

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 627, H.R. 5771, a bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions and make technical corrections, to amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.

#### SCHEDULE

Mr. REID. Mr. President, following my remarks and those of the Republican leader, the Senate will resume executive session and vote on the confirmation of the Santos and Rose nominations. Those will be done by voice.

Following disposition of the nominations, there will be up to 3 hours for debate equally divided and controlled between the two leaders or their designees in relation to the Saldana nomination.

The time from 2:15 p.m. to 2:30 p.m. will be equally divided and controlled in the usual form, followed by two roll-call votes on cloture and confirmation of the Saldana nomination.

There will be our usual party caucuses today at noon. Rollcall votes will occur for sure this evening at 6 p.m.

#### RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### EXECUTIVE SESSION

**DANIEL J. SANTOS TO BE A MEMBER OF THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**FRANK A. ROSE TO BE AN ASSISTANT SECRETARY OF STATE (VERIFICATION AND COMPLIANCE)**

The PRESIDENT pro tempore. Under the previous order, the Senate will resume executive session to consider the following nominations, which the clerk will report.

The assistant legislative clerk read the nominations of Daniel J. Santos, of Virginia, to be a Member of the Defense Nuclear Facilities Safety Board; and Frank A. Rose, of Massachusetts, to be an Assistant Secretary of State (Verification and Compliance).

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

The PRESIDING OFFICER (Mr. BOOKER). 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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.

#### VOTE ON SANTOS NOMINATION

The PRESIDING OFFICER. If there is no further debate on the Santos nomination, the question is, Will the Senate advise and consent to the nomi-

nation of Daniel J. Santos, of Virginia, to be a Member of the Defense Nuclear Facilities Safety Board?

The nomination was confirmed.

#### VOTE ON ROSE NOMINATION

The PRESIDING OFFICER. If there is no further debate on the Rose nomination, the question is, Will the Senate advise and consent to the nomination of Frank A. Rose, of Massachusetts, to be an Assistant Secretary of State (Verification and Compliance)?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, there is 3 hours of debate equally divided in the usual form on the motion to invoke cloture on the Saldana nomination.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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, it would probably be appropriate that I suggest the absence of a quorum but ask unanimous consent that the time be divided equally.

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

Mr. REID. This would be during all quorum calls today—because there will be several of them—that the time be divided equally on the Saldana matter.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CORNYN. Mr. President, more than 3 months ago I was proud to introduce a fellow Texan, Sarah Saldana, to the Homeland Security and Governmental Affairs Committee in connection with her nomination to become the Nation's top immigration enforcement official, a position important to our country and particularly to Texas.

Ms. Saldana was born in Corpus Christi, TX, and became the first Latina U.S. attorney in Texas history and only the second woman to hold that position in the 135-year history of Texas, in the northern district, a region that includes the Dallas-Fort

Worth metroplex, spans 100 counties, and stretches across 95,000 square miles. I, along with former Senator Kay Bailey Hutchison, was proud to support her nomination to that important job.

In her role as U.S. attorney and previously as a line prosecutor, Sarah Saldana has fought public corruption. She has fought organized crime, sex traffickers and other dangerous criminals. She has also prosecuted numerous high-profile public corruption cases, including the very publicized corruption trial that resulted in the conviction of the former Dallas mayor pro tem, Don Hill, and the ongoing case against Dallas county commissioner John Wiley Price—both members of her political party—which put her in some disfavor, as you might imagine, in Democratic political circles. But it was something which demonstrated to me that she was a person of courage and conviction and she believed in enforcing the law beyond purely deferring to personal political interests.

Throughout her career she has developed an outstanding reputation, and based on her qualifications alone, we would be hard-pressed to find a person better suited for the job at Immigration and Customs Enforcement than Sarah Saldana.

Unfortunately, the President changed everything this last November by his Executive action on immigration. To be clear—I have said this before on the floor, but I will just repeat—I believe the President's actions are beyond his constitutional authority and are a reckless political stunt.

Here are the sorts of things the President is claiming to do. The Department of Homeland Security has issued a series of directives pursuant to the President's instructions on November 21, doing everything from repealing the Secure Communities Program, by which local law enforcement cooperates with Immigration and Customs Enforcement and when a person is arrested who also is in the country illegally, they are detained by local law enforcement, even though they have served their time or otherwise are subject to release so that ICE can come pick them up and return them to their country of origin. The President's Executive action and the Department of Homeland Security directives pursuant to that eliminate the Secure Communities Program.

