

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

#### APPOINTMENTS

The PRESIDING OFFICER. The Chair announces, on behalf of the majority leader, pursuant to the provisions of S. Res. 64, adopted March 5, 2013, the appointment of the following Senator as a member of the Senate National Security Working Group for the 113th Congress: ROBERT MENENDEZ of New Jersey (Majority Co-Chairman), vice Frank R. Lautenberg of New Jersey (Majority Co-Chairman).

#### ORDERS FOR TUESDAY, JUNE 11, 2013

Mr. BROWN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Tuesday, June 11, 2013; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate resume consideration of the motion to proceed to S. 744, the comprehensive immigration reform bill, under the previous order; further, that the Senate recess from 12:30 p.m. to 2:15 p.m. to allow for the weekly caucus meetings.

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

#### PROGRAM

Mr. BROWN. Tomorrow at 2:15 p.m., there will be a cloture vote on the motion to proceed to the immigration bill. If cloture is invoked, there will be a second vote at 4 p.m. to adopt the motion to proceed and begin consideration of the bill.

#### ORDER FOR ADJOURNMENT

Mr. BROWN. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn following the remarks of Senator SESSIONS, as provided for under the previous order.

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

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

The PRESIDING OFFICER. The clerk will 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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.

#### IMMIGRATION REFORM

Mr. SESSIONS. Mr. President, we are looking at now and considering an immigration bill. S. 744 is before us. This is a two-volume set consisting of over 1,000 pages, and unfortunately it

doesn't do what its sponsors say it does. It doesn't provide the security and other important items we want in an immigration reform bill, and therefore it cannot be passed in its present form and should not be passed in that form. It is just that simple.

This is a big, important issue. When we pass immigration reform, we do not need to be back in the situation that occurred in 1986 when they passed immigration reform and promised to do enforcement in the future. We gave the amnesty immediately, and the promises of enforcement never occurred. This is not a little matter. It has resulted in 11 million people now being in our country illegally. This is a result directly of the failure of the 1986 bill to carry out its enforcement promises, a direct result of Presidents and Congress not insisting that happen.

So there is a general consensus even among the Gang of 8 that Congress and the President can't be trusted, and we need to have legislation that somehow mandates that to happen because we have to have—in their minds—the amnesty first. That is just the way it has to be, and once that is given, well, we will promise to take care of it in the future.

I have been discussing the two aspects of immigration that cause us to have the illegal immigrants. The first part is obvious—it is people who cross the border illegally. At any number of our borders and ports, they come in illegally, and that is a big part of our problem—actually, though, only 60 percent. Forty percent of the problem is the people coming into our country legally on a visa. The others just come illegally. They have no right to enter the country; they just enter. These have a right to enter the country. They come in on a visa and they just don't go home. They just stay. And history tells them nothing ever happens. Nobody knows they didn't return home. Nobody clocks them out when they go home. Nobody knows they are here, and they just stay.

The President of the United States, through the Secretary of Homeland Security, has directed its ICE agents—Immigration and Customs Enforcement officers who are all over and around our country, although small in number, about 5,000—to basically not execute any deportation proceedings against anybody—almost none. They have to be convicted of a big felony, a serious crime, and only then do they initiate deportation.

We also have cities that are failing to support the Federal Government in any way. When they catch somebody for a crime in their city and discover they are illegally in the country, they won't notify the Federal Government they are there so they can come and pick them up and carry out the deportation that is required. This is the kind of sad state we are in, and it certainly is a sad state indeed.

So the American people, by a 4-to-1 margin in a poll of just a few days ago,

said: We are prepared to be generous to people who entered the country illegally and haven't gotten into trouble. We will be compassionate to them. But we want to see the enforcement occur. By a 4-to-1 margin, that poll showed that the American people said the enforcement should come first before we grant the legality—before we give the amnesty. Now, isn't that good common sense?

As I go through the second part of my concern about this process, you will see the ineffectiveness and unwillingness of the Federal Government to fulfill its role of ensuring that our sovereignty is defended through the elimination of illegal immigration. And we can do that. We can do it, but we are not doing it.

So the first part, dealing with the border, as I mentioned today, they softened the current law.

Current law is you have to have 100 percent operational control at the border. Under the standards they utilize there, this bill says 90 percent of border patrol encounters and otherwise reduces the enforceability and the enforcement standards of making sure our border is lawful.

