visa program for illegal aliens and illegal aliens only. No one else is eligible for this program, particularly those waiting their turn in line. Also, there is no cap on the number of eligible participants.

No. 8, indefinite renewal of the Z nonimmigration visas. Z nonimmigrant visas are valid for 4 years and may be renewed indefinitely. This is a disincentive for illegal aliens to pay the $4,000 penalty, touch back to their own country, and prove that they paid their taxes or receive a very important medical exam.

No. 9, health standards are ignored. No medical exam or immunizations are needed to get a Z visa.

No. 10, there is no incentive to learn English. There is no English requirement to get a Z visa. Each Z nonimmigrant must only demonstrate ''an attempt to gain an understanding of the English language'' upon the first renewal of the Z visa. There are waivers even for that requirement.

No. 11, green card applicants are not required to return to their home country. Green card applicants, only for the principal alien, must be filed in person outside the United States but not necessarily in the alien's country of origin.

The alien can then reenter, likely on the same day, under a Z nonimmigrant visa because it serves as a valid travel document. Again, there are exceptions for the requirement.

No. 12: Fault with these provisions. Fines are, quite frankly, false and misleading. Not everyone is required to pay the $5,000 penalty. The principal alien pays some fines and fees, and the dependents only have to pay a processing and State-impact fund fee. To get a green card, if an alien intends to pursue this route, a Z–1 nonimmigrant must pay a $4,000 penalty. Z–2 and Z–3 aliens are only required to pay application fees.

No. 13: Fines will not adequately pay for the cost of amnesty. The bulk of the monetary fines are required at the end of the program. All fines may be paid in installments, and waivers are available in extraordinary circumstances.

No. 14: Impact on State and local government. State impact money will be granted to States to provide services for noncitizens only, instead of providing services to all citizens impacted by the large number of illegal immigrants. Examples would be school systems and health care services.

No. 15 and last: Revocations of terrorist visas. You know that visas revoked on terrorism grounds—I am talking about terrorists—if a visa is revoked on terrorism grounds, it would allow Z visa holders to remain in the United States and use the U.S. court system to appeal those terrorism charges.

The bill, including the amnesty program, does not address visa revocation for any visa holder.

I would like someone to tell me that this is the last time we will do an amnesty because I heard that 20 years ago. I will not hold my breath. Nobody is making any promises that this is the last amnesty, and that is because we all know amnesties will continue. We are on a path to make what I consider a mistake that I made in 1986. We ought to get it right and focus on the long-term solutions to this problem.

So I am going to be offering some amendments to fix some of these 15 flaws, but I am not sure it can be repaired at the end of the day. It is my plan, when we go into the bill, to offer an amendment, to lay an amendment before the body.

Madam President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mrs. McCASKILL.) Morning business is closed.

COMPREHENSIVE IMMIGRATION REFORM ACT OF 2007

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1348, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1348) to provide for comprehensive immigration reform and for other purposes.

Pending:

Reid (for Kennedy/Specter) amendment No. 1150, in the nature of a substitute.

AMENDMENT NO. 1166 TO AMENDMENT NO. 1150

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, I have an amendment at the desk that I would like to call up.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for himself, and Mr. DEMINT, proposes an amendment numbered 1166.

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

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

The amendment is as follows:

(Purpose: To clarify that the revocation of an alien's visa or other documentation is not subject to judicial review)

At the appropriate place, insert the following:

SEC. _____. JUDICIAL REVIEW OF VISA REVOCATION.

(a) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by striking ''There shall be no means of judicial review'' and all that follows and inserting the following: ''Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to all visas issued before, on, or after such date.

Mr. GRASSLEY. Madam President, the amendment I have before you is dealing with an issue I just described in morning business as one of 15 flaws in a very important part of this legislation. This amendment is going to revise current law related to visa revocation for visa holders who are on U.S. soil.

Now, we have this situation which does not make sense. My amendment is meant to bring common sense to this. Under current law, visas approved or denied by a consular officer in some of our embassies overseas would be nonreviewable. In other words, what that consular office said would be final. That person being denied a visa to come to this country would not have access to courts because consular officers have the final say when it comes to granting visas and allowing people to enter a country. So if you are a consular officer and you believe somebody is a terrorist or a terrorist threat, you can deny the visa, no review.

However, if that person gets a visa and they come to this country and we find out later on that they are a potential terrorist and should not have come here in the first place and you want to get them out of the country as fast as you can—because that is surely what we would have done with the 19 pilots who created the terror we had on September 11—then that decision made when the person comes to this country, that decision by the consular officer is reviewable in the U.S. courts.

Now, everybody is going to say: Well, that just does not make sense. You know, the same person over in some foreign country wants to come here, and the consular officer says: We can't let that person come here because he is a potential terrorist threat. Well, then they do not get to come here and nobody can review that. But if that very same person came here and we decided they shouldn't have been here in the first place, then they have access to our court system before they can be removed. Thanks to a small provision inserted during conference negotiations on the Intelligence Reform and Terrorism Prevention Act of 2004, the visa holder at that point has more rights than he or she should have. I think that is very obvious.

Now, the ability to deport an alien on U.S. soil with a revoked visa is nearly impossible if the alien is given the opportunity to appeal the revocation. This section has made the visa revocation ineffective as an antiterrorism tool.

My amendment would treat visa revocations similar to visa denials because the right of that person to be in the United States is no longer valid. In other words, if it was not valid for him to come here in the first place and it

was not reviewable by the courts, and then they get here and for the same reasons they should not be here—because they are a terrorist threat—they should not have access to our courts.

So this exception has made the visa revocation ineffective as an antiterror tool. My amendment would treat visa revocations similar to visa denials because the right of that person to be in the United States is no longer valid. If they were originally denied a visa by the consular officer, there would be no right to dispute; they would not be here in the first place.

I asked Secretary Chertoff about the problem with our current law on the visa revocation, and I want to quote from what he told the Judiciary Committee in March because I have been working on this problem for a while. To quote Secretary Chertoff:

> The fact is that we can prevent someone who's coming in as a guest. We can say ''You can't come in overseas,'' but once they come in, if they abuse their terms and conditions of their coming in, we have to go through a cumbersome process. That strikes me as not particularly sensible. People who are admitted as guests, like guests in my house, if the guest misbehaves, I just tell them to leave; they don't get to go to court over it.

We can equate the role of homeowner to that of a consular officer. Currently and historically, all decisions by consular officers with regard to the granting, the initial granting of visas are final and not subject to review. Revocations shouldn't be treated differently in the case of terrorists.

Why is this important to do? Consider visa revocations related to terrorism. Consider the 2003 Government Accountability Office report revealing that suspected terrorists could stay in the country after their visas had been revoked on the grounds of terrorism because of a legal loophole in the wording of revocation papers. This loophole came to light after the Government Accountability Office found that individuals were granted visas that were later revoked because there was evidence the persons had terrorism links and associations.

The FBI and the intelligence community suspected ties of terrorism in hundreds of applications. The FBI did not share this information with our consular officers in time, so the consular officers granted the visas. So I suppose at that point you cannot blame the consular officers when they did not have the information the FBI should have given to them. So then when they got the derogatory information about these individuals from the FBI, then it was too late. They had already been granted visas. They were already here. The consular officers then had to go through the process of revoking the visas. What the Government Accountability Office found was that even though the visas were revoked, immigration officials could not do a thing about it. They were handicapped from locating the visa holders and deporting them.

I wish to give you an example of how this hurts us today. A consular officer grants a visa to a person, and that person makes his or her way where they were intended to come, to this great country of the United States. After arriving in the United States, a consular office finds out that the foreign individual has ties to terrorism. Maybe the consular officer found out that visa holder attended a terrorist training camp or maybe the intelligence community just informed the consular officer that the visa holder was linked to the Taliban or maybe our Government just learned that visa holder gave millions of dollars to a terrorist organization before they applied for a visa. These are all very good reasons for revocation of a visa. If a person should not have received a visa in the first place, then the consular officer has to revoke it. Well, I mean if they had the visa then, you have to go to the trouble of getting it revoked.

Three key points to consider: First, the decisions to revoke a visa are not taken lightly. If a consular officer needs to revoke a visa, the case is thoroughly vetted. In fact, the case is decided back here in Washington, DC, at the highest levels. Second, consular officers do not have the authority to revoke a visa based on suspicion. A revocation must be based on actual finding that an alien is ineligible for the visa. Third, consular officers give the visa holder an opportunity to explain their case. They may ask them to come to the embassy and defend themselves. So when a visa is revoked, it is very serious business. But the current law handicaps law enforcement and makes it nearly impossible to deport the alien if they already made it to the United States.

Current law allows aliens to run to the steps of our country's courthouses and take advantage of our system. Allowing review of a revoked visa, especially on terrorism grounds, jeopardizes the classified intelligence that led to the revocation. It can force agencies such as the FBI and the CIA to be hesitant to share any information. Current law could be reversing our progress on information sharing, the very major thing we did to make sure September 11 didn't happen again. Prior to September 11, the FBI and the CIA could not share information. Now they can, in hopes that we will stop September 11 from happening again. But if all this information is going to get out through the court system, one of two things will occur: It isn't going to be given to the State Department in the first place, or, secondly, if it is given and it gets into the court system and gets out, we are going to have a damper put on the sharing of information.

We ought to be able to make sure a terrorist doesn't get into this country without exposing the source of our information and, once here, get them out. We need to secure this country, and we need the ability to revoke visas without terrorists or criminals seeking relief from deportation. I remind my colleagues of our poor visa policy contributing to the attacks on September 11. Nineteen hijackers used 364 aliases. Those people who killed 3,000 people in New York and 300 people here at the Pentagon knew how to play the system. They had 364 aliases. Two of the hijackers may have obtained passports from family members working in the Saudi passport ministry. Nineteen hijackers applied for 23 visas and obtained 22. The hijackers lied on the visa application in detectable ways. The hijackers violated the terms of their visas. They came and went at their convenience.

The 9/11 Commission pointed out the obvious by stating:

> Terrorists cannot plan and carry out attacks in this country if they are unable to enter the country.