It also purports to prioritize immigration enforcement according to three priorities. The problem is these add even more confusion to what is already an indecipherable and confusing mess, and it also puts to the lowest priority people who have been convicted of crimes such as child abuse, stalking, theft, some child pornography offenses, possession, distribution of alcohol to minors, hit-and-run, including some hate crimes, property destruction, false imprisonment, some abduction offenses and the like. In other words, the President's priorities for immigration enforcement really represent a wholesale

change in the law—if they were actually authorized. Until they are set aside by a court or if Congress were to repeal them along with what would require a Presidential signature, they are the standing requirement for any Director of Immigration and Customs Enforcement. The President, purportedly, also used his authority to issue work permits for millions of people illegally in the country. While I don't believe our country would ever engage in mass deportation, the fact that the President has usurped the authority of Congress and purports to take on the authority to issue work permits to people illegally in the country to me is mind boggling.

This is the situation into which the President has put a good and decent person such as Sarah Saldana. The President has put the next Director of Immigration and Customs Enforcement in an untenable position. When confirmed, she will be the principal enforcer of our immigration laws. Unfortunately, she now claims the President was operating within his legal authority to issue this Executive action. I say that because several Senators on the Senate Judiciary Committee issued written questions to the nominee about this Executive action, and it is clear in her responses that Ms. Saldana has wholeheartedly embraced the President's Executive action and claims that it is within his authority.

If you think about it, a Presidential nominee has two choices. They can either say, well, I disagree with what the President has done, so I will refuse to serve, or if they are already confirmed, I am going to resign my position, or they can embrace the President's policies, because the President is the one who makes those policies. Clearly, Ms. Saldana has embraced the President's policies, which I believe are unconstitutional.

I believe we should be deeply concerned about the damage the President's Executive actions will do to our already broken immigration system because they reinforce the dangerous message that the President is already sending to the world that our laws against illegal immigration will not be enforced. This is an invitation for lawlessness, and it will make it much more likely that we will experience further humanitarian crises and a surge of illegal immigration such as we saw last spring and which we have seen this year with more than 60,000 unaccompanied children coming from Central America through Mexico to our southern border. So the President's policies are a green light, and, unfortunately, Ms. Saldana has embraced those policies.

I believe that the recent election was a mandate for us to work together on bipartisan solutions to our country's biggest challenges, but apparently the President didn't get the memo. I was actually at a lunch at the White House with other leaders of both parties across the Capitol where Speaker

BOEHNER, the incoming majority leader and I, and the current majority leader said to the President: Please don't do this. Don't poison the well. Give us a chance to do our job as the new majority in the House and the Senate to try to pass consensus immigration reform bills and put them on your desk. The President ignored that. So the President chose to poison the well and to make it harder for us to do what we know we all have to do; and that is to fix our broken immigration system to the best of our ability.

The President's reckless Executive actions have done further damage. They are deeply unfair to people who have been waiting patiently in line according to the written immigration laws—the people who have been playing by the rules. To allow millions of people simply to jump ahead of those people who have been waiting patiently in line and playing by the rules is profoundly unfair. At a time when our economy is starting to recover from the financial crisis in 2008 and the policies that have intervened, we know that there is potential harm to hard-working middle class families who are already living on stagnant wages and a rising cost of living to have millions more people eligible for work permits under the President's purported authority in these Executive actions. We ought to be careful about that, and we ought to make sure we are doing the sorts of things that will protect—not harm—hard-working middle class families. But the President has ignored all that and just done it his way.

Well, some pundits have suggested perhaps the President's real goal was to provoke Republicans to taking the bait and descending into further dysfunction. Well, if I heard one message from my constituents and people as I campaigned for reelection in Texas, it is that people really want us to work together. They want this place to function. In many instances they don't care so much about what we do, as long as we do something to work together. Of course, they care about what we do, and there are areas where we disagree. But there are areas of common ground where we can work together to solve these problems. We are not going to take the bait if that is what the President's intention was, and we are not going to descend into even more dysfunction. That would be a repudiation of the message and mandate the voters sent to us on November 4.

