LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

IMPROVING AMERICA'S SECURITY ACT OF 2007—Continued

AMENDMENT NO. 328, AS MODIFIED

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that amendment No. 328 be modified, with the changes at the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

(Purpose: To require Amtrak contacts and leases involving the State of Maryland to be governed by the laws of the District of Columbia)

On page 299, between lines 2 and 3, insert the following:

SEC. 1337. APPLICABILITY OF DISTRICT OF COLUMBIA LAW TO CERTAIN AMTRAK CONTRACTS.

Section 24301 of title 49, United States Code, is amended by adding at the end the following:

''(n) APPLICABILITY OF DISTRICT OF COLUMBIA LAW.—In the case of Maryland, any lease or contract entered into by the National Railroad Passenger Corporation after the date of the enactment of this subsection shall be governed by the laws of the District of Columbia.''.

Mr. LIEBERMAN. I thank the Chair, and I yield the floor.

Mr. COBURN. Mr. President, I ask that the pending amendment be set aside.

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

AMENDMENT NO. 325 TO AMENDMENT NO. 275

Mr. COBURN. Mr. President, I call up amendment No. 325.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 325.

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

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

The amendment is as follows:

(Purpose: To ensure the fiscal integrity of grants awarded by the Department of Homeland Security)

On page 106, preceding the matter on line 7, insert the following:

SEC. 204. COMPLIANCE WITH THE IMPROPER PAYMENTS INFORMATION ACT OF 2002.

(a) DEFINITIONS.—In this section, the term—

(1) ''appropriate committees'' means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Oversight and Government Reform of the House of Representatives; and

(2) ''improper payment'' has the meaning given that term under section 2(d)(2) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

(b) REQUIREMENT FOR COMPLIANCE CERTIFICATION AND REPORT.—The Secretary shall not award any grants or distribute any grant funds under any grant program under this Act or an amendment made by this Act, until the Secretary submits a report to the appropriate committees that—

(1) contains a certification that the Department has for each program and activity of the Department—

(A) performed and completed a risk assessment to determine programs and activities that are at significant risk of making improper payments; and

(B) estimated the total number of improper payments for each program and activity determined to be at significant risk of making improper payments; and

(2) describes the actions to be taken to reduce improper payments for the programs and activities determined to be at significant risk of making improper payments.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, by our estimates, this bill is about $17-plus billion. As I said, it has not been scored. The House bill that will be merged with this in conference is over $20 billion. That is a large chunk of change for the American taxpayer. What we know is a lot of the grants which make up about $3-plus billion a year over the next 5 years of the vast majority of this bill will be homeland security grants of one type or another. What we know is the Department of Homeland Security has not followed the law when it comes to improper payments.

What the Improper Payments Act of 2002 required of every agency of the Federal Government was that they perform a risk assessment of every program they have, that they develop a statistically valid estimate of improper payments, that they develop a corrective action plan, and they report the results of those activities to us.

This is not an optional plan for the agencies. Yet this plan has been ignored since its inception and since the creation of the Department of Homeland Security. We are getting ready to send another $17- to $18 billion-plus out the door for homeland security grants—that is the majority of this—and we know the Department of Homeland Security is not in compliance with the Federal law.

The reason the law exists is to make sure we get good value for the taxpayers' money. The year 2004 was the first year the agencies were required to respond to this act. It is worth noting again that there is not an agency of the Federal Government, not one agency, that is exempt from this law. This is not a request. This is a statutory requirement of every agency.

The Department of Homeland Security has not even complied with the first step of this law. They have not performed risk assessments for the programs to be of significant risk of making improper payments. They are an at-risk program according to the analysis, yet they have not even looked to do a risk assessment. The Government Accountability Office has found at least six major programs at this Department are out of compliance with the Improper Payments Act. The Department of Homeland Security's independent auditor has repeatedly cited noncompliance, and the Department of Homeland Security continues to face significant challenges with FEMA and the Individual and Households Program.

Based upon the Department's performance and accountability report and their independent auditor assessment, the following programs are out of compliance with the improper payments act: Customs and Border Protection; Office of Grants and Training; Federal Air Marshals—the Coast Guard was supposed to have done a performance evaluation and risk assessment but it has not been done; FEMA; the Transportation Security Agency; and Immigration and Customs Enforcement. Not one of them has performed the first risk assessment as to improper payments.

In case you think that is not a lot of money, we have already spent over $25 billion in grants through the years for these programs, of which we have not looked at the problem accounts. The press is replete with problems in terms of these grants: $9 billion on State and local preparedness grants—that is what we get from DHS. Secretary Chertoff at the most recent hearing said $5 billion of the money, another $5 billion—part of which has been obligated but has not gone out the door yet.

