

Center have highlighted the number of overstays in the United States.

Like its predecessor, the Immigration and Naturalization Service, the Department of Homeland Security has a real inability to track down and remove aliens who overstay their visas. Each year, approximately 300,000 foreign nationals who come to the United States legally, overstay their visa. That is 300,000 a year.

My amendment, which was defeated last month by a narrow vote, would have given the U.S. Immigration and Customs Enforcement the personnel and money needed for additional investigators, detention officers, and detention space.

We need a plan, our government needs a plan from the administration to enforce our immigration laws regarding visa overstays or the American people will continue to see threats to our national security materialize before their very eyes.

Madam President, I ask unanimous consent to have printed in the RECORD my letter to Secretary Napolitano at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CORNYN. Madam President, there are a number of think tanks—and I will allude to just one—that have come up with a strategy to do what needs to be done to deal with visa overstays. I refer to a Backgrounder, published by the Heritage Foundation, dated January 25, 2010, entitled “Biometric Exit Program Shows Need for New Strategy to Reduce Visa Overstays.”

I think we need to put our best minds together and devote our efforts to dealing with this problem. Just like our broken border, unless Congress and the Administration come up with a credible plan to deal with this problem of visa overstays, I don’t think the American people will have the confidence they demand and are entitled to when it comes to enacting a credible immigration enforcement program.

I thank the Chair and yield the floor.

EXHIBIT 1

U.S. SENATE.

Washington, DC, June 22, 2010.

Secretary JANET NAPOLITANO,

U.S. Department of Homeland Security, Nebraska Avenue Complex, Washington, DC.

DEAR SECRETARY NAPOLITANO: Last week, the media reported that 17 Afghan military officers had gone Absent Without Leave (AWOL) from a Defense language training institute at Lackland Air Force Base in Texas. Needless to say, I was deeply disturbed by this report and by the fact that I had not received official notification from either the Departments of Defense or Homeland Security.

On Friday, I sent a letter to Secretary of the Air Force Michael Donley requesting an immediate explanation and report on how such a serious violation of security occurred, as well as an assessment of the potential threat posed by these 17 officers. In statements to the media, the Air Force stated that they work in close coordination with DHS and “[w]hen the Defense Department learns an international student has gone missing, DHS Immigration and Customs En-

forcement is immediately notified and appropriate action is taken.”

I have been informed by ICE the majority of these missing Afghan officers have not been located. According to the recent media reports, these Afghan officers disappeared over a 2-year period. Two years is a significant period of time and I find it alarming that we are still unable to locate these officers in the United States.

I recognize that tracking visa overstays in the United States is a challenge. However, I continue to see a disturbing pattern that began with Ramzi Yousef and the 1993 World Trade Center bombings, came to fruition with the 9/11 hijackers, and has continued recently with Hosam Maher Husein Smadi’s planned attempts to bomb of a skyscraper in Dallas, Texas—terrorists using legal visas to gain entry into the United States with the clear intent to overstay and do harm. The 9/11 Commission pointed out this area as a vulnerability and the Government Accountability Office (GAO) has echoed concerns about visa overstays and our ability to track and remove them from the United States.

According to one study, the number of current overstays in the United States ranges anywhere from 4.5 million to 6 million, approximately 40 to 50% of the total illegal immigration population. Overstays come from every continent, and from many nations known to harbor terrorists, including Iraq, Iran, Afghanistan, Pakistan, Syria, and Sudan. Given that this number is growing each year by approximately 300,000 additional aliens, it is imperative that your Department make identifying and removing visa overstays a national priority.

In a public statement, ICE indicated that they notified the U.S. law enforcement community about the missing officers and had “no information that any of these individuals pose a national security threat.” As you can imagine, I am not assured by this statement, especially given the fact that these officers remain at large in the United States with their whereabouts unknown to the U.S. government. I view this situation as a clear security failure that needs to be remedied immediately.

I would appreciate a response as soon as possible on how you intend to locate these officers immediately and remove them from the United States. I would also ask that you provide me with the Department’s strategic plan to deal with visa overstays.

Sincerely,

JOHN CORNYN,  
U.S. Senator.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island is recognized.