So we are going to plow ahead. When the new majority takes place on January 6, working with our colleagues in the House, working with our colleagues across the aisle, we are going to try to find places where we can pass bipartisan immigration legislation—not in a comprehensive fashion but in a step-by-step fashion to try to make some progress to improve our broken immigration system.

I am most concerned about the precedent the President's actions would set

for our system of government. What if future Presidents take upon themselves the claimed authority to issue other Executive actions that ignore the separation of powers and allocation of responsibilities given to the different branches of government under our Constitution? It is a dangerous precedent. If the President cannot be trusted to enforce the laws passed by the people's elected representatives, then self-governance is an illusion. This is very dangerous.

The American people should never stand for rule by Executive fiat, and they should demand the rule of law be enforced under our Constitution. The President's frustration with the Republican House of Representatives is no justification for doing what he has done. He needs to give us an opportunity to do our job, and he needs to join us at the negotiating table to make progress on our broken immigration system.

Although I admire Ms. Saldana, I fear she will be tasked with carrying out the implementation of the President's unconstitutional Executive actions, refusing to enforce our immigration laws. Unfortunately, when given the chance to address the constitutionality of these actions with the Judiciary Committee, these fears were not alleviated. Members of the committee were denied a chance to ask her questions during an open confirmation hearing, something several previous nominees for this position have undergone.

As a matter of fact, Senator GRASSLEY, the ranking Republican on the Judiciary Committee, and I invited Ms. Saldana to appear at an informal question-and-answer session, since the chairman of the Judiciary Committee denied us an opportunity to have a formal hearing, so she could perhaps answer our questions and clarify her position—the position she took in the written answers to the questions for the record, which I referred to earlier.

I don't know whether she got bad advice or whether she, herself, decided it would be a futile effort, but she decided not to appear for that informal give-and-take.

Maybe it would have helped her clarify her answers to the questions sent by the committee, maybe not. Maybe she would have stood by her answers, but we will never know.

It is for these reasons I regrettably cannot support her nomination. Ms. Saldana, as I said, is somebody whom I admire and respect, but if she is determined to help the President implement this deeply flawed Executive action and refuses to enforce the law Congress has written and has been signed by previous Presidents, I cannot support her nomination.

I will not aid and abet a President dead set on unilaterally defying our Nation's immigration laws.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

**NOMINATION OF SARAH R. SALDANA TO BE AN ASSISTANT SECRETARY OF HOMELAND SECURITY**

Mr. DURBIN. Mr. President, I ask unanimous consent that the Chair report the Saldana nomination, Calendar No. 1084.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The legislative clerk read the nomination of Sarah R. Saldana, of Texas, to be an Assistant Secretary of Homeland Security.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, my colleague from Texas has just stepped off the floor. He has spoken at some length about his position on this nomination. With the utmost respect for my colleague from Texas, I wish to address the same issue.

We disagree on many political issues, but we are truly friends, and we work together on the Senate Judiciary Committee. I respect him very much, even though we disagree on this issue. I just wanted to express my respect for the senior Senator from Texas before I speak about the nominee to be Assistant Secretary of Homeland Security.

I am at a loss to explain the position of the Senator from Texas and the Republican Party of America when it comes to the issue of immigration. What are we to make of what they tell us when we talk about immigration? Without fail, they say to us: First and foremost, we must have enforcement at our borders. Once we have secured our borders from the inflow of illegal immigrants, then—and only then—can we discuss fixing our broken immigration system.

How often have we heard that? I have heard it every time the Republicans address the issue of immigration: First, fix the border, and then we will talk.

It was about 540 days ago—on the floor of the Senate—when we called up an immigration reform bill for consideration. That immigration reform bill was put together—a comprehensive bill—by Democrats and Republicans. I was one of eight who helped to put that bill together. We sat down for months and negotiated that bill.

The Republican side of the table had JOHN MCCAIN of Arizona, former Republican candidate for President; JEFF FLAKE of Arizona, a border State Senator with passionate feelings about this issue; MARCO RUBIO, one of the two Hispanic Members of the Republican Senate caucus; and LINDSEY GRAHAM of South Carolina, a man who is an attorney, works in the Air Force Reserve in the Judge Advocate General's Corps, and is a conservative by every measure. Those were our four on the Republican side. On the Democratic side we had Senator CHARLES SCHUMER, chairman of the Senate immigration subcommittee of the Judiciary Committee; BOB MENENDEZ, of the Presiding Officer's State of New Jersey

and a Hispanic leader; MICHAEL BENNET of Colorado; and myself.