I think we owe it to the American people, if there is a law on the books, before we send more money out the door the agency ought to comply with the law. They ought to at least do a risk assessment. If there is no risk, that is fine. Then they will have complied with the law. But if there is risk, we ought to be identifying the risk. Every dollar we spend wastefully is a dollar we don't use to protect ourselves in terms of our security.

KPMG was the independent auditor for 2004, 2005, and 2006 for the Department of Homeland Security. In each one of those years they were out of compliance with this act. Specifically, the Department is cited for not instituting a systematic method of reviewing all practices and identifying those believed to be susceptible to erroneous, improper payments. The most important part of the Improper Payments Act is to create the process of good, strong oversight within the Department to make assessments about whether they are making improper payments. What this assessment does is it identifies where those improper payments could have been made, and that is essential to find out where the problems exist.

This amendment does not debate any of the merits of the Department's programs. It simply demands compliance with the transparency and accountability measurements that already exist under current law. If we want the American people and the executive branch to take us seriously, Congress must demand compliance with the laws that are laws. We cannot back off.

This amendment is not a surprise to the Department of Homeland Security. They know they are failing and they need to respond to it. This amendment in no way jeopardizes State funding. Let me tell you why. It is because there is a pipeline of 9 to 12 months in the works already on grants that are going there. For this to have any impact would mean they would have to not respond for another year before those grants would be in jeopardy. Some of my colleagues say, You can't do this. You can't put these grants at the risk of noncompliance of an agency in terms of meeting the law. The question ought to be, Why not? Why shouldn't we put the agency at risk with their grants for being noncompliant?

The other point I make is most of these grants go to States and localities. The problem with the grants is there is some culpability on the part of the States and the localities in terms of these grants. The States are not totally innocent. There is $2.5 billion that has not even been awarded yet that still can be awarded before this takes effect. So there is still another $5 billion, which is greater than the amount we spend in any one year on these grants. What this amendment says is they cannot go past that unless they have complied with the law.

If we are not going to agree to this amendment, then we need to trash the Improper Payments Act. If we are not going to say the Department of Homeland Security has an obligation to follow the law, then we ought to take the law off the books. We know for sure in the other areas of the Federal Government we have somewhere between $40- and $80 billion worth of improper payments. We know we have $40 billion of improper payments, overpayments, in Medicare; somewhere close to $30 billion in Medicaid. We have a third of the Earned Income Tax Credit that we know were improper payments and we have only looked at 40 percent of the Government; 60 percent of the Government still isn't complying.

We ought to say right now if we are going to put more money through the door, the American taxpayer ought to have value for the money they send through that door. What we are saying is we want them to be accountable, to be accountable as an agency of the Federal Government. There ought to be transparency. We ought to be able to see where they are making mistakes and where they are not. The question of not even asking the question is what we are debating with this amendment; they are in absolute noncompliance with the Federal law that requires them to be compliant about whether their grants are improperly paid or funding other than what they expected to fund.

Investigation showed FEMA spent millions on puppet shows, bingo, and yoga in south Florida. There is an article in the National Review, 7/19/05, on homeland pork. Baltimore Sun, 5/29/05, chasing security with dollars. The only transparency we have here is that there is a total lack of transparency in the Department of Homeland Security.

Needless to say, this is a bill that goes far outside 9/11 recommendations. The 9/11 recommendations said all money should be risk based. What we have turned around with the 9/11 bill, this one and what had passed in the previous Congresses, is a way to dole out money to States and not hold them accountable.

What this amendment says is you are going to have to start being accountable. If we are going to send out another almost $20 billion in terms of grants, Homeland Security ought to have to follow the law in terms of improper payments.

Remember, these grants are not competitively awarded—which is very different than the grants we have in almost every other Federal program. The fact they are not competitive is another reason, a much greater reason, for us to demand accountability and transparency at the Department of Homeland Security. These grants are also not let on the basis of risk. Some are. In some of these it will be down to .45 percent, others at .75, and a few at .25. Most of them have no local match so there is no risk on the side of the States or the municipalities that get these grants.

Just a note: The best way for Congress to practice spending discipline is to demand that the agencies comply with the laws assuring appropriated dollars are spent adequately, appropriately, and lawfully. We have yet to do that with many agencies.

DHS is a good place to start. FEMA awarded $22.6 million for crisis counseling for victims of Hurricanes Rita and Katrina—$22.6 million. Katrina did not even hit Florida. Yet a large portion of that was spent in Florida. There is no accountability. There was no risk assessment. Was there a risk? They have not done the work we demand by the law and what is being demanded of other agencies.

