare the files to be used by the Recorders frequently consisted of finished intelligence products of a generalized nature—often outdated, often ''generic,'' rarely specifically relating to the individual subjects of the CSRTs or to the circumstances related to those individuals' status.

9. Beyond ''generic'' information, the case writer would frequently rely upon information contained within the Joint Detainee Information Management System (''JDIMS''). The subset of that system available to the case writers was limited in terms of the scope of information, typically excluding information that was characterized as highly sensitive law enforcement information, highly classified information, or information not voluntarily released by the originating agency. In that regard, JDIMS did not constitute a complete repository, although this limitation was frequently not understood by individuals with access to or who relied upon the system as a source of information. Other databases available to the case writer were similarly deficient. The case writers and Recorders did not have access to numerous information sources generally available within the intelligence community.

10. As one of only a few intelligence-trained and suitably cleared officers, I served

as a liaison while assigned to OARDEC, acting as a go-between for OARDEC and various intelligence organizations. In that capacity, I was tasked to review and/or obtain information relating to individual subjects of the CSRTs. More specifically, I was asked to confirm and represent in a statement to be relied upon by the CSRT board members that the organizations did not possess ''exculpatory information'' relating to the subject of the CSRT.

11. During my trips to the participating organizations, I was allowed only limited access to information, typically prescreened and filtered. I was not permitted to see any information other than that specifically prepared in advance of my visit. I was not permitted to request that further searches be performed. I was given no assurances that the information provided for my examination represented a complete compilation of information or that any summary of information constituted an accurate distillation of the body of available information relating to the subject.

12. I was specifically told on a number of occasions that the information provided to me was all that I would be shown, but I was never told that the information that was provided constituted all available information. On those occasions when I asked that a representative of the organization provide a written statement that there was no exculpatory evidence, the requests were summarily denied.

13. At one point, following a review of information, I asked the Office of General Counsel of the intelligence organization that I was visiting for a statement that no exculpatory information had been withheld. I explained that I was tasked to review all available materials and to reach a conclusion regarding the non-existence of exculpatory information, and that I could not do so without knowing that I had seen all information.

14. The request was denied, coupled with a refusal even to acknowledge whether there existed additional information that I was not permitted to review. In short, based upon the selective review that I was permitted, I was left to ''infer'' from the absence of exculpatory information in the materials I was allowed to review that no such information existed in materials I was not allowed to review.

15. Following that exchange, I communicated to Rear Admiral McGarrah and the OARDEC Deputy Director the fundamental limitations imposed upon my review of the organization's files and my inability to state conclusively that no exculpatory information existed relating to the CSRT subjects. It was not possible for me to certify or validate the non-existence of exculpatory evidence as related to any individual undergoing the CSRT process.

16. The content of intelligence products, including databases, made available to case writers, Recorders, or liaison officers, was often left entirely to the discretion of the organizations providing the information. What information was not included in the bodies of intelligence products was typically unknown to the case writers and Recorders, as was the basis for limiting the information. In other words, the person preparing materials for use by the CSRT board members did not know whether they had examined all available information or even why they possessed some pieces of information but not others.

17. Although OARDEC personnel often received large amounts of information, they often had no context for determining whether the information was relevant or probative and no basis for determining what additional information would be necessary to establish a basis for determining the reasonableness of any matter to be offered to the CSRT board members. Often, information that was gathered was discarded by the case writer or the Recorder because it was considered to be ambiguous, confusing, or poorly written. Such a determination was frequently the result of the case writer or Recorder's lack of training or experience with the types of information provided. In my observation, the case writer or Recorder, without proper experience or a basis for giving context to information, often rejected some information arbitrarily while accepting other information without any articulable rationale.

18. The case writer's summaries were reviewed for quality assurance, a process that principally focused on format and grammar. The quality assurance review would not ordinarily check the accuracy of the information underlying the case writer's unclassified summary for the reason that the quality assurance reviewer typically had little more experience than the case writer and, again, no relevant or meaningful intelligence or legal experience, and therefore had no skills by which to critically assess the substantive portions of the summaries.

19. Following the quality assurance process, the unclassified summary and the information assembled by the case writer in support of the summary would then be forwarded to the Recorder. It was very rare that a Recorder or a personal representative would seek additional information beyond that information provided by the case writer.

20. It was not apparent to me how assignments to CSRT panels were made, nor was I personally involved in that process. Nevertheless, I discerned the determinations of who would be assigned to any particular position, whether as a member of a CSRT or to some other position, to be largely the product of ad hoc decisions by a relatively small group of individuals. All CSRT panel members were assigned to OARDEC and reported ultimately to Rear Admiral McGarrah. It was well known by the officers in OARDEC that any time a CSRT panel determined that a detainee was not properly classified as an enemy combatant, the panel members would have to explain their finding to the OARDEC Deputy Director. There would be intensive scrutiny of the finding by Rear Admiral McGarrah who would, in turn, have to explain the finding to his superiors, including the Under Secretary of the Navy.