In the Midwest we call that common sense.

The 9/11 Commission recommended that we intercept terrorists and constrain their mobility. This amendment would do that. Allowing aliens to remain on U.S. soil with a revoked visa or petition is a national security concern and something the 9/11 Commission would suggest is needed. We should not allow potential terrorists and others who act counter to our laws to remain on U.S. soil and get the protection of our courts, stay in this country for years through the appeals process of seeking relief from deportation.

Terrorists took advantage of our system before 9/11. We cannot let that happen again. This amendment will be helpful in making sure that doesn't happen again.

I hope my colleagues will support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I thank the Senator from Iowa.

I see the Senator from Georgia and I know the Senator from New Jersey wishes to speak on this issue. I will speak briefly. Will the Senator agree to an hour of time on the amendment?

Mr. GRASSLEY. Yes. Will the Senator let me check with our leadership?

Mr. KENNEDY. That is fine. We don't expect to vote at that time. I have been informed by the leader we are going to try to do this amendment, then the Bingaman amendment, and then vote on both at 2 o'clock. I won't propose that as a time, but if the Senator would think in those terms, we will go ahead with other Senators and then come back to the Senator from Iowa.

Mr. GRASSLEY. Madam President, may I say to the Senator that it is not my idea to take a long time, but I was asked to offer my amendment now by the leadership. I want to check with them.

Mr. KENNEDY. I thank the Senator.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Madam President, in deference to the distinguished Senator from New Jersey, I will only be a minute.

To the distinguished Senator and my ranking member on the Finance Committee and my dear friend, I commend him on his words and his effort. I do want to correct or at least amplify on a simile he used in his remarks where he had the picture of a stuffed horse named Trigger and made an analogy to the triggers in this bill.

I have worked for 18 months on these triggers. They actually are a complement to what he wants to do in terms of deporting people who are in this country on expired visas. One of the triggers in the bill that is a prerequisite to any of the rest of the bill going into effect is a biometrically secure ID which will prohibit exactly what happened with the hijackers on 9/11, because every business, school, employer, university, training center, and the like will be able to swipe that mag tape, and if they have an expired visa, they will know it. Secondly, because of the biometrics of a fingerprint, you cannot have a forged ID, nor can you have a stolen ID, because the holder of the stolen ID's print will not match.

With regard to the other triggers—and I appreciate the time of the Senator from New Jersey to amplify on the remarks I made yesterday—the triggers in this bill provide 2,700 redundant miles of barriers and visual security on the border, more miles than there are on the common border; 18,000 Border Patrol agents; 27,500 beds to detain anyone who is caught until their hearing date comes forward; 375 miles of barriers; 1,640 miles of ground positioning radar; 600 miles of constant surveillance in the air, plus all the ground sensors and the cameras that allow those 18,000 agents, when they are on duty, to immediately intercept the people who are violating the border, immediately put them in one of the 27,500 beds, and hold them until their case comes up and they are deported. I have no qualm with the Senator's amendment whatsoever, but I don't think it is exactly correct to make the reference to Roy Rogers' horse as an analogy to the triggers in this bill because, in fact, these triggers are meaningful. In their absence and in the absence of the President seeing that they are done, Homeland Security executing, and the Congress appropriating, this bill self-destructs. It is the predicate upon which complementary things such as the Senator is trying to do actually are made more meaningful and more helpful.

I appreciate the Senator letting me amplify on that.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Madam President, I have two purposes for rising at this point. One is to speak to the amendment offered by the distinguished Senator from Iowa and then to speak substantively, as we get into a full debate of comprehensive immigration reform, to lay out some parameters I hope all of our colleagues will consider.

Let me start off with the Grassley amendment. I rise in strong opposition to the amendment. It abolishes the last—underlined—remnant of judicial review on visa revocations. During the course of this week and the week when we come back, we are often going to hear terrorism invoked as the reason we must act in certain ways. Some of those ways ultimately undermine the essence of the Constitution of the United States and the equal protection clause. I think it is a false choice to be put in a position between the suggestion of terrorism and the suggestion that we should undermine the Constitution. I raise that as a warning flag now, as we look at all other amendments that are going to be coming. We are going to hear a wide range of reasons why we should dramatically change judicial reviews, the essence of protection under the Constitution. I hope our colleagues will understand that is a slippery slope to go down.

I hope we are not going to undermine due process, rule of law, and judicial review, because they are not just limited to suggestions on terrorism. Maybe if they were limited only on that, we could consider supporting such amendments. But it is eliminating judicial review totally, as it relates to visa revocation.

Right now what is the law? Right now judicial review of a visa revocation is already severely restricted. In fact, visa revocations are insulated from any judicial review when the visa holder is outside of the United States and the consular officers—these are our representatives abroad—have exceptionally broad authority to make revocation decisions. If you are outside the United States, you are not even coming. You don't even get a chance at judicial review. Let's make that clear.

The only area where limited judicial review of visa revocation remains available is with respect to individuals who are in the United States and then are placed in removal proceedings as a result of the revocation. Then judicial review is permitted in the context of those removal proceedings, if revocation is the only ground for that removal.

This is a critical check on Government authority to make arbitrary decisions. It is vitally important to allow the court review of removal proceedings because a person's ability to remain in the United States is at stake. We know immigration authorities have on more than one occasion made a mistake in the person's case or the person may have compelling circumstances that warranted consideration by a judge. We have seen cases time and time again that have so dictated and have said the Government is wrong, the individual is right. This would nullify that opportunity totally. This amendment would eliminate the last remaining remnant of judicial review.

Mr. KENNEDY. Will the Senator yield on that point for a question?

Mr. MENENDEZ. I am happy to yield.

Mr. KENNEDY. I listened with great interest—I hope our colleagues are—to the point the Senator from New Jersey is making. I wish to ask his comment on a situation. Some months ago we had a raid in New Bedford, MA. The people were picked up. They were sent up to Fort Devons and flown out of there, and many of them were transported to El Paso. Then some of them were deported. I have in my hand a May 3 article from the Boston Globe. The headline is ''U.S. Deports Wrong Raid Detainee In Case of Mistaken Identity.''

A man arrested in the March 6 raid of the Michael Bianco leather factory in New Bedford was deported by mistake, Federal officials said yesterday. Juan Sam-Castro, a native of Guatemala, was taken for a man of the same name, said the spokesman for the U.S. Immigration and Customs Service. As soon as the Customs Service became aware, we took immediate steps to bring Castro back to the United States. We are trying to locate him.

Here is an American citizen who has been deported and they are trying to locate him. Is the Senator not saying that in the situation where last year we deported 187,000 individuals and even in the last few weeks where we have this kind of mistake, at least some opportunity for an expedited kind of a review that effectively is not slowing the process down with this individual, between the time he was arrested and the time he was deported, was very few weeks, let alone the time he had the hearing, does this illustrate at least part of the points the Senator is trying to make with regard to the immigration service and the need for at least permitting the kind of review that currently exists? I do not believe we have had testimony to the contrary that this is an undue burden on the system.

Mr. MENENDEZ. Madam President, I appreciate the question and description from the Senator from Massachusetts. In fact, it is clearly one element—one very dramatic element—of the Government acting wrongly: deporting someone who had every legal right to be here in this country—making that mistake, and then, realizing they made a mistake, are now trying to find that individual whose life has been turned upside down.

In the process of doing that, under the amendment of the Senator from Iowa, they do not even have a chance to go to court. So the human faces we are talking about here are real. That is not about terrorism.

Now, let me give you another example. The Senator from Massachusetts gave a very vivid one. Let me give you another example of what happens when we do not permit basic due process as a part of our law.

This amendment would eliminate judicial review for all visa revocations unnecessarily, and it unduly expands the already broad discretionary authority of the executive branch. Let me

give you an example—a different case. A foreign government that wants to rein in one of their dissidents provides false information to the U.S. consulate that leads the consul to revoke the visa. This is someone who is speaking against maybe a totalitarian regime, a dictatorship, people who are oppressing people's human rights, but they are here in the United States. They got a visa, and they are here speaking out. That government wants to make sure that person can no longer speak out, so they give false information to the consul, and the consul reviews it and makes a factual determination: Do you know what. This looks right. Let's revoke the visa.

That person, that dissident, struggling to make a difference in the lives of people in that country—we want to see people like that challenging their own systems; we want to see people like that fighting in their own countries so we never have to send our people abroad—that person does not even have one chance to make the case in a court of law that what is being said is false.

Exposing individuals in this country to such arbitrary and capricious action is un-American. We should be striving for more balance and more transparency, not less.

Let me say there is another case, a case decided here in the United States in June of last year, where a U.S. Federal judge issued an order soundly rejecting the Government's contentions against an individual—the same type of case that would not, under this amendment, have access to this type of judicial review where this Federal judge determined that the Government was wrong, the individual was right.

What was the individual saying? He was saying his point of view, which separated him from the administration's point of view. Because it separated him from the administration's point of view, they revoked his visa. The judge held the decision was not a due authority, a use for the revocation of the visa, and that person was allowed to stay simply because they were expressing their points of view different from this administration.

Is that what we want to do? Eliminate the possibility for someone to be able to go to court and say: ''I am being hushed because I have a different point of view. My visa is being revoked with not one chance to go to court''?

By the way, finally, if we are going to talk about terrorism, if I have a terrorist in my possession, under other provisions of law I do not want to deport them. I want to arrest them. I want to throw them in jail. I want to make sure they do not get out of the country to do harm back to this country. Why would I want to deport them? I want to arrest them. I want to jail them under other provisions of law. I want to prosecute them. I do not want to let them go free so they can try to do harm again to the United States.

This amendment actually works to the opposite of our national security interests. I urge my colleagues to oppose it.

Now, let me speak more broadly about the overall immigration effort. Since I have already heard some of the commentaries on the floor, I think it is important for us to have a framework of where this discussion, I hope, will go in a civilized fashion that understands the better angels within us.

From the congressional district I had the honor of representing for over 13 years in the House of Representatives, one can see the Statue of Liberty. You can almost touch it. Ellis Island has been a gateway to opportunity for millions of new Americans. For me, it is a shining example of the power of the American dream, a place that launched millions down their own road to success.