#### TAX EXTENDERS

Mr. WHITEHOUSE. Madam President, I wish to say a few words about an amendment I had offered to the original tax extenders bill as No. 4324, which has also been offered as an amendment to the current package. It very much appears that in the crucible of the pressures the bill has had to go through in order to get to its present status, this amendment will not succeed.

The chairman of the Finance Committee is on the Senate floor. I thank him for his persistent efforts to try to get it into the agreed package and for his patience with my even more persistent efforts to try to get it into the agreed package.

It is a bipartisan amendment. I thank the five Republican colleagues who cosponsored it. I particularly

thank Senator SESSIONS, who is the ranking member on the Judiciary Committee. He was an early, initial cosponsor. We introduced it together in the Judiciary Committee. It passed out of the committee uneventfully. It was a pleasure to work with Senator SESSIONS. I was delighted he was willing to not only support it as a bill on the Senate floor but also to cosponsor it as an amendment to this tax extenders package. I extend a particular appreciation to him and to his staff for working with us on this legislation.

Let me say briefly what it is about. If you are an American business and you are doing business in a different State, in a State in which you are incorporated and domiciled, you would ordinarily have to file an agent for service of process in that State so that if your conduct or product injures somebody in that State, service can be achieved in the place of the injury.

We have a world economy, and we are undoubtedly the world’s greatest importer of goods. Some of these goods are harmful. Most of them are good for Americans, good for the economy, good for our consumers, but some are not. The wallboard that came from China filled with sulfur so that when it was installed in houses, the sulfur leached, corroded piping, made the occupants unhealthy, required a complete stripout and rebuild not only of the walls but also of plumbing and other fixtures and air-conditioning—that was a disastrous imported product.

Toys with lead that children could absorb: We all know what damage lead will do to developing brains of young children, particularly Chinese toys with lead in them. Pharmaceutical products with unacceptable chemicals added to them: There have been a lot of products that have come in from overseas and have harmed Americans.

If you are a big, legitimate foreign manufacturer, you probably have an office here. If somebody is hurt, it is not too hard for the person representing you to find the office and file suit and seek recovery for whatever injury was sustained. Many foreign manufacturers even have manufacturing facilities in this country. That makes it very easy to locate them. But some do not. Some live in a shadowy world where they send their products into the United States, get the money out, but when their defective product injures an American, trying to find them is like trying to grasp a handful of fog. They have disappeared, and they hide behind complicated international treaties and foreign laws in their home countries, making both service of process, getting the papers on the lawsuit to them, and actually getting your hands on them legally under our due process—long-arm statutes—is very challenging and difficult.

We heard from people who spent literally tens of thousands of dollars trying to have their pleadings translated

into a foreign language, work their way through all the complex ministries in the foreign country, all trying to find a company that, in many cases, simply reforms itself in a new corporate form and leaves them with nothing at the end of the chase.

When that happens, it is a very unfortunate result for American people, and it is a very unfortunate result for American businesses. The unfortunate result for American people is that somebody who was injured, whose child was lead-poisoned, for instance, has no one from which to seek recovery, and they lose the opportunity we ordinarily enjoy as Americans when we are injured by a product to get compensation for the injury. It is the family who gets hurt in that circumstance. That is one way it is bad.

The other way it is bad is because commerce is often a chain. When the wrongdoing foreign manufacturer disappears, the other folks who are still in the chain are still around to be sued. Under our theory of joint and several liability, the American company has to pick up the liability for the foreign company that absconded after it created the injury.

We had a very good example in our committee of an Alabama contractor who had a very good reputation, who built developments and homes. He got caught with this Chinese drywall. There was no Chinese drywall manufacturer to sue, but both for purposes of protecting his own reputation with the people for whom he had built these houses and because the liability now fell on him as the joint and several liability party, he had to go in and clean it all up. He had to put up the people who were living in these houses. He had to rebuild their air-conditioning systems and their plumbing systems. He had to strip out all the drywall and rebuild it all back. It was an immense expense, and it fell on the American company because the Chinese company had absconded and was not amenable to service and, consequently, to our laws.

The very simple premise of this bill is, if you are a foreign manufacturer that exports goods into the United States of America, with your export has to come an agent for service of process. You have to file agent of service for process. When that Chinese drywall, when that defective pharmaceutical, when that lead-poisoned toy hits an American consumer, hits an American home, hits an American family, they can go to that agent for service of process and find the wrongdoer, and they are amenable to justice in our courts.