There was an article in the Florida Sun. I cannot vouch for its accuracy, but where there is a little smoke there is some fire. Of the $1.2 billion in aid that FEMA granted to individuals—not municipalities or contractors but to individuals—affected by the weather disasters between 1999 and 2004, the Florida Sun-Sentinel found of $1.2 billion, at least $330 million of that went to people who did not personally suffer any damage or disruption from the storms. That is a fourth of the money out of that $1.2 billion. No wonder we have a deficit. No wonder. Because we are not willing to take the time to force an agency to do what they should be doing under the law.

I want to talk for a minute about this bill. The 9/11 Commission was very succinct and direct, noting that we have tremendous vulnerabilities and risks and exposures throughout this country. They were very clear to state that money that comes out of Congress to address those ought to be absolutely risk based. The House bill at least is down to 0.25 percent for every State. What that gives us is about 15 percent of the money is going to go to the States regardless of their risk. So that is about $3.5 billion or $4 billion—no risk, you are going to get Homeland Security grants even though you have no risk.

Think about what we are going to ask ourselves if we have another terrorist attack and it is in one of the high-risk areas and we have sent, year after year after year, $4 billion to areas that do not have a high risk and that money could have prevented that action.

With good fiscal discipline, we will best protect the people of this country. I know the tendency of this body is to make sure you get enough for you and to make sure you can go home and say we got this for you. You pat yourself on the back. But I wonder how many of us will be patting ourselves on the back when we buy things that are not absolutely necessary with these grants that are going to States and we ignore the very high-risk east coast, west coast, gulf coast, and the large metropolitan areas in this country that need more money while we are playing politics with 15 to 20 percent of the money. We will be judged on that, and that judgment will not be a pretty picture.

This amendment simply says no funds can go for any of these grants until FEMA and the Department of Homeland Security start complying with the Federal statute, which is called the Improper Payments Act of 2002. It is very straightforward.

What we will have raised is the fear that my State may not get some money. They have a year to comply. They have plenty of time to do what they have been asked to do. Senator OBAMA and I, this last year, over 8 months ago, sent a letter to the Department of Homeland Security asking why.

I ask unanimous consent to print that letter in the RECORD.

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

U.S. SENATE,
Washington, DC, November 16, 2006.

Hon. MICHAEL CHERTOFF,
Secretary, U.S. Department of Homeland Security, Washington, DC.

DEAR SECRETARY CHERTOFF: We are writing with regard to a recent Government Accountability Office (GAO) report concerning improper payments at the Department of Homeland Security (DHS). The persistent pattern of improper payments limits the Department's ability to respond to our nation's most dire threats and hazards, and we seek assurances that you are taking adequate steps to address this problem.

As you may know, the GAO released a report on November 14, 2006 assessing the compliance of government agencies with the Improper Payments Information Act (IPIA) of 2002 (P.L. 107–300). Congress passed and the President signed the IPIA with the belief that the Federal government, as a steward of

taxpayer dollars, should safeguard these funds from improper payments and make timely and accurate reports on the improper payments that do occur, so that erroneous payments are not repeated in the future.

Based on the recently-released GAO report, it appears that DHS is not fulfilling its duty to address improper payments. Specifically, the Department appears to have failed to adequately perform the first step in reducing improper payments—assessing which of its programs are at risk for these payments. If an accurate risk assessment does not occur, the Department's ability to reduce improper payments is seriously compromised.

We understand that in the period evaluated by the GAO (in DHS' Fiscal Year 2005 Performance and Accountability Report), DHS identified no programs in the entire agency with a high risk for improper payments. However, the GAO analysis of certain DHS programs indicates that the Department has not ''institute[ed] a systematic method of reviewing all programs and identifying those it believed were susceptible to significant erroneous payments.''

For example, GAO points to the Individuals and Households Program (IHP) within the Federal Emergency Management Agency. Despite warnings of reported financial management weaknesses in the IHP program from the DHS Office of Inspector General and the Senate Committee on Homeland Security and Government Affairs, DHS concluded that the program did not meet the OMB standard for identifying programs susceptible to significant improper payments—exceeding $10 million and 2.5 percent of program payments. However, the GAO analysis of the IHP program reveals improper payments of approximately $1 billion. In GAO's words, this ''dramatically different'' result—a difference of at least $990 million—far exceeds the OMB requirement for a high-risk program.

In fact, this was the third year in a row that your independent auditor reported IPIA noncompliance for DHS. If DHS cannot accurately determine which of its programs are at risk for improper payments, it cannot take further steps to root out these payments. And if steps are not taken to root out improper payments in an agency with an annual budget of over $34 billion, American taxpayer dollars will be left vulnerable to waste, fraud and abuse with funds that should have been used to protect them.