As Americans listen to this debate, I hope they understand and are honest with themselves—whether their family was part of the men and women who made the voyage on the Mayflower or part of the millions who stepped off of Ellis Island or part of those who were brought to this Nation against their will or, if like my own parents, they came to this country fleeing tyranny and searching for freedom—we all have a connection to immigration.

America has a proud tradition as a nation of immigrants and a nation of laws. History is replete with examples of the United States of America being a welcoming Nation. But, unfortunately, very often the public dialog through the years has been less than welcoming. Over the decades, the influx of immigrants of various ethnicities has caused concerns and, in many cases, heated comments against such immigrants to our Nation. In some cases, there were even laws enacted to limit or ban certain ethnic groups from being able to come to the land of opportunity. Let's remember some of this history so we do not repeat it again in these debates.

Before the American Revolution, Founding Father Benjamin Franklin wrote of the influx of German immigrants to Philadelphia:

> Those who come hither are generally the most stupid of their own nation.

Henry J. Gardner, the Governor of Massachusetts in the middle of the 19th century, saw the Irish as a ''horde of foreign barbarians.''

In 1882, Congress enacted the Chinese Exclusion Act, which made it nearly impossible for additional Chinese to enter America. The law was not repealed until 1943, in the middle of World War II, when the United States and China were allies against Japan.

In the early 1900s, H.G. Wells, a British novelist, stated that the arrival of Eastern Europeans, Jews, and Italians would cause a ''huge dilution of the American people with profoundly ignorant foreign peasants.''

Congressman Albert Johnson, coauthor of the Johnson-Reed Immigration Act of 1924, which severely restricted immigrants from Southern and Eastern Europe, and entirely prohibited East Asians and Asian Indians, stated that:

> Our capacity to maintain our cherished institutions stands diluted by a stream of alien blood, with all its inherited misconceptions respecting the relationships of the governing power to governed. . . . The day of unalloyed welcome to all peoples, the day of indiscriminate acceptance of all races, has definitely ended.

Finally—to give you a sense of some of these things that have been part of our past—a 1925 report of the Los Angeles Chamber of Commerce stated that Mexicans are suitable for agricultural work ''due to their crouching and bending habits . . . , while the white is physically unable to adapt himself to them.''

That was in 1925.

These are just a few statements from the past that have taken issue with and criticized the relatives and forefathers of various segments of our Nation's population today.

We must all remember that just in the last Congress the House of Representatives passed H.R. 4437, better known as the Sensenbrenner bill. Beyond the heated rhetoric that existed during the debate on that legislation, the bill itself was shortsighted and even more mean spirited and would have made felons out of anyone who was here in an undocumented status. That bill would have also criminalized citizens of the United States through a much broader definition of smuggling that would have allowed the Government to prosecute almost any American who had regular contact with undocumented immigrants. Luckily, that did not pass.

But today we continue to hear across the landscape of the country hateful rhetoric used to polarize and divide our country on this issue. But we must never allow ourselves to buy into the rhetoric. We must never subscribe to the policies of fear and division, driven by xenophobia, nativism, and racism.

The responsibility is on all of us—not just on Members of Congress, but everyone in this Nation. We must reject the rhetoric of hatred, division, and polarization. We must demand a comprehensive immigration policy that does not denigrate or demonize, but is tough, smart, fair, and humane.

However, on this issue, we must be completely honest with ourselves. Our country's immigration system is unarguably broken. In light of these failures, we must enact tough, smart, and comprehensive immigration reform that reflects current economic and social realities, respects the core values, I hope, of family unity and fundamental fairness, and upholds our tradition as a nation of immigrants.

In the absence of Federal legislation, what is happening is many local governments in my State of New Jersey and, for that matter, across the Nation are passing ordinances to address issues surrounding undocumented immigration in their communities. Unfortunately, many of these ordinances

violate constitutional equal protection guarantees and create divisions in communities that did not exist.

In addition to the moral imperative, our society would greatly benefit economically if we enacted comprehensive immigration reform. Such reform would allow undocumented immigrants to come out of the shadows and fully pay their taxes, ensuring accurate census counts, which translates into equitable funding levels for programs and schools. Additionally, we can reduce law enforcement demands since the need for day laborers, forged documents, and driver's licenses, along with the use of exploitation and human trafficking would largely be shut down.

As to those who don't come forward when such an opportunity is presented, we would be focused on asking: Why are they not coming forward? We would be able to determine who is here to pursue the American dream versus who is here to destroy it.

We need to aggressively curtail unauthorized crossings at the border, protect both undocumented immigrants and American workers from corporations exploiting undocumented labor, and provide a pathway for immigrants to earn—and I repeat: earn—permanent residency in order to ensure our immigration system is safe, legal, orderly, and fair to all.

Our goal should be neither open borders nor closed borders but smart borders. The specter of terrorism in a post-September 11 world creates an even greater imperative for us to succeed in this endeavor. The underlying bill has a whole host of triggers that go to the very heart of those elements.

We have all seen some of the consequences. We have seen lawlessness along the borders. Crime in our border communities is increasing and overwhelming local law enforcement's ability to address these challenges. So-called coyotes, or human smugglers, charge thousands of dollars to bring people into this country, creating a multimillion dollar industry for organized criminal organizations to exploit and fuel their other illegal activities. In fact, several reports have indicated there is more money in smuggling these undocumented immigrants into our Nation than smuggling drugs.

However, history proves it is not enough to rely on enforcement alone, even though I am totally for the enforcement. Over the past two decades, the Federal Government has tripled—tripled—the number of Border Patrol agents and increased the enforcement budget tenfold—tenfold. Yet, despite tripling the Border Patrol and increasing the budget tenfold, these efforts have yet to stop those who have either crossed the border or overstayed their visas. So it is about border protection, but it is also about a more comprehensive effort to make sure you deal with the push-and-pull factors of immigration.

Securing our borders is the first step to ensure an orderly, fair, and smart immigration system, but by no means is it adequate in isolation. We must also crack down on companies that illegally hire undocumented workers—something that is long overdue. I know under the Clinton administration, employers were held accountable for hiring undocumented workers, as 417 businesses were cited for immigration violations in 1999 alone. In contrast, a mere three—three—employers were issued notices of intent to fine by the Bush administration in 2004 for similar violations, making it 22 times more likely for an American to be killed by a strike of lightning in an average year than prosecuted for such labor violations.

So much for enforcing the existing law.

What happened in the span of those 5 years? What happened? Did companies suddenly decide to start abiding by the law by not hiring undocumented immigrants? No. The truth of the matter is, similar to border enforcement, this administration made a conscious decision to look the other way in order to once again serve the interests of corporate America to the detriment of average American citizens.

That is why I support stronger immigration enforcement not only at the borders but at the workplace. Unscrupulous companies that intentionally hire undocumented immigrants do so because they know they can exploit these people without fear of retribution. They know this because undocumented immigrants are forced to hide in the shadows of society and subsequently have no avenues to report labor abuses. Not only does this hurt the immigrant being exploited, it also directly impacts American citizens who must compete in the market with exploited labor. We must immediately end these abuses and in doing so create an equal playing field to ensure that the wages, benefits and health and labor standards of the American worker are not undercut.

While securing our borders and enforcing strengthened workplace employment laws will enable us to regulate the influx of new immigrants, it does nothing to solve our current dilemma of an estimated 12 million undocumented immigrants who currently reside in the United States. That is why our immigration policy must be about more than simply enforcement. It must be about providing a safe, orderly, timely, and legal process that deals with the economic realities of our time.

So in order to make our immigration system overall workable, we must be practical, fair, and humane in dealing with the estimated 12 million undocumented immigrants living in the United States. To do otherwise would require the most massive roundup and deportation of people in the history of the world—in the history of the world. I believe this is both highly unlikely and impractical on many levels, including due to both budgetary and economic impacts on the Nation and its economy.

Such a mass deportation of the undocumented population, even assuming 20 percent could leave voluntarily if such a policy was enacted, would cost us over $200 billion over a 5-year period, according to the Center for American Progress. That is not going to happen. So fully securing our borders is impossible unless efforts to include a temporary guest worker program and a path to earn residence for undocumented immigrants is part of the overall reform.

This solution will encourage immigrants to come out of the shadows and legalize their status. By doing so, we will learn who is here to seek the American dream versus who is here to destroy it through criminal or terrorist acts. Most of the people who cross our borders come looking for work, as many of our ancestors did. These immigrants contribute to our economy, provide for their families, and want a better life for their children.

Let me say I am, first and foremost, in favor of hiring any American—any American—who is willing to do any job that is available in this country today or tomorrow, but let's remember the jobs we are talking about. The fruit you had for breakfast was picked by the hands and bent back of an immigrant laborer. The hotel room and bathroom you use in travels through the country is likely cleaned with bended knee by an immigrant worker. The chicken you had for dinner yesterday was likely plucked by the cut-up hands of an immigrant laborer. If you have an infirmed loved one, their daily necessities are probably being tended to by the steady hands and warm hearts of an immigrant aide. Let us remember that.

So we have to create an equal playing field to ensure that the wages, benefits, health, and labor standards of the American worker are not undercut. But it is also in our best interests to have these workers participate and contribute to our society, especially when we had a 4.5-percent unemployment rate in April of this year and a declining ratio of American workers to retirees.

By coupling enhanced enforcement efforts with new immigration and labor laws, we will not only regulate how workers come into the country but finally give our border and law enforcement agencies a fighting chance to fulfill their duty.

Now, much of what the underlying bill does meets some of these challenges, and I respect those elements. But I wish to talk about one very compelling issue that I believe it does not meet: the importance of family. I said throughout the negotiations that were had, with a massive, complex bill such as this one, the devil is in the details. There are a number of details in this deal that would create an unfair and, in my mind, impractical immigration system, undercutting the more sensible provisions.

This is especially true when it comes to the issue of family. The deal struck virtually does away with a provision for family reunification which has been the bedrock of our immigration policy throughout our history. This idea not only changes the spirit of our immigration policy; it also emphasizes family structure, and all without a single hearing on the issue of family and our immigration system by the Senate Judiciary Committee, either in the 109th or the 110th Congress.