I would just say, first and foremost, each one of these matters are exceedingly complex and must be done properly. As we talked about earlier, the crafting of legislation necessary to ensure that our border is lawful requires a lot of work and a lot of different strategies and capabilities for our men and women who are out there at risk enforcing that law. That is the fundamental reason we should have legislation that goes step by step. We should have a piece of legislation that has been worked on very hard involving Immigration and Border Patrol officers. That legislation should be brought forth and we would pass it to fix the border.

Then, the second part, as I am talking about today, the entry-exit visa situation where people enter the country lawfully according to a visa but don't return to their home country, that has its own unique and complex systems that need to be dealt with, and that needs to be done independently and separately. We need a separate and independent analysis of how to deal with the workplace to ensure that people who come into the country illegally don't get jobs in the future. We have to end this.

So I am taking the bill at its word. They want to give legal status to everybody who is here. So what do we do to try to ensure this doesn't happen again in the future? We are not saying go out and try to find everybody who is in the country illegally and capture and deport them. That is not a practical solution at this point in our history. We do need to figure out how to compassionately deal with those individuals, but we don't need to be where we can't enforce the law in the future so we have another amnesty upon us,

another situation with millions of people here illegally because we failed to do our duty.

The way we do the entry-exit visa has been determined by Congress for a number of years. It is to use a biometric entry-exit visa system. So we take fingerprints of everybody who comes to the country. They are clocked in when they enter the United States, and that fingerprint identifies them as the person who has the visa. Then, when they leave, they are supposed to clock out and use their fingerprint—which is the best biometric proven system. You put maybe just two fingers on the reader as you go onto the airplane to fly out of the country and it reads it and sees if you are a terrorist or you are a criminal fleeing prosecution for a crime you may have committed in the United States. It is as simple and easy as can be, but for one reason or another this has been blocked.

The history of the biometric exit system is so instructive for us because it tells us how the Presidential and congressional authorities of America have failed to carry out what ought to be a universally accepted bipartisan plan to make our entry-exit visa system work right and reduce that 40 percent of illegal immigrants in our country who come by visa.

In 1996, Congress first adopted a requirement for an entry-exit system to track those who were entering and leaving the United States in the Illegal Immigration Reform and Immigrant Responsibility Act. The first time we passed it was in 1996. In 2000, Congress passed another law requiring the entry-exit system be electronic and to be implemented at all air, sea, and land ports of entry. That was 2000, 13 years ago.

Again in 2000, when amending the visa waiver program, Congress required a “fully automated entry and exit control system” to record entry and departure information for all aliens participating in the program. Congress also required that passports be machine readable.

After 9/11, a time of national introspection and study, Congress once again demanded the implementation of an entry-exit system through the passage of the PATRIOT Act. The intent of Congress was made clear at that time:

In light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of Congress that the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry with all deliberate speed as expeditiously as practical.

Congress demanded that the entry-exit system be biometric and based on tamper-resistant machine readable documents. A biometric system requires that an immigration document match the individual presenting the document. In other words, there is a biometric capability to make sure the person who presents a document is the

person named in the document. There are a variety of ways to make a document biometric, but the most common is to use digital fingerprints which can easily be run through computer data bases to match records on file. This is done every day.

According to the Department of Homeland Security's own Web site:

Unlike names and dates of birth which can be changed, biometrics are unique and virtually impossible to forge. Collecting biometrics helps the U.S. government prevent people from using fraudulent documents to enter the country illegally. Collecting biometrics also helps protect your identity in the event your travel documents are lost or stolen.

That is on the Web site today of Homeland Security, and it is absolutely correct.

In 2002, Congress reiterated the demand for a biometric entry-exit system at all ports of entry, requiring Homeland Security issue aliens “only machine readable tamper-resistant visas and other travel and entry documents that use biometric identifiers.”

That was what we passed in 2002. It also required that the government install biometric readers and scanners “at all ports of entry in the United States.”

Also, in 2002, the Department of Homeland Security initiated the US-VISIT system, which has great potential, and it has done some good things, but it hasn't been completed. That system was to develop this entire process. Two years later, US-VISIT was collecting biometric data on all aliens entering the United States. In 2004, Congress again demanded a biometric entry-exit system through the passage of the Intelligence Reform and Terrorism Prevention Act of 2004. In that act, Congress said:

Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in the effort to protect the United States by preventing the entry of terrorists.

It goes on:

The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system.