Please provide us with an explanation of how the Department failed to identify the IHP as a risk susceptible program during the risk assessment process for fiscal year 2005, potentially failing to account for as much as $990 million in improper payments. We further ask that you provide details on how the Department plans to institute an improved method of reviewing all of its programs and identifying those programs that are susceptible to improper payments, in accordance with the letter and spirit of the law.

Please provide a response by December 15, 2006. Thank you in advance for your consideration of this important matter.

Sincerely,

BARACK OBAMA,
U.S. Senator.
TOM COBURN,
U.S. Senator.

Mr. COBURN. This letter was sent to Secretary Chertoff. The Federal Financial Management Subcommittee of the Committee on Homeland Security and Governmental Affairs had four hearings on improper payments. We know what is required. We know they can do it. What the Congress has to do is make them do it, if they want to spend the money. It is only right for our children and grandchildren to get fair value for the taxpaying public, as we send out this money.

I am a skeptic when it comes to this body, when it gets away from the political porking that goes on. I am not sure this amendment will pass. But if it doesn't pass, I will offer an amendment to get rid of the Improper Payments Act because there is no reason to have a law that we are not going to enforce. If we are not going to enforce it, why is it on the books? It is similar to enforcing the borders. The law is there, but we don't do it.

We have to be accountable to the American public to make sure that agencies follow the law. This is a simple amendment that requires Homeland Security to follow that.

By the way, we have not had an answer to this letter. It was dated November 16. I spoke in error.

UNITED NATIONS FUNDING

I want to correct something I said last week on the United Nations. My numbers were wrong. We, in fact, do pay for about 22 percent of the unified budget at the United Nations, and our total contribution is in excess of $5 billion. I had the ratios right, I had the numbers wrong. I want to correct that for the RECORD today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

AMENDMENT NO. 305

Mr. SESSIONS. Mr. President, I call up amendment No. 305. I believe it is already pending, having been offered by Senator MCCONNELL.

The PRESIDING OFFICER. The amendment is pending.

Mr. SESSIONS. Mr. President, I ask unanimous consent that Senators CRAIG, INHOFE, ISAKSON, and COBURN be made cosponsors of the amendment.

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

Mr. SESSIONS. Mr. President, it is critically important that we clarify the role of State and local law enforcement officers in the enforcement and apprehension of those who violate our immigration laws and that we expand the National Crime Information Center interest. It is critical that we have them participate because with expanded NCIC capability, which I am surprised is not already being done, they can be partners in Federal law enforcement efforts.

It would be in compliance with what the 9/11 Commission and other reports have asked us to do. It is a loophole in the system today that needs to be fixed.

The amendment I offer is a slimmed down version of the bill I offered in the last Congress, the Homeland Security Enforcement Enhancement Act. That was cosponsored by Senators CRAIG, INHOFE, and ISAKSON. The ideas contained in the amendment have also been supported by Senators KYL and CORNYN. They included it in their immigration bill last Congress. Senators BEN NELSON and COBURN included those provisions in the Nelson-Sessions immigration enforcement bill in the last Congress.

Additionally, my amendment is almost word for word the provision that the Senate Judiciary Committee included when it marked up the Senate immigration bill last year and the provision that the full Senate voted for when it passed S. 2611.

The first section of the amendment reaffirms what I believe to be the existing inherent authority of State and local law enforcement to assist the Federal Government in enforcing the immigration laws of the United States during the normal course of carrying out their law enforcement duties. The amendment specifically states that the participation of State and local law enforcement personnel is not required, not mandated by this legislation. It is 100 percent voluntary.

Section 2 of the amendment deals with the listing of immigration violators in the National Crime Information Center database. State and local officers need easily accessible roadside access to critical immigration information, just as they would do for citizens of the United States who violate our laws. Officers routinely, when they stop people on the road, run National Crime Information Center database checks when they pull over suspects, speeders, or people they are investigating for other crimes. The NCIC is their bread-and-butter database. Today the immigration violators file of the National Crime Information Center database contains information on deported felons, alien absconders, and wanted persons, aliens with outstanding criminal warrants. That is in the National Crime Information Center database. But my amendment would direct that the Department of Homeland Security work with the FBI to place additional information on certain immigration violators into the already existing immigration violators file.

The four categories of immigration violators whose information would be entered are, one, aliens who have final orders of removal. That is someone who has been apprehended, gone through a hearing, and a judge has ordered finally that they be removed from the country for whatever violation; two, it would cover aliens under voluntary departure agreements who for one reason or another have signed an order that they would voluntarily deport themselves or leave the country; No. 3, it would cover aliens who are known to have overstayed their authorized period of stay, the visa overstays; and No. 4, it would cover aliens whose visas have been revoked. Sometimes people misbehave seriously. Twenty-seven percent of our Federal penitentiary bed spaces today are filled by noncitizens.