Under this bill, they change the fundamental values of our immigration policy by making an advanced degree or skill in a highly technical profession the most important criteria—the most important criteria—for a visa. This Nation has been built by immigrants who came here to achieve success, but the deal tilts toward immigrants whose success stories are already written. They are already written.

Family reunification will be deemphasized under this deal, serving to tear families apart. From a moral perspective, this undermines the family values I hear so many—in different contexts—so many of my colleagues talk about all the time.

As the late Pope John Paul II said:

> The church in America must be a vigilant advocate, defending against any unjust restriction of the natural right of individual persons to move freely within their own Nation and from one Nation to another. Attention must be called to the rights of migrants and their families and to respect for their human dignity.

Practically speaking, a breakdown of family structure often leads to a breakdown of social stability. I took it to heart when President Bush said: ''Family values don't end at the Rio Grande,'' but this agreement, similar to his proposal before it, belies those words.

Yet here we are with a piece of legislation which the White House promoted that undermines the very essence of that. Even under a new point structure that is envisioned under the bill, it seems to me that the essence of family should be given more weight and points within the context of a whole new process of how we are going to move our immigration system forward. Family, I would hope, even under a new system, is a critical value, in our country.

I would like to take a little time to get into some of the details of this agreement and how they would impact families.

Under current law, foreign-born parents of U.S. citizens are exempt from green card caps when applying for legal permanent residency as they fall in the immediate relatives category. Now, remember, this is someone—a U.S. citizen already—a U.S. citizen or a U.S. permanent resident who has a right—who has a right—to claim their relative. In this case, I wish to talk about parents. Unfortunately, the agreement removes these individuals from the immediate relative category and sets an annual cap for green cards for parents of U.S. citizens at 40,000. Last year, 120,000 visas were given to such parents, and the annual average number of green cards issued over the past 5 years to parents is 90,000, so this bill would slash required green cards by more than half for a U.S. citizen to be reunified with their mother or father. So we are automatically creating a new backlog, even though the bill is intended to end such family backlogs.

Another area that would be negatively impacted under the deal is the spouses and minor children of legal permanent residents of the United States. The bill before us does not lift the visa cap on the spouses and minor children of lawful permanent residents; it actually lowers it, ensuring that backlogs continue indefinitely. The separation is not only immoral in my mind, but it exacts an economic toll, as lawful immigrants who are productive members of society move to rejoin their families. Moreover, unification with immediate family members gives rise to an undesirable incentive to break the law and live in the United States illegally. Families want to migrate to each other, and that is a natural, human instinct. We undermine that in this respect.

Now, the so-called ''grand bargain'' also moves us to a point-based immigration system which would turn current immigration on its head—a system that hasn't received any hearings by the Judiciary Committee. Yet, in the agreement, we are moving to a point system that is geared toward people with degrees who are highly skilled or educated. Fine. We can have people who are highly skilled and educated as part of the equation, but in my mind it shouldn't ultimately undermine dramatically the ability of families to have a fighting chance. In fact, in the point system that is contained in the bill, families would receive no points at all—no points at all, none—unless the applicant has obtained at least 55 points through other elements: employment, education, language. So much for family values under that system, in my mind.

In addition, if the applicant meets the 55-point threshold, they would be eligible for a maximum of 10—a maximum of 10—additional points; that is out of 100 maximum points. I guess that some who preach family values don't believe that family should count for more than 10 percent—10 percent.

Now, this legislation also curtails the ability of American citizens today, permanent residents, to petition for their families to be reunified here in America.

As I mentioned earlier, there is a family backlog of people who have applied for legal permanent residency who are claimed by U.S. citizens. This legislation, as currently drafted, does away with several of the family categories such as adult children of a U.S. citizen and lawful permanent residents and siblings of citizens. These categories will be grandfathered in and dealt with as part of clearing the backlog during the first 8 years but only if you filed your application before May 1 of 2005. What is the consequence of that? The consequence of that is over 800,000 people who have played by the rules, applied under the normal process, didn't come across the border, didn't violate any law, did the right thing, that all of those who did all the right things but applied after that date, will not be cleared as part of the family backlog. They lose their chance under this law.

More importantly, it vitiates—it takes away—the right of the U.S. citizen to have them claimed because they lose it. They have a petition pending under existing law, and yet that petition is gone with the flash of this bill.

So the legislation, as currently drafted, says that if you legally apply for a visa after May 1, 2005, you have to compete under an entirely new system. It is an arbitrary date that was picked out of the thin air.

Let's think of how fundamentally unfair that is. Imagine you are a lawful, permanent U.S. resident. You have fought for your country, you have shed blood for your country, and in some cases, you may have even died for your country. In fact, a noncitizen, a legal permanent resident of the United States, Marine LCpl Jose Antonio Gutierrez, originally of Guatemala, was the very first, the very first U.S. combat casualty in the war with Iraq. Had he not been a combat casualty under this bill, he would not have been allowed to claim his family. If this bill moves forward the way it is, these legal permanent residents are also not only—there are thousands of them in the Armed Forces of the United States, and they are protecting our airports, our seaports, and our ports. They risk their daily lives in Afghanistan, Iraq, and other places around the world to protect us here at home, yet we would do away with their right to petition to have their sister or their brother come join and live with them in America. Under this bill, you lose that right if you file after May 1, 2005. It is hard to imagine that one would have that right taken away from them.

Here is another case for you to consider. You are a U.S. citizen. You have paid your taxes. You may have served your Nation. You attend church. You make a good living. You are a good citizen. You have petitioned to have your adult child come to America, but you did so after the date of May 1, 2005. Under this bill, that U.S. citizen loses their right. However, those who are undocumented in the country after May 1 of 2005, they actually get a benefit under the bill. So if you obey the law, follow the rules, do all the right things, you are a U.S. citizen, paid your taxes, maybe even served your country in the Armed Forces, doing everything you should do, you lose your right to claim your relative under the existing law and be part of the backlog, but the person who came in an undocumented

fashion over the border, they actually will get a benefit as of January 1, 2007. It seems to me that the legal permanent resident, the U.S. citizen, should have at least the same date as those who have not followed the law and the rules. It is hard to imagine, but it is true.

So these are a few of the shortcomings contained in the bill we are moving forward. This deal would have prevented my own parents, a carpenter and a seamstress, from coming to this country. They wouldn't have qualified under this point system. I would like to think that they and others whom I have heard about around this Chamber—I have heard so many stories from my colleagues in the Senate and formerly in the House, talking about their proud history.

Their parents would not have been eligible to come to this country under this bill. I would like to think that, on both sides of the aisle, they have contributed to the vitality of this Nation. I have listened to so many of the stories of our colleagues, and I know many of their parents never would have qualified to come to this country under this bill. It seems to me a new paradigm could have been structured where family values and reunification have more of a fighting chance than under the framework agreement that we consider.

The story of the legislation is not finished. We still have the historic opportunity this week to craft tough, smart, and fair immigration reform. It is my intention, starting, I hope, later today, through a series of amendments, to get to the heart of the issues I have mentioned, to change and to improve this deal. I know many of my colleagues are committed to the same issues of practicality, fairness, and family values, and I will work with them to turn this unworkable deal, in those respects, into sound policy we can all support.

As we have throughout our Nation's long and proud history, I believe we can create a pathway to the American dream for those who contribute to our Nation and allow them to fully participate in our economy and our society. As the President told Congress in this year's State of the Union speech: Let's have a serious, civil, and conclusive debate, so you can pass, and I can sign, comprehensive immigration reform into law.

It is a rare moment, but I agree with the President. Reform is long overdue. I want to just say that I have the greatest respect for the Senator from Massachusetts in his advocacy in this regard. I look forward to trying to—even though he may not be able to support some of these things as part of his commitment to a grand bargain—change it in a direction that we can all be proud of. But for him, we probably would not be on the Senate floor debating this issue today, or in the past, and I admire him greatly in that respect.

However we got here, from wherever we came, we know we are in the same boat together today as Americans, and together I hope we can make this journey a safe, orderly, and legal process that preserves and fulfills the American dream for all, that upholds the right of U.S. citizens to seek the reunification of their families. It takes those who serve our country and who are not U.S. citizens yet and gives us the right to say: You fought for America, you may have been wounded in the process. You have done everything we would want of any citizen. Your right to make a simple claim to have your family reunited for you will not be snuffed out by this legislation.

If we do that, this process deserves our respect. I hope this preserves the Constitution, as well as the due process of law that makes America worthy of fighting for and dying for—the Constitution and the Bill of Rights. When we seek to erode and undo it, we undermine the very essence of America's greatness. Those are our challenges in this debate and also our opportunities.

I yield the floor.

Mr. KENNEDY. Madam President, first of all, I commend my friend from New Jersey for an excellent presentation, particularly on this issue of the Grassley amendment, and for also reminding us about the importance of family in the consideration of our immigration bill.

I think we are going to have an opportunity during the course of the day to deal with those issues in greater detail, and we will look forward to that. I think we have made some important progress in terms of family issues, but I think we have also seen some changes in the existing law in those issues. And it is important for the American people to understand exactly the areas we have made progress in and the areas that we have altered as we deal with this underlying bill.

I wish to take a moment to address the points that are included in the Grassley amendment, which is the pending amendment. Then I understand the Senator from New Mexico will be coming down shortly to offer an amendment that deals with the temporary workers. We will have an opportunity during the noontime to address that issue. Then, according to the leadership, we will have the two votes. If there are side-by-sides, other votes—at 2 o'clock or in the time close to 2 o'clock. I say that for the benefit of our colleagues here.

Madam President, on the Grassley amendment, I think it is important to understand that people who come into the United States under visas have to go through extensive background checks before they are granted visas, and again before they are admitted. We are talking about millions of visitors, about hundreds of thousands of scholars and researchers and workers. These are not criminals or terrorists. Anybody who is a terrorist or criminal is not eligible for a visa.

