

schedule too. I need about 10 minutes. So my inquiry, before I object, might be how long the Senator might expect to proceed.

Ms. CANTWELL. I expect to go for probably about another 5 minutes.

Mr. SESSIONS. I don't object to that, Mr. President.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Thank you, Mr. President.

So to continue on this point, Amaranth actually tried to make some of these energy futures trades on the NYMEX exchange. What happened is NYMEX said: No, you can't hold such large positions on this exchange. NYMEX wouldn't allow Amaranth to do it. Instead, they just went to the ICE exchange—again, without the transparency—and promulgated some of these things which ended up costing consumers billions of dollars.

Another product is traded on the ICE, but on an exchange they own in London, the West Texas Intermediate crude oil contract, which is a benchmark for crude oil prices. It is interesting because West Texas Oil does give us some indication about what oil futures are going to be and what the price of oil is going to be. Since it started trading on ICE in February of 2006, the price of crude oil has doubled. So we can see it has had a big impact.

I wish to make sure people understand because Amaranth is an example. We had Enron, which had many impacts on the electricity markets in the West. It cost billions of dollars in our State and throughout the west coast. Many of my consumers were greatly impacted by that. Amaranth came along in the natural gas markets and there was similar manipulation. So we saw it in electricity, we saw it in natural gas, and now we want to make sure oil markets are being policed. But Amaranth, as I said, was told to reduce its positions because the NYMEX didn't like the fact it had large trading positions. Instead of doing that, they switched over to this dark market that is unregulated and continued to hold these large positions which caused volatility and again, as I said, cost consumers over \$9 billion.

So where are we today? Well, we have in the farm bill taken a good step forward in trying to put some teeth back into the CFTC, but we need to do more. We need to ensure consistent market rules are there for all U.S. oil trading. We need to make sure our U.S. oil-trading platform has the type of transparency and the bright light of day on it. We need to make sure it is subject to U.S. trading exchanges, that those trading exchanges have the oversight of CFTC, and that energy traders can't simply justify any exemption and say the burden of proof is on the CFTC.

So what are we talking about? Some people say because the West Texas oil contract is being traded on ICE's London exchange it is an international exchange. But the crude oil we are talk-

ing about being traded is produced in the United States, it is delivered in the United States, it is consumed in the United States, and it is traded in the United States. The only question we have is if it is regulated in the United States, and the answer is no, it is being regulated by the Financial Services Authority in the U.K. It is a big question mark as to what is causing gas prices to be at \$127 a barrel, when energy analysts and oil company executives will tell you it should be between \$50 and \$60 a barrel.

So if somebody wants to tell you this product is not a U.S. product and should be on this exempt ICE exchange, that is buying something they should not be buying. What is important about this is that since this deregulation, we have seen explosive growth in the oil futures market. In fact, this is 2002, where you can see this on the chart. I hope we can get some numbers for 2000. I guess we will probably see something that is a little more parallel.

Look at this futures market, this explosive growth in derivatives now—this huge growth compared to where the stock market is today. So people are investing all this money in what is a dark market—not all of it, but a big portion in what is the dark market. Here, again, is what oil prices were. We created the Enron loophole and then the ICE started changing the West Texas intermediate oil and the price went up. When the dark market—the lack of transparency of trading oil futures—happened, the price shot up.

We need to get back to the basics. One of the CFTC commissioners said:

I am generally concerned about the lack of transparency and the need for greater oversight and enforcement of the derivatives industry by the [United Kingdom's Financial Services Authority.]

We know that another analyst involved in oil trading said:

Oil's price records are less due to fundamental changes than the increasing proportion of investor demand driving prices higher. I think we'll achieve a price of \$150 in the coming six months.

That was Eugene Weinberg who said that. The people in Washington State cannot afford gas coming from \$150 a barrel, and I am sure other consumers across the country cannot either.

One of the analysts who spent a lot of time reporting on this said:

Where is the CFTC now that we need [speculation] limits? It seems to have deliberately walked away from its mandated oversight responsibilities in the world's most important traded commodity, oil.

I think it is time we get back to the CFTC and their responsibility. I will send a letter this week, along with my colleagues—Senator SNOWE and others—to basically ask the CFTC to reverse its no-action letter that allows trade of crude oil, home heating oil, and gasoline futures contracts on ICE to be exempt from U.S. oversight and ask the CFTC to reinstate the authority it has to look at these dark markets.

One of the law professors who testified before the committee said:

The ICE [oil trading] loophole could be ended immediately by the CFTC without any legislation.

I hope my colleagues will join in signing a letter that says basically these markets cannot continue to remain dark. We need, as in the stock market, recordkeeping. We need to have large trade reporting so we know who is moving large trading volume and impacting the market. We need speculation limits and we need monitoring for trade and manipulation. These are things we can get the CFTC to do tomorrow.