We negotiated not for weeks but for months. We laboriously went through every aspect of immigration in America, and, to the amazement of ourselves as well as the public, we reached an agreement, a compromise. I was not happy with parts of the bill. Some of it I didn't like at all, and I thought other parts were excellent. That is the nature of a compromise.

We brought this bill to the Senate Judiciary Committee and opened it up for amendment. We said to Republicans and Democrats alike: Improve it if you can. There were scores of amendments that were offered in that committee.

The bill was favorably reported from the Senate Judiciary Committee and came to the floor of the Senate, where once again it was amended. One amendment, offered by Senator CORKER of Tennessee and Senator HOEVEN of North Dakota, Republicans, dramatically increased border enforcement.

We currently spend more on immigration enforcement than on all other Federal law enforcement efforts combined. We have made a huge commitment, and the Hoeven-Corker amendment increased it with 700 miles of fences, more personnel than ever, to the point where they could literally have an agent every 1,000 feet along the southern border.

Are we serious about border enforcement in our comprehensive bill? Yes, we are. We adopted the Hoeven-Corker amendment. Although some said we were overdoing it, we adopted it in the spirit of compromise and offered it on the floor for passage. On the final vote, we had 68 Senators who voted in favor of comprehensive immigration reform. There were 14 Republicans who voted for it, along with the Democrats, which made a majority of 68, and we passed the comprehensive immigration reform bill.

Sadly, the senior Senator from Texas voted no. He voted no on comprehensive immigration reform. We did our job. We had a bill endorsed by the U.S. Chamber of Commerce and the AFL-CIO. This bill was endorsed by faith leaders all across the United States and had the support of the civil rights community as well as conservatives such as Grover Norquist. We passed it. It is what the Constitution said we had to do.

We sent it through the Rotunda and across the Capitol to the House of Representatives, where it fell into this dark and gloomy pit never to be seen again. We have waited about 540 days now for the House of Representatives to at least acknowledge it, maybe even debate it, perhaps change it or even offer it on the floor of the House of Representatives, but no, they chose to do nothing. In the view of the House of Representatives, we have a broken immigration system. Yet they decided to leave it untouched.

So the President said time and again to Speaker BOEHNER: When are you

going to accept your responsibility when it comes to fixing this broken immigration system?

The Speaker kept saying: Give me some time. Give me some time. Give me some time.

Eighteen months passed, and the President said: I am sorry. I have to do something. If you are going to do nothing in the House of Representatives when it comes to immigration, I must do something as President.

He went into an effort—I know because we spoke—of research to determine what previous Presidents had done when it came to immigration by Executive action. He started off somewhat skeptical, and he said as much publicly, as to the limits of what he could do.

He said: I need to carefully research this, and he did. He found that some 11 Presidents have engaged in Executive action on immigration, and so he set out to do the same, to carefully construct Executive action to deal with our broken immigration system, all the while knowing the Republicans in the House of Representatives, and many here in the Senate, were going to do nothing when it came to immigration.

He issued his Executive action a few weeks ago. What did it say? It said: If you have been in the United States at least 5 years and come forward and register with this government by giving us your name, your address, and vital information, we will then submit you to an extensive criminal background check to determine whether you have done anything while in the United States or before that makes you ineligible to stay. If you fail that initial criminal review, you are gone—no questions asked. But if you pass it and are prepared to register with this government and pay your fair share of taxes for working in the United States, you will be given a temporary work permit that must be renewed, as we review every several years whether you are still eligible to stay. That is the Executive action that has driven the Republicans to distraction.

The notion is that this President is going to try to fix a broken immigration system by at least guaranteeing that those who are here working legally have no criminal background problems and are paying their fair share of taxes. They are so distraught over this that they have come up with a strategy that is incredible.

The Republican Party, which has insisted time and time again that border enforcement is their highest priority, have—in protest to this Executive action by the President—decided to do two things. First, they passed a spending bill in the House of Representatives which funded all of the Federal Government with a budget for the next year except for one agency. Which agency would that have been? It turned out to be the Department of Homeland Security, which is responsible for border enforcement. The party that is dedicated