In 2007, now the 9/11 Commission comes back together again. They had issued a report with a whole lot of recommendations. They met to see how many of their recommendations had been adopted. They reiterated the need for an exit visa system and demanded that the exits apply to all foreign nationals entering under the visa waiver program and added a biometric component. That was in 2007 when that was passed.

Congress is crystal clear and consistent that this is what we expect to be done. Has it been done? No. It has not yet been done. What about this new immigration bill that has 1,000 pages in it and we are told is the toughest in history? We are told—Senator SCHUMER said “tough as nails.” Does it require it? Will it ensure that it finally gets done? No. Not only that, it alters the

law. It says it doesn't have to be done. It eliminates biometrics, and it eliminates land entry and exit systems. So you do not have an exit visa system at anything but the airports under their plan, and it is not biometric. It actually weakens dramatically repeated law enactments of the Congress, so it is not stronger on the visa program, where 40 percent of the overstays come from. Forty percent of the people entering the country illegally come from visa overstays. It doesn't fix that. It weakens that law. I don't see how my colleagues can come here and brag about this when, plain as day, that is what their bill does. I do not think the bill should be considered in this form.

The struggle continues. Get this. Last week the House, still frustrated about this matter—Representative BARLETTA of Pennsylvania got an amendment passed to prohibit funding for Department of Homeland Security parties and receptions until the biometric entry-exit system was fully implemented as the 2004 law required.

What do we draw from this? We draw several things. One of them is that the American people already get it. They don't trust Congress to do anything they say. We pass laws and we go home and we say we fixed the biometric bill, and it never happens. We passed six different laws requiring it, and it doesn't happen. Then they say they are passing the toughest bill that has ever been written about entry-exit visas and we are going to fix this problem and we recognize that 40 percent of the people come through that way, and is it fixed? No. It undermines current law. Current law is not being enforced, I acknowledge. They just surrender—give in.

This can be done. First of all, we need to go back. I think the frustration of the American people with what is happening in this Congress is well-earned. They have a right to be unhappy. A recent poll, a poll not too long ago, showed this. It asked people: Are you more frustrated or angry with people who enter the country illegally or the government officials who have allowed it to happen? And 88 percent said they were mad at Congress and the government. The American people are not mad at people who want to come to the country illegally. They are frustrated and angry that their elected representatives, who year after year, decade after decade, promised to fix this system, blithely go about their business and never do it. They say one thing and they do another. It is not right.

They say: You know, it just cannot be done. It is too hard. It is too expensive. It slows down entry-exits. People just don't want to do this, and that is why we just never got around to it.

We just discovered a report that never got any publicity, but I didn't realize what was in it, that was published in 2011. It went to the Appropriations Committee. They are not the immigration committee. It sat around; nobody paid much attention to it.

In 2009 the Department of Homeland Security conducted a pilot program at the Detroit and Atlanta airports to deal with what would happen if we had an entry-exit biometric visa system at those two airports. They found that a biometric exit system—we have the entry, remember—was not only feasible but fast, accurate, and did not slow passengers as they boarded the departing flights.

During 1 month of heavy international travel time, June and July, the biometric exit system in Detroit processed 9,448 aliens and identified 44 from the watch list and 60 suspected overstay—out of less than 10,000 people. This is a terrorist watch list and a criminal watch list. Some of these were arrested for violation of Federal law and had warrants out for their arrest on nonterrorist charges. Some of them showed up on watch lists, and 60 of them were suspected overstay. What about Atlanta? They processed 20,296 aliens subject to US-VISIT and identified 131 on the watch list and 90 overstay.

Since 9/11, at least 36 individuals who have overstayed their visas have been convicted of terrorism-related charges. Thirty-six since the 9/11 attacks have been arrested for terrorism charges. They were visa overstay, including Amine el-Khalifi, who attempted to bomb the Capitol last year; the Christmas Day bomb plot; and a near get-away by the would-be Times Square bomber, Faisal Shahzad, who had already boarded a flight leaving the United States when he was arrested just before he could take off.

We are once again reminded that border security is an essential element of national security, and exit control is part of that rubric. Tamerlan Tsarnaev, the Boston bomber—alleged—remained invisible to the immigration system, having exited the country for a 6-month stay in Russia because today's biographic exit data was insufficient to identify him as leaving the country—in this case, a misspelling or he used a different spelling and he was not picked up on the list, whereas if we had used his fingerprints, he would have been identified biometrically instantly.