It is time to pop the oil price bubble. It is not based on market fundamentals of supply and demand. We owe it to our consumers to make sure we are policing energy markets. We are going to do all we can to make sure we restore whatever is the proper oversight to these markets to make sure the deregulation that happened in 2000 is put back into place to give consumers more confidence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

#### IMMIGRATION

Mr. SESSIONS. Mr. President, I think most of my colleagues may not yet be aware, and would probably be shocked to learn, that late Thursday afternoon during the Appropriations Committee markup, 110 pages of controversial immigration provisions were added to the war supplemental package in the form of four very significant Senate amendments to the House messages. It has been less than a year since the resounding defeat of the Senate immigration bill on June 28 of last year, where cloture failed by a vote of 46 to 53. The proponents of that legislation hoped to get 60 votes, and we walked down there in front of the American people and only 46 voted for it and 53 voted against it.

Yet the amnesty proponents—those who want to enact legislation that legalizes their status and forgives criminal activity, as opposed to creating a lawful system of immigration—are obviously continuing their determined effort to override the will of the American people and legalize the illegal alien population, without Congress acting to fulfill its responsibility to secure the border and create a lawful system of immigration.

That is what it is all about. This is a determined effort to push through the amnesty and the legalization status for people who have entered this country illegally subsequent to our 1986 bill, in which we said we would never have amnesty again, and they continue to seek ways to do that. So now they are seeking to attach their plan to a bill that provides necessary funds for our soldiers in Iraq. The 110 pages of immigration provisions now hidden in the supplemental war bill are offered in the

form of several amendments. Together, these amendments would legalize approximately 3 million illegal alien workers and their family members. They called it AgJOBS light. It is very bad policy, bad legislation, and should not become law. I don't think most of the Senators know this, and I ask that you pay attention to this. It would increase by up to fivefold the number of low-skilled temporary workers who will come to the United States over the next 3 years—5 times the current legal rate of 66,000 workers under that H-2B program.

Some way, we have been allowing more in under that program. Yes, when the economy was booming, we did get up to about 120-some-odd-thousand. This was on that basis even to be at least 2½ times the highest amount we have ever admitted under H-2B, at a time when people are being laid off. I understand the experts expect maybe today or tomorrow a higher unemployment rate to be demonstrated in our country. So why are we going to increase 2½ times the immigration under that bill?

It would also increase the number of employment-based green cards that will be given out over the next few years by 218,000. It is called green card recapture. I note that a green card, in effect, gives permanent legal status to a person who has a green card, and a guaranteed path to citizenship, as long as they don't have some felony offense. It would reauthorize the Foreign Investor Visa Program. That program probably deserves consideration for renewal and reauthorization. I just thought we certainly have not discussed it in the Judiciary Committee, where I think it is supposed to be coming forward. No hearings have been held on it. It was stuck in while the appropriators were considering funding our military men and women in Iraq and in other places. It was stuck into that without any real debate.

The merits of each of these provisions, I suggest, are worthy of discussion. I have proposed—and I think Senator SAXBY CHAMBLISS has agreed with me—a genuine temporary AgJOBS worker program that I think could be the foundation for improvement in this area. But that has been flatly rejected by those in the West, who seem to be obsessed with a program that guarantees people a permanent residence in America, and maybe even a pathway to citizenship—those who came here illegally. We have not had hearings on this in the Judiciary Committee, the committee of jurisdiction, of which I am a member.

I guess the question is, why would they do this? I think it is like we have had time and again—and I hate to say it. It is an effort to bury major alterations in our policy of immigration in legislation that is rushed through the floor of the Congress, without full consideration by the Senators and a full evaluation by the American people. That has been the problem. They tried

to bring up the bill last summer in 1 week. We were able to demand and have some votes and some amendments and discussion. When the American people found out what was in it, they put an end to it. So many phone calls came in, the entire Senate switchboard shut down. That is when votes started changing from aye to nay.

I think it is distressing, and it is one reason there is a lack of public confidence in the Congress, because we say one thing in public, and we say something else in committee meetings when, apparently, people are not looking so closely.

Last summer, the words were: We got the message, America. We understand now that you do want a legal system of border security first, before we go through an amnesty proposal. That was what we talked about. That was what I think everybody on both sides seemed to agree was the message of that debate. It was the right answer. That is what the American people instinctively favored. The American people were fundamentally correct on that all along. It was Congress that was out of step with morality, law, and propriety. The American people spoke to them last summer, and I thought we had gotten the message. But oh, no, here we come again.

You don't see any amendments slipped into these appropriations bills that would actually help us improve the legal system in America, that would actually help this country establish a system of immigration that is generous and fair and serves the national interests. Those are not introduced. It is always a way to do a backdoor amnesty.