21. On one occasion, I was assigned to a CSRT panel with two other officers, an Air Force colonel and an Air Force major, the latter understood by me to be a judge advocate. We reviewed evidence presented to us regarding the recommended status of a detainee. All of us found the information presented to lack substance.

22. What were purported to be specific statements of fact lacked even the most fundamental earmarks of objectively credible evidence. Statements allegedly made by percipient witnesses lacked detail. Reports presented generalized statements in indirect and passive forms without stating the source of the information or providing a basis for establishing the reliability or the credibility of the source. Statements of interrogators presented to the panel offered inferences from which we were expected to draw conclusions favoring a finding of ''enemy combatant'' but that, upon even limited questioning from the panel, yielded the response from the Recorder, ''We'll have to get back to you.'' The personal representative did not participate in any meaningful way.

23. On the basis of the paucity and weakness of the information provided both during and after the CSRT hearing, we determined that there was no factual basis for concluding that the individual should be classified as an enemy combatant. Rear Admiral McGarrah and the Deputy Director immediately questioned the validity of our findings. They directed us to write out the specific questions that we had raised concerning the evidence to allow the Recorder an opportunity to provide further responses. We were then ordered to reopen the hearing to allow the Recorder to present further argument as to why the detainee should be classified as an enemy combatant. Ultimately, in the absence of any substantive response to the questions and no basis for concluding that additional information would be forthcoming, we did not change our determination that the detainee was not properly classified as an enemy combatant. OARDEC's response to the outcome was consistent with the few other instances in which a finding of ''Not an Enemy Combatant'' (NEC) had been reached by CSRT boards. In each of the meetings that I attended with OARDEC leadership following a finding of NEC, the focus of inquiry on the part of the leadership was ''what went wrong.''

24. I was not assigned to another CSRT panel.

I hereby declare under the penalties of perjury based on my personal knowledge that the foregoing is true and accurate.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise this afternoon in opposition to the Leahy-Specter amendment on the Defense authorization bill. The Leahy-Specter amendment will strike an important change made by the Military Commissions Act of 2006 that strips courts of jurisdiction to hear habeas corpus petitions from alien unlawful enemy combatants detained by the United States.

This amendment would restore jurisdiction to the Federal courts to hear habeas petitions from detainees who are currently pending trial before a military commission. Essentially, this amendment would grant habeas corpus rights to all non-U.S. citizens, regardless of location, who are detained by the United States.

The amendment would have the effect during the current global war on terrorism or during a large-scale protracted war on the scale of World War II of giving any noncitizen detained by U.S. forces, regardless of where they are detained and regardless of the reason for their detention, the right to challenge that detention in the U.S. court system.

I can think of few better ways to ensure that the United States is defeated in any conflict in which we engage and few better ways to undermine the national security of the United States than to adopt this amendment.

In 2004, the Supreme Court's decision in Hamdi v. Rumsfeld held that the President is authorized to detain enemy combatants for the duration of hostilities based on longstanding law-of-war principles. It also held that Congress could authorize the President to detain persons, including U.S. citizens, designated as enemy combatants without trial for a criminal offense so long as the enemy combatant has a process to challenge that designation.

As a result of the Hamdi decision, the Department of Defense created the

Combatant Status Review Tribunal, a process where detainees may challenge their status designations.

Congress passed and the President signed the Detainee Treatment Act on December 30, 2005, which included the Graham-Levin amendment to eliminate the Federal court statutory jurisdiction over habeas corpus claims by aliens detained at Guantanamo Bay.

After a full and open debate, a bipartisan majority of Congress passed the Military Commissions Act just last fall. The MCA amended the Detainee Treatment Act provisions regarding appellate review and habeas corpus jurisdictions by making the provisions of the DTA the exclusive remedy for all aliens detained as enemy combatants anywhere in the world, including those detained at Guantanamo Bay, Cuba. The MCA's restrictions on habeas corpus codified important and constitutional limits on captured enemies' access to our courts.

The District of Columbia Circuit upheld the MCA's habeas restrictions in Boumediene v. Bush earlier this year. The Supreme Court, in a rare move, reconsidered their denial of certiorari and will make a decision on this case in the near future. In the meantime, Congress should not act hastily.

Before the Supreme Court decision in Rasul v. Bush in June 2004, the controlling case law for over 50 years was set out in the Supreme Court case of Johnson v. Eisentrager, a 1950 case which held that aliens in military detention outside the United States were not entitled to judicial review through habeas corpus petitions in Federal courts. The Court recognized that extension of habeas corpus to alien combatants captured abroad ''would hamper the war effort and bring aid and comfort to the enemy,'' and the Constitution requires no such thing.