I will just mention the various crimes that individuals have committed that have denied them the opportunity to come to the United States to get a visa: crimes of moral turpitude, such as aggravated assault, assault with a deadly weapon; aggravated DWI, fraud, larceny, forgery; controlled substance offenses, such as the sale, possession, and distribution of drugs, and drug trafficking; theft offenses, including shoplifting; public nuisance; multiple criminal convictions, any alien convicted of two or more offenses regardless of whether the offense arose from a scheme of misconduct; crimes of violence; counterfeiting; bribery; perjury; certain aliens involved in serious criminal activity who have asserted immunity from prosecution; foreign government officials who have committed particularly severe violations of religious freedom; significant traffickers of persons; money laundering; murder; rape; sexual abuse of a minor; child pornography, as well as attempts or conspiracy to commit most of those offenses.

Those, obviously, who are denied on security-related grounds include espionage or sabotage; engaging in terrorist activity, and that is broadly defined; likely to engage in terrorist activity, broadly defined; association with terrorist activity; representative of a terrorist organization; spouse or child of an individual who is inadmissible as a terrorist; activity that is deemed to have adverse foreign policy consequences for the United States; membership in a totalitarian party.

All of those ban individuals from coming into the United States. So if a visitor here has his visa revoked, he should be entitled to review. This doesn't create a burden on our courts but simply preserves basic due process. Courts review these cases every day, and we have heard no evidence of any undue burden on the courts. These cases can be handled expeditiously.

Immigration judges ordered 220,000 people deported last year. Only 9 percent of these decisions were appealed. We have no abuse in the system at the current time. So providing review to a few more people whose visas are revoked won't flood the courts.

Again, we are talking about the mistakes that can be made with the Department of Homeland Security, as a Member of the Senate, I was put on the no-fly list by the Department of Homeland Security and denied the opportunity to even fly out of the Nation's Capital to go back to my home city of Boston. In Boston, I had the temporary approval by the Department there, which had to overrule Homeland Security. Despite the head of the Homeland Security then saying we have cleared that up, it wasn't cleared up for 3 more weeks, and with the airlines, it was 4 more weeks. If that happens to a Senator, what is happening to other individuals?

I have given the example of a person in my home State of Massachusetts

who was deported. Now the Immigration Service is trying to find that individual down in Guatemala. It was because of similar names.

So I think, as the Senator from New Jersey pointed out, the system we have included in the legislation is appropriate. It is not burdensome. We have had no complaints even during this long period of time. We have had no complaints from any of those who have been involved in the system that it is an undue burden, or any complaints from the judicial system. We have found out that we have 23 different incidents reported by my own Boston office of individuals who are very substantial citizens in New England, including a dean of a medical school, who were put on the list by mistake.

So mistakes happen. All we have in this is a simple process of review. That process has been outlined and stated by the Senator from New Jersey, and it should be preserved.

I look forward to not closing off the time to the Senator from Iowa, but we are trying to move this process along and consider the amendment of the Senator from New Mexico and then see if we cannot continue to consider the follow-on amendments. The Senator from South Carolina has an amendment as well. We will be looking forward to having debate on his amendment.

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

The PRESIDING OFFICER (Mr. CASEY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Massachusetts.

IRAQI TRANSLATORS

Mr. KENNEDY. Mr. President, I wish to take a moment to congratulate the House for moving on the issue of Iraqi translators. I am talking about translators who have worked for the American Armed Forces in Iraq. They have to follow a very detailed procedure, and then they get certified. Most of them have to work on it for more than a year.

These people have been particularly targeted by the terrorists. Their names are printed in mosques and other places of worship, and if they are found, they are executed. We have a limitation, I believe, of 50, and we have taken in 18. Many of these individuals have risked their lives for American service men and women and this legislation will be a very small downpayment in terms of their safety and their security. It is important, and I am hopeful we will be able to address this issue.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from New Mexico.

AMENDMENT NO. 1169 TO AMENDMENT NO. 1150

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I send to the desk an amendment to the underlying substitute and ask for its consideration.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, and Mrs. FEINSTEIN, Mr. OBAMA, Mr. DODD, and Mr. DURBIN, proposes an amendment numbered 1169 to amendment No. 1150.

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

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

The amendment is as follows:

(Purpose: To reduce to 200,000 the number of certain nonimmigrants permitted to be admitted during a fiscal year)

Strike subparagraph (B) of the quoted matter under section 409(1)(B) and insert the following:

''(B) under section 101(a)(15)(Y)(i), may not exceed 200,000 for each fiscal year; or

In paragraph (2) of the quoted matter under section 409(2), strike '', (B)(ii),''.

Mr. BINGAMAN. Mr. President, this is an amendment to reduce the number of visas issued each year under the new guest worker program that is in this bill—reduce it to 200,000. This is 200,000 new visas each year which would be permitted if my amendment were to be adopted.

The amendment I am offering is cosponsored by Senators FEINSTEIN, OBAMA, DODD, and DURBIN. It is essentially the same amendment I offered when we had the debate on the immigration bill last year when we were fortunate to have the support of 79 Senators for the amendment.

Let me talk a little bit about the context of this before getting into the detail of the amendment. The Kyl-Kennedy or Kennedy-Kyl substitute amendment allocates 400,000 new guest worker visas per year, and it has in it also an increase mechanism that allows the annual allocation to go from 400,000 up to 600,000 per year. After a few years, presumably, we would be at a level of 600,000 per year from then on. Workers are allowed to stay for a total of 6 years under this program. They would work for 2 years—and Senator DORGAN described this very accurately as part of the debate on his amendment yesterday—and they would be allowed to work for 6 years; that is, they work for 2 years, leave the country for 1 year, work for an additional 2 years, leave the country for another year, and work for an additional 2 years, then leave for good. That is the structure of the system as it now stands. I can go into whatever details Members are interested in to explain how the increase mechanism provided for in the law is structured, but before I get into that, let me just talk about the larger context.

This bill, the Kennedy-Kyl substitute, contains really three so-called temporary worker programs which are very distinct, and individuals can come to our country and work in our country under any of these three programs.

One program is what I would refer to as the true temporary worker program, and that is where you bring people in for seasonal work. Clearly, that is something we have done for a long time. I think the limit in the law today is 66,000 are permitted to come in each year for temporary work—to work at resorts or work in some kind of a seasonal job—and then that 66,000 is then allowed to be increased to reflect those who have come the previous year or two. In fact, I think the estimate I have seen is that there are about 135,000 people in our country each year doing that kind of temporary seasonal work.

This bill, this Kennedy-Kyl substitute, would change that 66,000 to 100,000. It would contain an increase mechanism similar to what is in this new guest worker program, and so the 100,000 would eventually go to 200,000 after a few years. As I understand it now, there is also written into the law, written into the substitute, a provision that says the 200,000 number for the seasonal guest workers does not include people who have been here under that same program working in any 1 of the previous 3 years. Obviously, you have the potential for a great many more than 200,000 to come in as seasonal temporary workers under that provision.

Another separate provision of this substitute bill which allows for temporary workers to come in is the agricultural workers program. I point out to my colleagues, that is without limit. There is no cap on that. There is a tremendous opportunity for people to come into this country and work in agriculture. We do not have numerical limits on that, so, to anyone who says we are not going to be allowing people to come into the country to do the work Americans don't want to do, the truth is, if they want to do work that is related to agriculture, we can bring them in, in whatever numbers, without any limits being imposed by this law.

The third opportunity to come in as a so-called temporary worker is this new guest worker program. This is a little bit of a misnomer, when we talk about temporary worker, because these are permanent jobs that we are bringing people in to fill. People need to understand that. These are not temporary jobs, these are permanent jobs. We are bringing people in for a temporary period, or a designated period of 2 years, three different times, to do the work.

But these are not temporary jobs in the same sense that a seasonal job is a temporary job—that you have it for a few months and then the ski resort closes and you no longer have a job. That is not the kind of jobs we are talking about.

As I see it, there are several fundamental problems with this guest worker program as it is currently constructed. The most significant problem is the bill anticipates letting way too many people come into this country in a new, untested program. This is a new program. There is nothing in the current law that is comparable to this new guest worker program that we are talking about. The amendment I and my cosponsors are offering tries to restrict the size of the program until we find out how it is working, until we figure out whether this makes sense. Let's not build into the law automatic increases in a program we have never tested before. Let's not start this program at 400,000 and have it escalate up to 600,000. The amendment I am offering is trying to bring down the size of the program.

Another problem with the program is the structure, and I described that. This idea we are going to bring people in for 2 years, kick them out for 1 year, bring them in for 2 years, kick them out for 1 year, is not good for the employee, obviously. That is not good for the employer, obviously. It is not a realistic expectation. I think anyone would have to recognize that is not a good structure.

The third problem I have with the bill is there is no real avenue for any of these individuals we are talking about to ever gain legal status, so we are creating a group of workers who have come to this country and worked for 2 years or 4 years or 6 years, to whom then we are saying: Your time is up, go home. There is a tremendous likelihood that we are going to have a lot of people staying over and overstaying their visas. I think that is unfortunate.

That is a change from the previous legislation. We passed that bill Senator KENNEDY brought to the Senate floor last year and I supported it. There was a much more realistic opportunity for people who came in under the guest worker program to pursue legal status at some time, so the incentive to essentially go underground to try to avoid deportation was not the same in that bill.

I think the most significant thing we can do at this point to try to correct the most significant problem with this guest worker program is to reduce the number. Let me show a couple of charts, for my colleagues to understand what we are talking about.

The current bill calls for 400,000. The first year this law is in effect, 400,000 are permitted to come in under this guest worker program. Then there is a complicated process if that total is reached. If there is a demand to bring in 400,000 during the first half of the year, then there is an automatic increase of 15 percent. So you bring in an additional 15 percent at that point, which is 60,000, so you are at 460,000. You start the next year at 460,000, but you add another 15 percent to that immediately, and if there is another demand, using up all of those, you can go up another 15 percent.

In any event, it rachets up pretty rapidly. It says if the 400,000 is not used up until the second half of the year, then there is only a 10-percent increase each year from then on.