Let me say this. We provide each year over a million green cards to people who want to become American citizens. A green card gives them a guaranteed permanent residence in America. It puts them on a path to citizenship if they avoid any serious difficulties in the next several years and answer a few English and history questions. This is a generous nation. We have temporary worker programs that work pretty well. But why is it we seem to be incapable of going on and closing the loop and creating a lawful system that actually works? It is frustrating to me. This is not acceptable. This is not an acceptable way to do business. We do not need to have the war supplemental tied up in this kind of controversial debate. I hope my colleagues will see what they can do to make sure our troops are funded in a way that does not create an AgJOBS lite legislation that is fundamentally unacceptable.

What does this AgJOBS do? It is 101 pages. It passed by a 17-to-12 vote. It would grant 3 million illegal aliens—1.35 million workers, plus approximately 1.62 million family members—a 5-year amnesty, or if you would rather call it so, a 5-year legalization to live and work in the United States. For almost all legal purposes, the amend-

ment requires that these legalized illegal aliens be treated as lawful permanent residents. They get basically the same status as green card holders do, except they do not have guaranteed permanency.

Illegal aliens who qualify for the 5-year amnesty are those—get this; this is all it takes to qualify, that you perform agricultural employment for 863 hours or 150 days, 3 months' worth of work, have earned \$7,000 from agricultural employment over the course of a 4-year period, anytime from January 1, 2004, to December 31, 2007. That is just last year. This is just last December 31.

It is particularly galling to me—just think about this—this Nation says it is serious about controlling illegal entry into America. Every Senator I know has repeatedly said: I am for a legal system; I am not for illegal entry into America. I don't approve of that. But we would propose legislation—get this—that if you came in last July, and you were able to break through the border barriers that have been put up, the fences, or avoided the National Guard and got into our country illegally, you will be given a 5-year legal status in America. See what this is as a matter of consistency and morality? It is an undermining respect of law at its most basic level. It indicates we have not gotten the message from the American people.

There is no requirement in this amendment that the illegal alien prove they paid their taxes on the wages they obtained when they were here. Examples of who would qualify for this legalization includes any illegal alien who arrived as of the end of 2007 and earned \$7,000 in agriculture that year. Mr. President, \$7,000; what is that, 3 or 4 months?

Also covered are illegal aliens who arrived as recently as July of 2007 and worked 150 days in agriculture before 2008. It covers illegal aliens who arrived years ago and earned a mere \$1,750 for a 4-year period in agricultural employment. They will qualify. It covers aliens who arrived illegally years ago and worked a mere 37.5 days in agriculture a year for 4 years. It will not matter that for the other 327 days a year, they were not working at all or they were competing illegally and improperly with American workers for other jobs that might be available in the economy.

I have seen these bills time and time again. We point out these loopholes in the legislation. But I just want to tell you, Mr. President, I am pretty well convinced now, having seen it time and time again, that this is no drafting error. This was a deliberate attempt to provide a huge number of persons the opportunity to obtain legal status, even though they had a most peripheral connection to agricultural labor.

It also allows spouses and children to receive 5-year visas, allowing them to live and work—and work—in the United States. Illegal aliens whose spouses and children are not already illegally present in the United States

would be encouraged under this amendment to come to the United States. They would be encouraged to bring them to the United States because the application period does not start for 7 months after enactment.

Spouses and children who are in the United States by the time the illegal alien applies for and receives this amnesty will also qualify. Do you see? So a person makes the application, and he has a powerful incentive to bring in his family.

Astonishingly, if the spouse or child is caught crossing the border illegally—we have to think about this in terms of our commitment to the rule of law. I ask my colleagues to think about it. If a spouse or a child is caught crossing the border trying to come into America illegally in violation of our laws, the bill actually prohibits them from being deported, as long as they make a claim they are eligible for this amnesty also.

Spouses will be given permission to work in the United States in any job, not just AgJOBS, even if they were not previously working. The amendment's flaws are not cured by the fact that the visa sunsets in 5 years. They say: Don't worry, it is only a 5-year amnesty, a 5-year legalization. I can ask seriously, I say to my colleagues and friends in the Senate, what will Congress do 5 years from now when a person has now brought their family here for 5 years, they have had 5 years in the school and it will become far more painful to confront their circumstance than if we had not created this legal status to begin with?

A real temporary worker program, which I think we can establish and is important for America, would allow workers to come for less than a year, but without their families, and to work for a period of time but will return home. That is a temporary worker program, and we could make that feasible. But, no, that is not what this is. It is 5 years with your family, digging and putting down roots, and it is not going to be anything Congress wants to wrestle with to ask them then to leave America. They will have quite a number of arguments why they should stay.