The Rasul case changed the state of the law for detainees held at Guantanamo Bay, Cuba, due to the unique nature of the long-term U.S. lease of that property. The Supreme Court reasoned that the habeas corpus statute and the exercise of complete jurisdiction and control over the Navy base in Cuba were sufficient to establish the jurisdiction of U.S. Federal courts over habeas petitions brought by detainees.

The Supreme Court ruled that the status of a detainee as an enemy combatant must be determined in a way that provides the fundamentals of due process—namely, notice and opportunity to be heard. The executive branch established Combatant Status Review Tribunals, or CSRTs, to comply with this mandate. Judicial review of CSRT determinations of enemy combatant status by article III courts is provided by the Detainee Treatment Act. Under the DTA, appeals of CSRT decisions may be made to the U.S. Court of Appeals for the DC Circuit.

In his dissent in the Rasul case, Justice Scalia wisely pointed out that at the end of World War II, the United States held approximately 2 million enemy soldiers, many of whom no doubt had some complaint about their capture or conditions of confinement. Today, approximately 25,000 persons are detained by the United States in Iraq, Afghanistan, and at Guantanamo Bay.

Restoring jurisdiction over alien enemy combatants could result in providing the right of habeas corpus to all those detainees held outside the United States so long as their place of detention is under the jurisdiction and control of the U.S. Armed Forces.

In fact, habeas challenges on behalf of detainees held in Afghanistan have already been filed.

The Supreme Court recognized in Johnson v. Eisentrager that allowing habeas petitions from enemy combatants forces the judiciary into direct oversight of the conduct of war in which they will be asked to hear petitions from all around the world, challenging actions and events on the battlefield. This would simply be unworkable as a practical matter and could greatly interfere with the Executive's authority to wage war. As the Supreme Court revisits these issues, Congress should not undue what it has done.

Federal courts have ruled twice—in December 2006 at the district court level on the remand of the Hamdan case from the Supreme Court and again in February 2007 at the DC Circuit Court level in the consolidated cases of Boumediene and Al Odah—that the Military Commissions Act is constitutional and that alien enemy unlawful combatants have no constitutional rights to habeas corpus.

The Supreme Court, at the end of June, decided it would hear these cases on expedited appeal this fall. It is appropriate for Congress to allow the Supreme Court to review the decision made by the DC Circuit Court of Appeals, applying the standards of review enacted in the DTA and the MCA before granting habeas rights to and opening the Federal courts to thousands of detainees held outside the United States.

For these reasons, and simply because it represents extremely bad policy, I urge my colleagues to oppose the Leahy-Specter amendment.

Mr. President, I had also intended to talk a little while today about Senator GRAHAM's amendment seeking to strike section 1023 of the underlying bill. It is my understanding now that there are discussions ongoing relative to the possibility of trying to work that amendment out. So if that amendment does come to the floor for consideration, I will be back to talk about the support of that amendment at that time.

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

The PRESIDING OFFICER (Mr. MENENDEZ). The clerk will call the roll.

The 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.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. The Senate is now proceeding under a previous order in a period of morning business, with Senators being recognized for up to 10 minutes.

The Senator from Alabama is recognized.

Mr. SESSIONS. I thank the Chair.

DEFENSE AUTHORIZATION AND APPROPRIATIONS

Mr. SESSIONS. Mr. President, I would just say that we have a limited amount of time in this body—and we all know that—before the end of the fiscal year will be coming up on September 30. We have to pass some sort of appropriation to fund our defense and our military by that date. We need to pass the Defense authorization bill, which has been voted out of the Armed Services Committee. Senator LEVIN, our Democratic chairman, has moved that bill forward, and it had strong bipartisan support. It is on the floor today, and it provides quite a number of valuable and critically important benefits for our defense on which we need to vote. For example, it increases the number of persons in the Army, the end-strength of the Army, by 13,000, and 9,000 for the Marine Corps. We have a lot of people talking about the stress on the military, so we need to authorize the growth of the military. It is something we know we need to do, and I think we have a general agreement on that. It is in this bill. We need to move this bill. It authorizes numerous pay bonuses and benefits for our warfighters and their family members. It allows a reservist to draw retirement before age 60 if they volunteer under certain circumstances for active mobilizations. It directs studies on mental health and well-being for soldiers and marines. It establishes a Family Readiness Council. It authorizes funding for the MRAPs, which are those vehicles which are so much more effective against even the most powerful bombs and IED-type attacks.

So this bill, this authorization bill, is not an unimportant matter. Our soldiers are out there now in harm's way, where we sent them, executing the policies we asked them to execute, and we need to support them by doing our job. We complain that Iraq can't pass this bill or that bill; we need to pass our own bill.

Not only do we need to get this authorization bill passed, but we have to get on next week to the appropriations bill to actually fund the military because if we do not do so, the funding stops. Under American law, if Congress does not appropriate funds, nobody can spend funds. It is just that simple.