What we have done on this chart—and I think people need to try to understand this—is we have tried to show with this graph how many so-called guest workers under this program—not under the other two, not under the ag workers program, not under the seasonal workers program but under this program—how many people we would actually have in the country as the bill is currently written. You would have 400,000 the first year; the second year you would have 840,000 because you would have the first 400,000, plus the second 400,000, plus the increase, 10 percent. You would have 924,000 the third year, you would have 1.4 million the fourth year, you would have 1,958,000 the fifth year, and this keeps going up so, by the eighth year, you would have 3,158,000 people in the country legally working under this program.

There is a very important assumption built into this chart. The assumption is that everybody who comes in under this program goes home when their visa says they ought to go home; nobody overstays his or her visa. If, in fact, that assumption is false and people get to the end of their 6 years and say: Wait a minute, I am not ready to leave the United States, I am staying, and they stay here on an undocumented basis at that point and overstay their visa, then they go on top of these numbers.

So you have a tremendous number of new people. This is a brandnew program. We have never had this program before. I think that is too large.

Let me show what the amendment I am offering does. I did not support Senator DORGAN's proposal to eliminate the guest worker program entirely. I think there is a legitimate argument that some number of guest workers is appropriate to bring into the country to do some of the work. But as I say, this is a brandnew program and we ought to do this in a judicious way and feel our way along. In this proposal that I have put forward, it says let's bring in 200,000 the first year and 200,000 each year after that and see how this goes. We can make judgments and we can alter this in future years. Congress meets every year, so we can alter this if we decide that is not the appropriate number. But let's start with a number that we think makes sense.

Even at that very substantial reduction, we would wind up in the eighth year with 1.2 million people in the country under this program, legally working as guest workers. It is not that there are going to be 200,000 people working here each year, there are going to be 1.2 million people working here each year. Again, the assumption is there will only be 1.2 million, assuming everyone goes home when their visa says they ought to go home, which I think is a fairly questionable assumption.

That is what the amendment does. I think it is a far better way for us to proceed than what the underlying bill calls for. I know there are some who are coming forward and arguing that this is terrible, that we are not going to have enough people to keep the economy running, that there are going to be all kinds of jobs going unfilled. I point out again that there are other ways people can come to our country and obtain employment. They can do so under the seasonal workers program, which is being increased very substantially under the bill. They can do so under the ag workers program, which has no limits on it at all. Of course, there are other ways that people can immigrate into our country that are provided for in the legislation as well.

This is an amendment that I think makes all the sense in the world. I was very pleased we had such strong support for it when we offered it in the previous debate that we had on immigration last year. I hope we can adopt it again this year. By doing so, I think we begin to bring a little more judiciousness to this process if we are going to start a brandnew program.

Let me also point out there is provision in this legislation for a commission to be established to review how this new program is working and to make recommendations back to the Congress. I think that is entirely appropriate. To me, that is another reason why we should not be building in automatic escalators in the size of this program. We should not be starting with a program that is so large as 400,000 and going up to 600,000. We should start at 200,000 and keep it right there until we get those recommendations and find out what we think at that point about whether to increase the size of the program or terminate the program or whatever steps we might take at that point.

That is the basic gist of my argument. I hope colleagues will support the amendment. I think it is a meritorious amendment. I think it will improve the legislation substantially.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I commend my friend from New Mexico for his thoughtful presentation on this issue. As he mentioned, he offered this amendment last year and it passed overwhelmingly. I expect there will be a similar result today.

I appreciated the fact in our earlier debate he understood we need this temporary worker program. All of us want to have a strong border, but we do understand there will be pressure on the

border, and we will either have a front door or a back door, the back door being for those who are going to try to penetrate that border, or the front door so they can come in and have a temporary worker program.

The real issue is the size of this program. The Senator has mentioned the other provisions that are included in the legislation. We have the longstanding temporary worker, the H–2B, which is about 100,000 workers. Those are the seasonal workers, for the most part, who work in many of the resorts during the summer or wintertime and are truly temporary workers. They are entitled to bring their families. They do not. That program has been very modestly expanded over this program.

You have the H–1B, which is sort of high tech, which is 150,000—it will go up to 180,000; and the ag jobs, which is 40,000 to 60,000.

The reason the 400,000 was reached is that is the general estimate, although there are some a good deal higher, of individuals who penetrate now. I think it is safe to say it is probably closer to 500,000 undocumented who come across the border and are able to gain employment here. So the 400,000 represented an evaluation, an estimate from results of hearings. That is how we built that in. Then, in the legislation, there is the possibility it can either go up or go down. The Council of Economic Advisers thinks we need probably close to a million new jobs every year.

I think what we, in our considerations, were thinking about establishing is some panel that would be made up of workers as well as members of the business community and people who could help give an assessment, and make a recommendation of what that number would be.

I think that is probably the best way to go in the future. But that is not where we are today. Where we are today in the bill is 400,000 and the possibility of an escalator to go up or an escalator to go down.

The Senator says: Let's start off in this area, we are not sure how this program is going to work. Let's start off with just 200,000, watch it very carefully, find out if the kind of mix we have with this and with the point system we have been able to develop is going to function and work, whether after 2 years people will really go back or they will not go back.

I think he makes a strong case. I did not support this last year. I feel sort of compelled—under the agreements we have made earlier in terms of the totality, I feel the same restraint this time. But I commend him for the thoughtful presentation. It was thoughtful last year, and it is thoughtful this year. He makes his points very effectively. It ought to be considered by the Members. I do not, as I mentioned, tend to support it, but I certainly would ask our colleagues to look at it very closely because it is a thoughtful presentation. He raises some very important and worthwhile points.

I thank him also for coming over here and offering this amendment. I think the time has been set for voting at 2 o'clock.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MENENDEZ.) The senior Senator from Pennsylvania.

Mr. SPECTER. Mr. President, it is obviously hard to calculate what is the precise figure among the Senators who crafted the so-called ''grand compromise.'' We thought the figure we had here was correct. We are aware that the Senator from New Mexico offered an amendment last year and was successful in reducing the amount to 200,000. But I think either figure would be understandable. But I will stand by what we have worked out in the bill.

In arriving at the compromise legislation which has been proposed, there was a great deal of give-and-take. While we are facing a tremendous number of objections from both sides of the political spectrum, for every point someone does not like, there were concessions made by others for some points the person does like. There is no doubt that we are facing very substantial criticism in the initial stages of the consideration of this bill. The criticism came before the bill was even printed. The criticism has continued after it was printed, before people had a chance to read it. There is a great deal of analysis and consideration being undertaken at the present time.

I think Senator LOTT has expressed the issue very succinctly; that is, do we have a problem? The answer to that is, categorically, yes, we have an enormous problem. We have a border which is porous. We have anarchy in the way the immigration system works at the present time. People are complaining that it is amnesty. In my legal judgment, it is not. It is not amnesty because people have to pay a fine, people have to have a job, people have to contribute to our society, people have to pay their taxes, people have to learn English, people go to the very end of the line, are not even considered until they have been here 8 years, and it may take as long as 13 years. That is not amnesty.

But the fact is that these 12 million undocumented immigrants are going to be here whether we pass this bill or not. The only difference will be whether they will be here in a way where we regulate their presence here. If we have a registration system, we will have an opportunity to identify people who ought to be deported. It is not practical to deport 12 million people. But when we cull through the list, we may find those who should be deported, if in a practical sense they can be deported. To deport someone, you have to take them into custody. Then you have to have detention facilities, and then you have to have judicial proceedings. It is a total impossibility to think of deporting 12 million undocumented immigrants, but at least we would move toward regulation.

As part of the comprehensive system, we are structuring border security as outlined by the Secretary of Homeland Security, Michael Chertoff. The entire border would be covered either by fences, by obstacles, or by drones. So the entire border would be covered, fences covering the populated areas.

It is not possible to structure border security so that no one slips through, but by moving toward employer verification, we will be eliminating the magnet. Until we have a system to positively identify who is legal and who is illegal, you cannot impose tough sanctions on the employers. But now that we have that system, those tough sanctions can be imposed, and that has the objective, a realistic objective, of eliminating the magnet.

There is great distrust, and understandably so, as to whether the enforcement procedures will occur. Bear in mind that there are preconditions to having the guest worker program or the processing of the 12 million undocumented immigrants.

I think it is fair criticism that since the 1986 legislation, no administration, Democratic or Republican, has enforced the law. There are ideas which are now being formulated to move to a very prompt appropriation immediately after the bill is passed—if and when it is passed—so that we have a structure here.

Senators LOTT's first question is: Do we have a problem? Yes. Is this bill an improvement? Yes. Again, categorically. Will there be a better chance at a better time to improve the system? Categorically, no. If we do not get it done at this setting, as we are moving ahead, hopefully shortly after the Memorial Day recess, then we are off into the appropriations process, and next year is an election year. So that if not now, if not never, certainly not soon.

When we come to the Bingaman amendment, as I say, my preference is to stick with the bill. A certain understanding has been reached among those who were parties to the negotiations of the structuring of the bill to stand together on it. If the Bingaman amendment is adopted, then it is my hope we will retain the adjustment features so that if we find that more or fewer guest workers are necessary for our economy, realizing they perform a very vital function in so much of our economy, in the restaurants and the hotels, on the farms, landscaping, so many facets—talked about that yesterday with the hearings which we held in the Judiciary Committee last year, cited the economists who testified about the importance of immigrants in our economic structure—I hope we will at least retain the so-called adjustor factors so we can make adjustments should that become necessary.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, first of all, let me take a moment to acknowledge the senior Senator from

Pennsylvania, the Senator from Arizona, the Senator from Massachusetts, Mr. KENNEDY, for their leadership and Herculean efforts on this legislation. In the spirit of praise I heard just a moment ago from the Senator from New Mexico on bringing judiciousness to this process, I rise in opposition to amendment No. 1166 offered by the very distinguished Senator from Iowa, Mr. GRASSLEY. The amendment would eliminate judicial review of removal proceedings where revocation of a visa is the sole ground for removal. That may sound technical and complex, but the amendment is actually quite simple in the way it works. It means that if the State Department should wrongly decide to revoke a visa, whether through bureaucratic error or misjudgment, and then the Department of Homeland Security tries to remove you from the United States, you have no opportunity to have your case heard in Federal court; the case ends at the Board of Immigration Appeals.