For some reason in recent years we are seeing a substantial number of

criminal aliens coming into the country. These are not bed spaces for immigration law violations, not people waiting to be deported. These are people who have been arrested, tried, or convicted of Federal criminal laws such as drug dealing and assaults or smuggling, things of that nature.

When State and local police officers encounter individuals during their regular law enforcement duties, it is important that they know if the individual in front of them falls into one of these violator categories. Importantly, my amendment includes a new procedure for removal of erroneous information from NCIC. If there is something entered incorrectly, under the new procedures an alien may petition the Secretary of the Department of Homeland Security or the head of NCIC to remove any erroneous information that may have been placed in that file to protect them from any unfair treatment.

These are recommendations that should already be law, but they are recommendations made in the 9/11 Commission Report. We are all familiar with those recommendations, and they have been included in the Hart-Rudman report.

On page 384 of the 9/11 Commission Report, the Commission says:

> Our investigations showed that two systemic weaknesses came together in our border system's inability to contribute to an effective defense against the 9/11 attacks: a lack of well-developed counterterrorism measures as a part of border security and an immigration system not able to deliver on its basic commitments, much less support counterterrorism. These weaknesses have been reduced but are far from being overcome.

On page 390, the report says:

> There is a growing role for State and local law enforcement agencies. They need more training and work with Federal agencies so that they can cooperate more effectively with those Federal authorities in identifying terror suspects.

In the fall of 2002, a year after the 9/11 attacks, the Council on Foreign Relations published the Hart-Rudman report entitled ''America Still Unprepared, America Still in Danger.'' That report found that one problem America still confronts is that 700,000 local and State police officials continue to operate in a virtual intelligence vacuum. The first recommendation of the Hart-Rudman report was to ''tap the eyes and ears of local and State law enforcement officers in preventing attacks.'' That is their first recommendation, to ''tap the eyes and ears of local and State law enforcement officers in preventing attacks.''

On page 19 the report specifically cited the burden of finding hundreds of thousands of illegal fugitive aliens living among the population of more than 8.5 million illegal aliens and suggested that the burden could and should be shared with the 700,000 local, county, and State law enforcement officers, if they could be brought out of the information void.

So this amendment I am offering tightly targets 9/11 Commission and Hart-Rudman report recommendations that we look at the growing role for State and local law enforcement, that we move toward an immigration system that can ''deliver on its basic commitments'' as a way to fight terrorism, and that we ''tap the eyes and ears of local and State law enforcement officers'' in an effort to find the hundreds of thousands of fugitive aliens in the United States.

Most Americans would probably be amazed that is not occurring today. In fact, a recent poll of 3 years ago was done on this very subject. It found that a large majority of Americans believe that State and local governments should be aiding the Federal Government in finding alien fugitives. That is pretty commonsensical. In fact, a Roper poll found that 85 percent of Americans agree and 65 percent strongly agree—those are powerful numbers—that Congress should pass a law requiring State and local governments and law enforcement agencies to apprehend and turn over to INS, now ICE, illegal immigrants with whom they come in contact. That is pretty strong data.

It is important to note that those responses were collected in answer to questions about requiring State and local immigration enforcement action. So it is very likely that a poll on this subject, one about voluntary State and local assistance, would be even stronger.

Let me tell my colleagues about the problem that started my interest in this area and prompted me to offer this amendment, as well as 3 years ago to push for a hearing, which was held on April 22, 2004, in the Judiciary Committee entitled ''State and Local Authority to Enforce Immigration Law, Evaluating a Unified Approach for Stopping Terrorists'' and for me to author a Law Review article in April of 2005, along with my chief counsel on Judiciary, Cindy Hayden, that was published in the Stanford Law and Policy Review, entitled ''The Growing Role for State and Local Law Enforcement in the Realm of Immigration Law.''

This is the reality. This is the problem we are dealing with. Police chiefs and sheriffs in Alabama have begun to tell me, as I have traveled the State and met with them frequently, and as I continue to do so, that they have been shut out of immigration enforcement and that they felt powerless to do anything about Alabama's growing illegal immigrant population. I heard the same story wherever I went:

> When we come across illegal aliens in our normal course of duty, we have given up calling the INS, because they tell us we have to have 15 or more illegals in custody or they will not even bother to come and pick them up.

Even worse, Alabama police were routinely told that aliens could not be detained until INS could manage to send someone. They were told they just had to let them go. This is basically the policy all over America today, I kid you not. If a local officer in virtually any State in America stops someone for speeding or DUI and finds out they are here illegally, they basically take no steps to even contact INS because they only have 2,000 agents in the entire United States and they are not going to come out there and get them. In fact, for other legal reasons, they may have some doubt—although, frankly, not much—but there is some doubt about what their authority might be.