It is from a competitiveness point of view wrong that foreign manufacturers should be able to underprice American companies because they know they can dodge liability, dodge the consequences for their actions, and have an American company have to charge more, knowing they have to bear that liability.

Setting aside the whole public safety and consumer protection piece, it is a

systemic disadvantage to American industry to not fill this loophole and make our workers' international competitors hit the same bar that American companies have to hit in terms of being available for suit when their products create an injury.

Obviously, the tax extenders legislation has not proven to be the vehicle for this legislation. My contention for my colleagues is that because this is a bipartisan bill, because Senator SESSIONS and I worked so hard on it, because all of the initial concerns that were raised by the U.S. Chamber of Commerce have been cleared and it is now good to go with the Chamber of Commerce—which I know has a significant voice in the views of my colleagues on the other side of the aisle—and because this is a simple mechanism that will treat foreign companies no differently than American companies are treated and put them on a level playing field and protect American jobs, as well as consumers, I look forward to continuing to pursue this legislation and look for further opportunities and further vehicles to find a way to remedy what is now an unjust situation for American consumers, an anticompetitive and unfair situation for American businesses, and a tilted situation against America's interests for the American economy.

I thank again the distinguished chairman of the Finance Committee who I know is supportive of our efforts. As I said at the outset, the intensity of the crucible of the negotiations that finally appears to be moving this tax extenders bill forward in an unfortunately diminished way, but in the best way we have been able to do it, did not permit this particular amendment to proceed. But it was not for his lack of effort.

I appreciate his courtesy with my persistent lobbying and his support.

I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### AMERICAN JOBS AND CLOSING TAX LOOPHOLES ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message with respect to H.R. 4213, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to concur in the House amendment to the Senate amendment with an amendment to H.R. 4213, an act to amend the Internal Revenue Code of 1986, to extend certain expiring provisions, and for other purposes.

Pending:

Reid (for Baucus) motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Baucus Amendment No. 4386 (to the amendment of the House to the amendment of the Senate to the bill), in the nature of a substitute.

Reid (for Baucus) amendment No. 4387 (to amendment No. 4386), to change the enactment date.

Reid motion to refer in the amendment of the House to the amendment of the Senate to the bill to the Committee on Finance, with instructions, Reid amendment No. 4388, to provide for a study.

Reid amendment No. 4389 (to the instructions (amendment No. 4388) of the motion to refer), of a perfecting nature.

Reid amendment No. 4390 (to amendment No. 4389), of a perfecting nature.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Madam President, we are on the message now.

First, I commend my colleague from Rhode Island for his efforts to enact legislation which will level the playing field. It is only proper that foreign companies that operate in the United States have the same ability of service of process that American companies have. I commend him and tell my friend from Rhode Island that at the first opportunity, I will work hard to include his provision in an appropriate bill so it can pass and be enacted into law.

I remind my colleagues that for several weeks now the Senate has been working to pass this important bill that is before us, the so-called extenders bill. This week marks at least the eighth week the Senate has spent most of the week on this bill to extend current tax law and safety net provisions.

This is a bill that would remedy serious challenges that American families face as a result of this great recession. This is a bill that works to build a stronger economy. Americans want that. It is a bill to put Americans back to work. Clearly, with national unemployment hovering around 10 percent, Americans want that, too.

With this bill, we have fought to pass policies to create jobs. We have fought for tax cuts for businesses. We have fought for small business loans. We have fought for career training programs, and we have fought for infrastructure investment.

We have fought to pass tax cuts for families paying for college. We have fought to pass tax cuts for Americans paying property taxes and sales taxes.

We have fought to extend eligibility for unemployment insurance, health care tax credits, and housing assistance for people who have lost their jobs.

As of this week, 900,000 out-of-work Americans have stopped receiving unemployment insurance benefits. Why? Because of the Senate's failure to enact this bill.

We have fought to help States cover the cost of low-income health care programs so that families in need can continue to get quality health care.

Unfortunately, this has been a difficult fight. I don't know why, but it has been difficult. Those provisions I mentioned are clearly provisions the American public would like.

For months now, we have been trying to address Senators' concerns. Senators expressed concern about the size