While S. 744 requires the use of software to correct misspellings, it may not work for the millions of other names the software does not pick up. It will not pick up the fact that there is an arrest warrant for murder out for him—let's say in Indianapolis—when he is getting on a plane in Boston, but it should get picked up if they use the entry-exit visa. The individual would then successfully have fled the United States and may be able to get away completely with a serious crime. The only way to verify a person is who they claim to be really is through a biometric identifier.

During the committee markup, I offered an amendment to require the implementation of the biometric exit system as required by current law as part

of the trigger to allow the Secretary to grant green cards to those given amnesty. In other words, if she did not have that fixed and in place as current law required it, the amnesty in 10 years, the green card, would not be issued.

A biometric air-sea exit solution is available right now, as it was in 2009. It requires no infrastructure changes to airports and can be deployed immediately. Neither the TSA nor airlines need to be directly involved in this.

Also, in 2005, the biometric exit for vehicles and pedestrians at land ports was tested and found to be workable. To implement that solution today would require less than was required during the 2005 testing. We simply use the biometric data already in the system as well as the tamper-resistant card and expansion of the current Trusted Traveler Program in entry lanes to the exit lanes. If we do the entry, we need to do the exit lanes.

Nevertheless, my amendment failed 12 to 6. So I guess Senator SCHUMER and the leaders of the Gang of 8 didn't give a path to the Republican members who might have voted for my bill. They had to stick together. Senator SCHUMER claimed such a system would cost \$25 billion to implement. Well, somebody had used that figure, and I had only then discovered this 2011 report of the exit system in Atlanta and Detroit—this report right here. We just found out there was actually documented evidence that it doesn't cost anything like that much.

However, when we aggregate the 2008 U.S. visa impact analysis data and industry data, the greatest total cost for the first year of technology implementation at air and seaports would be approximately \$172 million to \$855 million, depending on collection and the units chosen. The most expensive units do not require an attendant to even be there. Instead, there would be a monitoring attendant who can supervise a number of mobile kiosks all at once.

In addition, in 2008, an air, sea, and biometric exit project regulatory impact analysis also noted that the air, sea, and biometric system was less costly than a biographic exit system for several reasons: improved detection of aliens overstaying visa, 300 ICE agents have to do overstay now, and cost avoidance resulting from improved Immigration and Customs Enforcement efficiency; in 2007 cost removal per visa violator was \$18,375 per individual; improved efficiency and processing of entry-exit data; and improved national security environment. Today the cost is significantly lower because the latest technology requires less manpower to operate and support the process. So in an exit system, when a traveler comes through the airport, before they board the plane, they go to a spot and for a few seconds—according to this report there is negligible slowing down—they put their finger on it, it reads their fingerprint, and says, yes, indeed, this person who entered

the country has permission to leave. It then runs a check of terrorist and crime data to see if there is a warrant for the person's arrest, and then moves right on to the plane. The report found it took less than 2 seconds for a fingerprint capture. That is amazing.

Of course, a lot of people don't know, but many police departments provide police officers in their automobiles fingerprint reading data. So they arrest somebody for DUI, they have them put their finger on the machine, and bingo, it comes up they are wanted for rape. That is how fugitives are apprehended today. We do far less hunting them down by name. We wait for them to get picked up with some sort of check or other arrest. Mobile units do that.

These systems are now deployed internationally in nine countries and 20 international airports, including Australia, and process over 700 million passengers per month. This can be done, and I am amazed and frustrated it has not happened.

When Secretary Ridge was Homeland Security Secretary, we talked about this. My experience in law enforcement was that the fingerprint had to be the data because it is the fingerprint the police officers and the FBI use when they arrest somebody for a crime, and many people flee. Many of the people who flee like to leave the country.

The last thing he said when he left office: I have one bit of advice for my successors, and that is use the fingerprint. After much effort and much debate and much conflict, he had distilled that down to that simple decision. Frankly, we are almost there, and we should complete.

So in the committee markup, an amendment sponsored by Senator HATCH was adopted that requires yet another pilot program limited to the 10 busiest airports within 2 years, and the FAA designated 30 core airports over 6 years. The amendment, which does not serve as a trigger to amnesty or anything else, fails to require biometric exit at the land ports, which makes the system unenforceable and almost unusable because a person can fly in and they can exit from a land port. We need to record that or we won't know whether they ever left the country.