Now, we have done some research into this and believe the legal authority of State and local officers to voluntarily act on violations of immigration law is pretty clear. If there is any doubt that State and local law enforcement officers have any authority—and if there is any, and there certainly is some today—Congress needs to remove that doubt, which is what this amendment will do.

Basically, there is a split in the circuits. I will take just a moment to explain. The Tenth Circuit on more than one occasion concluded squarely that a ''state trooper has general investigatory authority to inquire into possible immigration violations.'' As the Tenth Circuit went on to say, there is a ''preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws.''

The Tenth Circuit went on to say, in 2001:

> [S]tate and local police officers [have] implicit authority within their respective jurisdictions ''to investigate and make arrests for violations of federal law, including immigration laws.''

Now, these Tenth Circuit cases made no distinction between criminal violations and visa overstays, which are not criminal in nature but civil. But the Ninth Circuit did. They concluded the civil violations of a visa overstay did not amount to an offense of law that the local law enforcement officer could arrest and detain for. It was in dictum, not part of the central holding of that case. But that one piece of dicta has created an impression throughout the country that has impacted lawyers and police departments and sheriffs' departments all over America.

They are telling their officers: Well, it might be that the person you stop and is here illegally is a visa overstay and not someone who came across the border illegally, and if you arrest them and detain them, they might sue us, they might sue the city, they might sue the police department. So they have established policies based on this ambiguity that have effectively reduced the participation of local law enforcement officers to a dramatic degree in the enforcement of immigration laws. That is not appropriate. We can fix that. This amendment would fix that.

The second problem the amendment deals with is the inadequate way we share information on immigration matters with State and local police. We have databases full of information on

criminal aliens and aliens with final deportation orders, but that information is not directly available to the State and local police through their base system, the NCIC. Instead, officers are required to make a special second inquiry to the Law Enforcement Support Center, which is headquartered in Vermont, to see if the person they pulled over is an illegal alien wanted by DHS.

Now, I have to tell you, they are not just carrying around in their pocket those phone numbers anyway. They do not know how to do it. They are not comfortable with it. It is not what they do every day. They are not doing it. Besides, if they do and find out the person is illegal, there is nothing much they can do but let them go anyway. So the ability of the bread-and-butter NCIC database to convey to local police who stop someone out on the highway information that this may be a wanted person, maybe even a terrorist, has been severely impacted or really is not effective in many different areas.

I have complained about this for some time, and some progress has been made but not enough. To date, the Immigration Violators File of the NCIC contains about 200,000 entries, and only about 107,000 of the approximately 600,000 alien absconders are in the NCIC. I want you to hear that. Only about 100,000 of the 600,000 alien absconders have been entered into the NCIC.

So what does that mean? That means if a local police officer somewhere stops a person who has been previously arrested for an immigration violation and that person has been released on bail, as often is the case, and ordered to return to court or to be deported—and they frequently do not do so; they abscond; and there are 600,000 of those absconders out there, but only 107,000 of those records are in NCIC, so a local police officer is not likely to find a hit for the person before him—there will be a 1-in-5 chance of them getting that hit.

That really needs to be fixed. For the life of me, I cannot see why more progress has not been made. We have been talking about this for 4 or 5 years in the Senate Judiciary Committee with the Department of Justice officials and ICE officials and FBI people who run the NCIC.

At the very least, NCIC should contain four types of immigration information.

The first group: aliens with final orders of removal. If someone has been ordered removed, they should not be in this country. They sometimes leave the country and come back into the country and you get a hit on that person. In other words, they have been ordered removed. Why are they back in the country?

The second group that should be in there: aliens under voluntary departure agreements. Some agree to leave voluntarily and sign an agreement to that effect. They ought to be in there because they should not have stayed in the country or, if they left, they should not have returned.

The third group: aliens who are known to have overstayed their authorized period of stay should be entered.

The fourth group: aliens whose visas have been revoked, for heaven's sakes, ought to be in there.

If somebody is here improperly—maybe they have been associated with some criminal enterprise; the ICE people have revoked their visa for some reason; it would have to be significant, usually, for that to occur—they ought to go in there because if they are stopped somewhere, they should be detained and turned over to ICE; otherwise, the system is not working.