It means a dissident lawfully admitted to the United States on a visitors visa could find himself giving a speech one day and then the very next day learn the Department of State revoked his visa based on false information provided by his home country. The dissident may even risk punishment upon return to his home country. But there will be no means to fight his removal in Federal court. The amendment means that when DHS invokes the ideological exclusion provision which allows the Government to exclude anyone from the country who endorses or espouses terrorism or persuades others to support terrorism, there is no judicial check to make sure that is, in fact, what is going on, and that great power is not being abused.

As U.S. district judge Paul Crotty wrote in an opinion last year, rejecting the Government's efforts to exclude a Swiss citizen who had a visa to teach religion, conflict, and peace-building at Notre Dame University.

> While the Executive may exclude an alien for almost any reason, it cannot do so solely because the Executive disagrees with the content of the alien's speech and therefore wants to prevent the alien from sharing this speech with a willing American audience.

That is exactly the kind of case which would be barred by the amendment we are debating. What is the basis for this change? How can it be that review by a Federal court under these circumstances is such a serious burden to the Government that it must be eliminated? Are the courts clogged with these cases? Is it too much to require DHS to submit to a modicum of checks and balances before it exerts its power to expel someone under these circumstances? Judicial review of visa revocation is already severely limited—so severely limited, in fact, that the subject of this amendment is the only area remaining in which somebody can still seek judicial review of a removal order.

Too often, we are obliged to defend basic principles of American democracy—in other circumstances, the great writ of habeas corpus; here, the core principle of separation of powers and judicial review. We should not trample lightly on our founding principles.

I have said over and over that the cornerstone of any comprehensive immigration package must be strengthened security at our borders, enhanced workplace enforcement, and a sensible, practical solution for the 12 million people already living illegally in this country. But strong security means smart security, and smart security must include respect for the administration of justice, including our great American system of checks and balances, and a realization that sometimes the Government gets it wrong.

This amendment, by further limiting the authority of Federal courts to hear removal cases, goes too far. I ask my colleagues to oppose it.

I yield the floor and 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. NELSON of Florida. 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. NELSON of Florida. Mr. President, I ask unanimous consent to speak as in morning business.

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

The Senator from Florida is recognized.

(The remarks of Mr. NELSON of Florida are printed in today's RECORD under ''Morning Business.'')

Mr. NELSON of Florida. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BROWNBACK. 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. BROWNBACK. Mr. President, I rise to speak on the immigration bill, the underlying amendment.

I am delighted we are taking up this issue dealing with immigration. I am glad we are debating this important issue in the Senate and that the majority leader has dedicated 2 weeks to do this bill. I think we need at least that period of time to delve into this issue. I have worked on it before. I have served on the Judiciary Committee. It is a tough topic, and it needs a lot of debate.

Immigration is an issue which has seized Americans across the Nation. People are torn trying to balance two fundamental American principles: one, of being a rule of law nation; and, second, trying to be a compassionate society. Here I think we do not need to mitigate either of these desires, that we can do both of them. But it is difficult and the details matter.

America is a nation of both justice and compassion. The two are not mutually exclusive. But reconciling the two is sometimes difficult, as we find in this debate.

Currently, we have, we think, somewhere around 12 million illegal immigrants in our country. The number is growing. In 1987, there were roughly 4 million undocumented immigrants in our country; in 1997, there were roughly 7 million; and today, in 2007, there are somewhere around 12 million. In addition, according to the Pew Hispanic Center, annual arrivals of illegal immigrants have exceeded the arrival of legal immigrants since 1985. That is not the trend we want.

The reality is our immigration system is seriously broken and needs to be fixed. Some people think the solution is to grant undocumented immigrants amnesty as we did in 1986, but that won't work. Others think the solution to the problem is to simply enforce the laws we have and kick everyone out. We have taken a serious look at this option, and although our enforcement efforts over the last year have dramatically increased, I do not believe this answer alone will work either.

The office responsible for detaining and removing illegal immigrants is the Office of Detention and Removal, DRO. It is a division of U.S. Immigration and Customs Enforcement, the largest investigative agency in the Department of Homeland Security. You may be surprised to know that the DRO is actually quite large, despite the relatively small impact they are able to have. DRO includes 6,700 authorized employees, including nearly 5,300 law enforcement officers and 1,400 support personnel. To put this in perspective, the number of DRO law enforcement officers is just under half as large as the number of FBI special agents. With these resources in 2006, ICE, Immigration and Customs Enforcement, removed 187,513 illegal aliens from the country—a record for the agency and a 10-percent increase over the number of removals during the prior fiscal year. If you do the math, though, that works out to roughly 28 illegal aliens deported per DRO employee per year or 35 deportations per law enforcement officer per year. At that pace, if we shut down the border to a point at which no one crosses illegally, and successfully end 100 percent of the visa overstays and double the number of DRO agents, then it will take us 25 to 30 years to deport the estimated 11 million to 13 million illegal aliens who are currently in the United States.

As a matter of national security, we can't afford to wait 30 years to know who is in our country illegally. For the sake of our national security and our Nation's future, we need to solve the immigration problems facing our Nation now. The comprehensive bill before the Senate goes a long way toward

enabling us to fix our immigration system and the problem of illegal immigration. I might point out that people are not opposed to immigration, they are opposed to illegal immigration, and we need to get the legal system to work and fix the problems in it. I believe we need a multifaceted approach to the complex immigration problem we are facing, and the compromise bill before the Senate now will enable us to take significant strides toward fixing the problem.

That said, there are certain aspects of the bill I wish to change. I look forward to the opportunity to do so through the amendment process and to see whether I can support the final product.

With respect to solving the immigration problem, we must first and foremost secure the border, and this bill appears to do that. Section 1 of the bill ensures that we don't repeat one of the biggest mistakes of the 1986 amnesty of implementing immigration reforms without increasing border and worksite enforcement. The triggers in section 1 require the DHS Secretary to certify in writing the following border and worksite enforcement measures are funded, in place, and in operation before—before—initiating a guest worker program or issuing Z visas to current undocumented immigrants. These are the triggers: 18,000 Border Patrol hired; construction of 200 miles of vehicle barriers and 370 miles of fencing; 70 ground-based radar and camera towers along the southern border; the deployment of 4 unmanned aerial vehicles and supporting systems; ending catch and release; resources to detain up to 27,500 aliens per day on an annual basis; the use of secure and effective identification tools to prevent unauthorized work; and the receiving, processing, and adjudication of applications for Z status.

I go through the details because the details really matter in this bill.

In addition, the bill authorizes enhanced border enforcement, including a national strategy for border security, 14,000 new Border Patrol agents by 2012, doubling the current force; 2,500 new Customs and Border Protection officers by 2012; 3,000 new DHS investigators by 2010; 24,000 new detention beds by 2010; enhanced surveillance, using unmanned aerial vehicles, as I mentioned; cameras, sensors, satellites, and other technologies.

That is not enough for just taking care of the border. We also have to go to the workplace. Most people are attempting to enter the United States illegally to work. I think we have to focus on what we do at the workplace. I think we need to implement a smart worksite enforcement system, smart and tough. The primary reason for illegal immigration, as I stated, is employment. If we eliminate a person's ability to unlawfully gain employment, then we will dramatically reduce the incentive for illegal immigration. This bill includes several measures that enhance our ability to enforce immigration laws at the workplace: increasing penalties on employers who knowingly hire illegal immigrants; requiring DHS to issue a tamper-resistant work authorization document with biometric information; allowing the Commissioner of Social Security to share information with DHS so they can go after those who use fraudulent Social Security cards to gain employment; creating an employment eligibility and verification system that requires employers to electronically verify a prospective employee's work authorization.

The robust worksite enforcement system included in this bill fixes a huge hole in our current system and should curtail the use of false documents to fraudulently obtain employment.

Now let's look at the immigration system reforms. The most significant immigration reform this bill makes is the implementation of a merit-based immigration system—and this is a big shift—to choose the best and the brightest of those coming into our country. This doesn't mean we should only allow rocket scientists or brain surgeons, but education is and should be a factor. The merit-based system under the bill does that. It sets up a system in which immigrants can earn points in four categories: education, employment, English proficiency, and family.

In addition to the merit-based system, this bill ends chain migration for extended family, while preserving family unification for the immediate family. I think that is an important distinction, that we want family reunification for immediate, nuclear family, but we don't want the chain migration system for extended family members. This is an important change.

I am one of the staunchest supporters of family in the Senate. I don't think our immigration system should blindly favor, though, non-nuclear families such as siblings and adult children over skilled workers who are coming to apply their trade and contribute to our economy. It seems to me this is an appropriate balance. Throughout this bill, what we are trying to accomplish is an appropriate, workable balance for the good and the future of this Nation.

On the temporary guest worker program, once we are able to secure the border and implement worksite enforcement enhancements, we need to reform our immigration system to create sufficient legal means for well-meaning workers to come to our country and to work. The temporary guest worker program in this bill does that, while at the same time protecting American workers and wages by: requiring employers to advertise jobs to U.S. workers first; requiring employers to advertise pay, a wage equal to that of an average wage for the particular job or industry, particular in that region of the country; and prohibiting a temporary guest worker from working in a county that has 7 percent unemployment or higher.

I think there are some important changes that need to be made in the bill. As I have said, the compromise bill before us does a lot of good, but I think it is far from perfect and needs improvement.

To give some examples, section 601(h) of the bill gives certain immigration benefits to undocumented immigrants who seek ''probationary'' status, and states that an undocumented immigrant can obtain no probationary benefits until the alien has passed all appropriate background checks, or until the next business day, whichever is sooner. So you have a 24-hour check period. That is insufficient, if they want to look into the background of an individual seeking this probationary status. I will seek to change that particular provision. The impact of this provision is that 12 million or more undocumented immigrants could receive lawful status, the right to work, and other such benefits even if a background check cannot be completed in time.