As Senator GRASSLEY said at the time in the committee: In 1996, we passed an entry-exit system, and it is not law. So what I see before us is a fig leaf that leaves us to believe we are doing more than the bill requires, but because the bill does a lot less than what we decided in 1996 we needed to do, I think this amendment should be defeated. But it wasn't; it passed.

Finally, we were told that all of the triggers would have to be fully implemented. If they are not fully implemented, there will be no green cards issued. This is one of the Gang of 8 selling and talking about the bill. It had to be fully implemented—all the triggers—or there would be no green card.

So let's take a look at what the bill actually says about that. The bill says

after 10 years, the Secretary may adjust the status of those illegal immigrants who receive amnesty to lawful, permanent resident or green card status. So the Secretary can adjust the people who came here illegally from their temporary legal status to permanent resident of the United States, or green card, and then be on a guaranteed pathway in 3 years to full citizenship. But that is supposed to only be done when? The Secretary certifies to Congress that her border security strategy is substantially deployed, substantially operational, and that her fencing plans are implemented and substantially completed. These terms are undefined, leaving these determinations to the sole discretion of the Secretary, and she said we don't need anymore fencing. She gets to decide about fencing.

What is she required to do? Her fencing plan has to be initiated and approved, or her plan has to be implemented. But the plan doesn't have to call for a single foot of fencing.

Also, the green card status can be given when she has implemented the new—this is important—employment verification system required under the bill, which is for new employees, not current employees. They do an E-Verify system to check on something like that, and it is not mandatory for all employers until 5 years after the regulations are published. So the employment effort is not effective for at least 5 years after the amnesty has been provided, and it could take even longer for it to become fully effective.

The real deadline for implementation of the employment, the E-Verify successor system they would like to develop, may be as long as 10 years. That is less than what the 2007 bill called for, the bill that failed. In 2007 E-Verify was required for all new hires 18 months after the enactment of the bill

and for all current employees 3 years after the enactment of the bill. So their plan for the E-Verify system is far weaker than the plan in 2007, and it suggests that by putting it off and not having current employees have to have it used for them that they are not very serious about it.

Also, she is using an electronic but not biometric system exit system at air and sea but not land ports of entry. So another requirement for a trigger is that there must be an end use and an electronic, not biometric, exit system for air and seaports but not land. Experts have told us if we don't do land, we never know when anybody has left the country.

Unfortunately, as are most seemingly tough provisions in this bill, it is followed by an exception that swallows the rule. The bill allows the Secretary to grant green cards to those given amnesty without satisfying these triggers if litigation or an act of God has prevented one of the so-called triggers from being implemented, or implementation has been held unconstitutional by the Supreme Court, or the Court has simply granted certiorari in a case challenging its constitutionality; and ten years have elapsed since the date of enactment. There are so many loopholes in it, and so she can certify she has a plan. She can certify that with expanding the system electronically but not biometrically, in airports and seaports but not land ports, we end up with what would appear to be a big improvement over current law, but it is not. Current law requires biometric in land, sea, and air. So this reduces that.

The bill undermines the ability to deport people who are in the country illegally. There are a whole lot of examples I could give at this point, and I won't—not tonight, to the Chair's relief.

So, as in 1986, amnesty comes first. It will occur. The deportations will stop,

and it happens now. But the enforcement that is promised will not happen in any effective way. That is clear. If we read the bill, we see there is not a real sense that anybody who knows anything about enforcement was there in the room drafting the bill, driving the legislation, to close loopholes and make this system enforceable in the future and end its brokenness today, end the illegality today, and put us on a path we can be proud of for our future. The bill does not fix illegality that dominates so much of our current system. It surrenders to illegality and does not stand up and fix it. This is not what the good people of this country want for their future: another long period of illegal immigration and another inevitable amnesty.

We can fix the border. We can do that. We can fix our visa system. It is not that hard. We know how to do it now. We can fix and dramatically increase the ability of employers to ensure they hire only legal workers and not hire illegal workers, leaving Americans unemployed at record rates. We can establish a strong interior enforcement system, one that has integrity and fairness. This bill is not close to that goal. Even though we could do it, it fails to move us where we need to go to put this system on a sound path. It should not become law.

I thank the Chair and yield the floor.

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ADJOURNMENT UNTIL 10 A.M.  
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow morning.

Thereupon, the Senate, at 7:44 p.m., adjourned until Tuesday, June 11, 2013, at 10 a.m.