The chairman of the Appropriations Committee, Senator ROBERT BYRD, was correct when he stated in the committee markup: "This amounts to amnesty."

Although the amendment stopped short of giving all illegal aliens who get the 5-year amnesty visa an automatic pathway to citizenship, it specifically—get this. This really must be a great lobbying group. We need to find out who lobbies for these people. It stopped short of getting most of the illegal aliens who get the amnesty visa an automatic pathway to citizenship, but it specifically creates a pathway to citizenship for sheepherders, goat herders, and dairy workers.

Why were they picked out, please tell me? Does this make sense? They would get a 3-year visa which converts to a

green card, which is a permanent resident status, and with the right within a few years to apply for citizenship.

It is most distressing, and most distressing to me at the most fundamental level. We have to think about this. This is just another attempt to take action that will eviscerate the rule of law, will eviscerate the respect we have gradually been gaining. And we could have done it a lot more, but we have made some progress in convincing the world that our border is not open, that it is a lawful system, and if they want to come to America, they must come lawfully.

I think this is bad national policy because it undermines respect for law. It says to the rest of the world: Yes, we say we have the National Guard there, we say we are building fences, we say we put more Border Patrol agents down on the border, but we really don't care. If you can just get in and work here a few days, then you are guaranteed to stay with your family, if you can get them in. Even after you apply for this 5-year amnesty, you can bring your family, and then maybe we will talk about what will happen to you 5 years from now.

I note also that one of the key points that ought not to be dismissed by the American people is that there is not one provision—not one provision—in this AgJOBS lite to further enforcement—not one—but everything there is about ignoring and erasing the consequences that naturally flow from violating the laws of America. That is most distressing.

I will take a minute to encourage my colleagues to be aware of the H-2B returning worker provisions that have been made a part of the war supplemental, also that have no business being part of that bill. It allows any person who has worked in the United States as an H-2B worker—that is a low-skilled, nonagricultural foreign worker—in the past 3 years to return for another year without counting against the 66,000 annual numerical cap.

The exemption would last through 2011, which is important, and the result could easily be a very large increase in the number of low-skilled workers who enter the United States over the next 3 years, and these are not agricultural workers. They will be competing for jobs with American workers.

Under the current law, a total of 198,000 workers will enter the United States on H-2B visas over the next 3 years, 66,000 per year. If this amendment becomes law, the number of low-skilled foreign workers invited into the United States will soar. Up to 300,000 H-2B workers will enter the United States in fiscal year 2009 alone, up to 366,000 will enter in 2010, and up to 432,000 will enter in fiscal year 2011, for a total of up to 1 million workers entering over the next 3 years. That is more than a fivefold increase over the number expected under current law. These workers will be competing with

American workers in construction, food production, manufacturing industries, and any other industries of that nature in a time when we have a softening economy and job market.

Some say we have expanded those numbers to 66,000 and we have gotten up to 120,000 some-odd workers, so this is not such a huge increase. It is about 2½ times in a time when the unemployment rate is going up in America.

How did this get in? Did we have any hearings on it? Was the American community asked whether they think it is healthy? Did we have any experts talk about what an impact it might have on wages? No, it was just slipped in.

Hopefully, somehow we can move the war supplemental in a way that does not create a debate over immigration in the Senate. I don't think it is the right thing to do. This legislation should not be attached to it. I oppose the AgJOBS lite as vigorously as possible, and I believe the H-2B returning worker number is far larger than it needs to be. I have discussed trying to work out something of a reasonable nature previously, but I was surprised to see this broad piece of legislation be attached to the war supplemental.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

#### JUDGES

Mr. SPECTER. Mr. President, I have sought recognition to respond to a statement made earlier today by the Senator from Nevada, Mr. REID, on the judge issue. I heard about 25 or 30 minutes ago that Senator REID had spoken. I pulled together some materials and asked my staff to notify Senator REID's staff that I would be coming to the floor to speak on this issue, which is my practice when I am going to mention another Senator by name. Senator REID, in his speech, mentioned me by name, stating that I had delayed the nomination of Judge Helene White, who is a nominee to the Sixth Circuit. My preference would have been to have had notice. I have been in the Senate complex since late morning, and I invited Senator REID to come. And, perhaps he can come to the floor now. I would prefer to have this discussion face to face, but we can do it by long distance, through the record, or really short distance—Senator REID's office is right across the hall from the Chamber.

What is involved here is a very important issue, and that is the constitutional responsibility of the Senate to advise and consent on the nomination of Federal judges. Regrettably, it has been a very sore spot in Senate proceedings for the last 20 years. In the last 2 years of the Reagan administration, when Republicans controlled the White House and Democrats the Senate, nominations were delayed; the same during the last 2 years of the administration of President George H.W. Bush—again, Republicans controlled