Let me tell my colleagues—I know how this system works—if someone had their visa revoked and had been ordered to be removed, trust me, the ICE agents do not go out and walk the streets of Philadelphia or Atlanta or Birmingham and look for them so they can deport them. They do not do it. They are not even close to having the ability to do that. Only the people for whom they have evidence who are extremely dangerous is that done. That is very few. The way most people are caught is just like everybody else in America who is caught who has absconded or run off on bail. They get caught by getting picked up by police on a traffic stop somewhere. The police officer runs their name and ID in NCIC and a hit comes back; there is a warrant for his arrest in Montgomery, AL, for armed robbery, and he locks him up.

If you are an American citizen and you get a reckless driving ticket and you are ordered to appear in court at a given time and place and you do not appear in court, they issue a warrant for your arrest. Normally, the police officers do not go out and chase you down all over and find you to arrest you. Normally, they put it in the NCIC immediately on the assumption you will soon be stopped somewhere else along the way and they will get a hit on you and somebody will put you in jail because you have a warrant for flight out there or for jumping bail. But we do not do that for noncitizens. A citizen, that will happen to; a U.S. Senator, that will happen to but not somebody who is coming to the country illegally. We do not do the same thing when they jump bail on their charges.

So there are a lot of stories we can tell. I will just summarize a number of them. It really caught the attention of the 9/11 Commission. For example, Mohamed Atta, who is believed to have piloted American Airlines Flight 11, which flew into the World Trade Center's North Tower, and played a leading role in more than 3,000 deaths that occurred that day, in July, just 2 months before the attacks, was stopped by police in Tamarac, FL, and was ticketed for having an invalid license. He ignored the ticket and a bench warrant was issued for his arrest. When he was stopped for speeding a few weeks later in a nearby town, the officer did not check, did not discover this warrant had been issued and let him go with only a warning.

Now, OK, Atta had not yet become illegal. I believe at that time he still was on a legal status. However, it was about to expire. I doubt he would have returned to the immigration office to get it extended. He would soon have been here illegally as a visa overstay. He could well have been apprehended and identified before 9/11 had he done so.

That is the example I am trying to make. It could very well have been decisive.

Also Hani Hanjour was, just 1 month before 9/11, stopped by police in Arlington, VA, for driving 50 miles an hour in a 35-mile-per-hour zone. He was in a Chevy van with New Jersey plates. He produced a Florida driver's license. But he was the pilot of the American Airlines Flight 77 which crashed into the Pentagon.

A third hijacker was stopped by State police just 2 days before September 11, also for speeding. Maryland State police stopped Ziad Jarrah on Interstate 95 for driving 90 miles an hour in a 60-mile-per-hour zone.

Well, we are not talking about academic matters; we are talking about the fact that the alien database needs to be accessible to local police. It might as well, for all practical purposes, be locked up in some vault somewhere in secrecy, the way it is being done today. It is not available to the people out there who need it.

The Hart-Rudman Commission raised that point, as did the 9/11 Commission. I have been told at hearings by the appropriate officials that the NCIC system can handle the additional data. It will not overburden the system. It will make this information readily and immediately available to a police officer. He or she may have stumbled onto a person such as Mohamed Atta on his way to commit a horrible, unspeakable act of terrorism against the people of the United States. That opportunity to make that arrest and to identify that criminal is most important.

So that is the purpose of the amendment. I believe as people think about it we will see the need for it. I have tried to get this done in any number of different ways, but we have not quite gotten there yet. I think there is a majority in the Senate, probably on both sides of the aisle, who would support this when it is clearly raised. But as so often tends to happen, matters that actually work to a significant degree and will actually substantially increase the ability of our law enforcement system to be effective are the things that do not become law. It is almost like if it works, it will not pass. If you come up with something that sounds good but will not work, that will get passed.

This needs to be done. In many ways, it will be a test of the Members of this body.

Are we serious about enforcement of immigration laws? I think we are becoming that way. I believe there is a growing understanding that lawfulness needs to be returned to immigration. Without it, we are going to continue to have an erosion of public confidence in our system. We can do all of that. I ask that my colleagues consider this amendment. I hope we will be able to move it forward as part of this security legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 347 TO AMENDMENT NO. 275

Mr. SESSIONS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] offers an amendment numbered 347 to amendment No. 275.

Mr. SESSIONS. Mr. President, I ask that this amendment be called up and made pending.

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

The amendment is as follows:

(Purpose: To express the sense of Congress regarding the funding of Senate approved construction of fencing and vehicle barriers along the southwest border of the United States)

At the appropriate place, insert the following:

SEC. ___. SENSE OF CONGRESS ON THE FUNDING OF FENCING AND VEHICLES BARRIERS ALONG THE SOUTHWEST BORDER OF THE UNITED STATES.

(a) FINDINGS.—Congress makes the following findings:

(1) On May 17, 2006, by a vote of 83 to 16, the Senate approved amendment 3979 sponsored by Senator Sessions to Senate Bill 2611 (109th Congress), the Comprehensive Immigration Reform Act of 2006, which required the Secretary of Homeland Security to construct at least 370 miles of fencing and 500 miles of vehicle barriers along the southwest border of the United States.

(2) On August 2, 2006, by a vote of 94 to 3, the Senate approved amendment 4775 sponsored by Senator Sessions to House Bill 5631 (109th Congress), the Department of Defense Appropriations Act, 2007, which included a provision to appropriate $1,829,000,000 for the construction of 370 miles of fencing and 461 miles of vehicle barriers along the southwest border of the United States.

(3) On September 20, 2006, by a vote of 80 to 19, the Senate approved House Bill 6061 (109th Congress), the Secure Fence Act of 2006, which mandates the construction of fencing and border improvements along the southwest border.

(4) On October 26, 2006, the President signed the Secure Fence Act of 2006 (Public Law 109–367; 120 Stat. 2638), which mandates that ''[n]ot later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States,'' including ''physical infrastructure enhancements to prevent unlawful entry by aliens into the United States'' into law.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Congress should—

(1) appropriate funds in the Department of Homeland Security Appropriations Act for fiscal year 2008 to fund, at a minimum, the strong commitment to border security represented in the President's budget request for fiscal year 2008, which is consistent with the congressional intent expressed in amendment 3979 sponsored by Senator Sessions to Senate Bill 2611 (109th Congress), amendment 4775 sponsored by Senator Sessions to House Bill 5631 (109th Congress), and the Secure Fence Act of 2006; and

(2) appropriate funds in Department of Homeland Security Appropriations Acts for fiscal years after fiscal year 2008 in a manner consistent with the congressional intent expressed in such amendment 3879, such amendment 4775, and the Secure Fence Act of 2006.

Mr. SESSIONS. Mr. President, I thank the Chair. I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that at 11:30 tomorrow morning, the Senate proceed to vote in relation to the following amendments in the order listed, that there be 2 minutes of debate between each vote, with the time divided and controlled in the usual form: amendment No. 316, McCaskill; amendment No. 315, Lieberman, as amended, if amended; Collins amendment No. 342; and amendment No. 314, the DeMint amendment.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object, and I would say to my good friend, the majority leader, I will have to object. I have not had a chance to vet several of these amendments on this side yet, and I understand we are still going to have a vote on the DeMint amendment, a motion to table in the morning, even if this unanimous consent is not agreed to. So, therefore, I will be constrained for the moment to object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. I would indicate to the majority leader I will continue to work on it. I believe I am also correct the plan is to go ahead and have a vote on the tabling motion of the DeMint amendment.

Mr. REID. Yes. If I was unable to do that, that is what I will do. Thank you very much, Mr. President. I appreciate the statements of my friend.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that there be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO HAL ROTHMAN

Mr. REID. Mr. President, it is with great sadness that I rise to share the passing of a real Nevadan, Dr. Hal Rothman. After a struggle with Lou Gehrig's disease, Hal passed away on February 25, 2007. He was a loving husband to Lauralee, a father to Talia and Brent, and a friend to many who were privileged to know him, including me.

Hal's professional life and community involvement were remarkable. Hal was a history professor at UNLV, a Las Vegas Sun columnist, and a respected author on Western and environmental history. Whenever anyone needed a quick quote or quip about Las Vegas, they often called Hal. From syndicated news shows to historians, Hal was often seen as the go-to-man for anything related to the city.

Hal's love of Las Vegas was clearly apparent last October when he was honored as the Chin's Humanitarian of the Year by the southern Nevada chapter of the Muscular Dystrophy Association. In his prepared remarks Hal wrote:

I have sought to explain our wacky city and State to an often skeptical and sometimes incredulous national and international audience. Las Vegas not only became our home but also a city I love with all my heart.

Hal was an outstanding ambassador for Las Vegas and to a larger extent Nevada. He was our front man. He was our image. He was our voice to the world. Nevada has lost one of its favorite sons, and Hal will be forever remembered as a tireless advocate for Las Vegas.

DIABETES SCREENING AND MEDICAID SAVINGS ACT

Mr. DOMENICI. Mr. President, on Friday, my colleague Mr. SCHUMER and I introduced the Diabetes Screening and Medicaid Savings Act of 2007. This bill will provide a diabetes screening benefit for adults within the Medicaid program. Only Medicaid eligible individuals who are enrolled in the program and who meet certain qualifications will be covered. If you test positive for diabetes, then there is mandated coverage of treatment, supplies, and education.

According to the American Diabetes Association, diabetes affects nearly 21 million Americans, about 7 percent of the total population. The number of U.S. adults with diagnosed diabetes has