I think the problems with this provision are significant and obvious. First, in a post-9/11 world, it is misguided at best and dangerous at worst to grant millions of people unlawfully present in the United States lawful status, even if a background check has not been completed. That is not wise. Second, there is no evidence that the Department of Homeland Security is capable of conducting cross-departmental and cross-governmental background checks, let alone a million of them, or millions of them, in a 24-hour time period. Third, many records relevant to a background check are not electronic and/or are not in possession of or otherwise accessible to the Federal Government, suggesting that more than one business day may be required for a thorough check, and a thorough check we must do. This is an important issue with potentially grave consequences for our national security.

I have filed an amendment to change this provision so no one would receive any immigration benefits without passing a background check. I would urge my colleagues to support this amendment.

In addition, I think the bill should require followup background checks when Z visa holders apply to extend their visa beyond the initial 4 years. As the bill is drafted, it leaves that decision to perform a background check up to the Secretary of Homeland Security.

I think we need to be able to have removal proceedings for ineligible Z visa applicants. Section 601(d) of the bill lays out certain grounds of ineligibility for a Z visa, which include multiple criminal convictions, controlled substance trafficking, trafficking in persons, and even terrorist activity.

The very same section also states:

> Nothing in this paragraph shall require the Secretary to commence removal proceedings against an alien.

The obvious question is: Why not? Why should DHS not be required to immediately begin removal proceedings against someone who is ineligible for a Z visa because they are a criminal or a terrorist? I think DHS should be required to begin removal proceedings or at the very least take steps toward removing such people from the country.

The two main reasons for providing undocumented immigrants the ability to obtain a Z visa are to separate those who are here with good intentions to work and support their families from those who intend to do us harm; and second, to create a system where people have a legal status. In order to successfully do this, this provision needs to be changed so when an individual is found to be ineligible to remain in the country legally under this program, they are removed.

In conclusion, I look forward to continuing this debate on this bill on these issues I have identified and others to strengthen this bill. As many Members have said, this bill is not perfect and can certainly be improved in ways I have noted and in others. But we can't use the bill's imperfections as an excuse for doing nothing for a system that is clearly broken.

I look forward to offering these amendments to improve the bill, and I look forward to hearing some of the ideas my colleagues in the Senate have as well. At the end of the day, I hope we can pass a bill the President can sign, so we can say we did something to improve America by enacting immigration legislation that secures our borders, restores respect for our laws, and creates an immigration system that works.

Mr. President, I yield the floor.

Mr. OBAMA. Mr. President, I ask unanimous consent that at 2:20 p.m. today, there be 4 minutes of debate prior to a vote in relation to the Bingaman amendment No. 1169, with the time divided as follows: 2 minutes under the control of Senator BINGAMAN, and 1 minute each under the control of Senators KENNEDY and SPECTER or their designees; that without further intervening action or debate, the Senate proceed to vote in relation to the amendment, with no second-degree amendment in order prior to the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. OBAMA. Mr. President, I wish also to speak to the bill.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, last year, I spoke at one of the marches in Chicago for comprehensive immigration reform. I looked out across the faces in the crowd. I saw mothers and fathers, citizens and noncitizens, people of Polish and Mexican descent, working Americans, and children. What I know is these are people we should embrace, not fear. We can and should be able to see ourselves in them.

I do not say that to diminish the complexity of the task. I say it because I believe that attitude must guide our discourse. We can and should be able to fix our broken immigration system and do so in a way that is reflective of American values and ideals and the tradition we have of accepting immigrants to our shores.

I think the bill that has come to the floor is a fine first step, but I strongly believe it requires some changes. I am working with others to improve it.

In approaching immigration reform, I believe that we must enact tough, practical reforms that ensure and promote the legal and orderly entry of immigrants into our country. Just as important, we must respect the humanity of the carpenters and bricklayers who help build America; the humanity of garment workers and farmworkers who come to America to join their families; the humanity of the students like my father who come to America in search of the dream. We are a Nation of immigrants, and we must respect that shared history as this debate moves forward.

To fix the system in a way that does not require us to revisit the same problem in twenty years, I continue to believe that we need stronger enforcement on the border and at the workplace. And that means a workable mandatory system that employers must use to verify the legality of their workers.

But for reform to work, we also must respond to what pulls people to America and what pushes them out of their home countries. Where we can reunite families, we should. Where we can bring in more foreign-born workers with the skills our economy needs, we should. And these goals are not mutually exclusive. We should not say that Spanish speaking or working class immigrants are only good enough to be temporary workers and cannot earn the right to be part of the American family.

With regard to the most pressing part of the immigration challenge—the 12 million undocumented immigrants living in the U.S.—we must create an earned path to citizenship. Now, no one condones unauthorized entry into the United States. And by supporting an earned path to citizenship, I am not saying that illegal entry should go unpunished. The path to permanent residence and eventual citizenship must be tough enough to make it clear that unauthorized entry was wrong.

But these immigrants are our neighbors. They go to our churches, and their kids go to our schools. They provide the hard labor that supports many of the industries in our country. We should bring them out of hiding, make them pay the appropriate fines for their mistakes, and then help them become tax paying, law-abiding, productive members of society.

I am heartened by the agreement that we have to put all 12 million undocumented immigrants on a path to earned citizenship. I applaud those who worked on this compromise. But there are other parts of the compromise deal before us that cause me serious concern. Let me briefly address some of those concerns.

In order to stem the demand for illegal workers, we need a mandatory employment verification system that is actually mandatory. It needs to allow employers to check with the Department of Homeland Security to see that their employees are legally eligible to work in the United States. This is something I worked on last year. But this year's version of the employment eligibility verification system would give DHS too much power to force the screening of everyone working in America without appropriate safeguards. I will be working with others to offer an amendment to make this provision closer to what we proposed last year.

As for the guestworker program in the bill, it proposes to create a new 400,000 person annual temporary worker program that could grow to 600,000 without Congressional approval. And it expands the existing seasonal guestworker programs from 66,000 up to 100,000 in the first year and 200,000 after that. At the end of their temporary status, almost all of these workers would have to go home. That means at the end of the first three years, we would have at least 1.2 million of these new guestworkers in the country with only 30,000 of those having any real hope of getting to stay. I believe we are setting ourselves up for failure, and that will just create a new undocumented immigrant population.

As we have learned with misguided immigration policies in the past, it is naive to think that people who do not have a way to stay legally will just abide by the system and leave. They won't. This new group of second-class workers will replace the current group of undocumented immigrants, placing downward pressure on American wages and working conditions. And when their time is up, they will go into the shadows where our current system exploits the undocumented today.

I will support amendments aimed at fixing the temporary worker program that Senator BINGAMAN and others will be offering. And if we're going to have a new temporary worker program, those workers should have an opportunity to stay if they prove themselves capable and willing to participate in this country.

But the most disturbing aspect of this bill is the point system for future immigrants. As currently drafted, it does not reflect how much Americans value the family ties that bind people to their brothers and sisters or to their parents.

As I understand it, a similar point system is used in Australia and Canada and is intended to attract immigrants who can help produce more goods. But we need to consider more than economics; we also need to consider our Nation's unique history and values and what family-based preferences are designed to accomplish. As currently

structured, the points system gives no preference to an immigrant with a brother or sister or even a parent who is a United States citizen unless the immigrant meets some minimum and arbitrary threshold on education and skills.

That's wrong and fails to recognize the fundamental morality of uniting Americans with their family members. It also places a person's job skills over his character and work ethic. How many of our forefathers would have measured up under this point system? How many would have been turned back at Ellis Island?

I have cosponsored an amendment with Senator MENENDEZ to remove that arbitrary minimum threshold of points before family starts to count and to bump up the points for family ties.

And at the appropriate time, I will be offering another amendment with Senator MENENDEZ, to sunset the points system in the bill. The proposed point system constitutes, at a minimum, a radical experiment in social engineering and a departure from our tradition of having family and employers invite immigrants to come. If we are going to allow this to go forward, then Congress should revisit the point system in five years to give us time to examine the concept in depth and determine whether its intended or unintended consequences are worth the cost of continuing the experiment or whether we should return to the existing system that allows immigrants to be sponsored through family and employers.

In closing, we must construct a final product that has broad bipartisan support and will work. I agree with Senator BROWNBACK that the time to fix our broken immigration system is now. If we do not fix it this year, I fear that divisions over the issue will only deepen and the challenge will grow.

I also believe that we have to get it right. I think it is critical that as we embark on this enormous venture to update our immigration system, it is fully reflective of the powerful tradition of immigration in this country and fully reflective of our values and ideals.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I inquire, is the pending business the Bingaman amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. SESSIONS. Mr. President, I will speak on that. I support the Bingaman amendment. It is sort of instructive in a number of different ways for us in the Senate because I don't know how the number 400,000, for the first year of the program, got accepted as the number that we would have in the temporary worker program. The temporary worker program is a new way of doing business that I think has great potential, although I am concerned about how it can be effectuated in its details. The temporary worker program is now in addition to the permanent citizenship track that we have in our country—the track where you get a green card and then move on to citizenship.

So the temporary worker program is designed to create an opportunity for people who want to come into America and work for a period of time but who do not desire or may not be accepted on the citizenship track. It makes some sense to me. We have had a portion of our State damaged in Hurricane Katrina, and Mississippi and Louisiana have been severely damaged; tremendous reconstruction is being done. That created a real shortage of labor. Anybody can say that area of the country—at least for a certain period of time—needs additional labor, and temporary workers could help fulfill that and other needs in the country.

I wish to say that the temporary worker program, as I understand it in the legislation—remember, it was dropped in Monday night; that is the first time it has been filed as part of the legislative process in the Senate, and no hearings have been conducted on it—the 400,000 would be for 2 years. So you would have 400,000 come in year one of the bill's passage. They would stay for 2 years. The year after the first group gets here, another 400,000 would come the next year. So it is 800,000, at a minimum, after the first year. So that is a lot of people who would be coming in on the temporary worker program.

I am not aware that we have ever done any research or gone out and actually studied how many temporary workers we need. Apparently, the conferees—this group I affectionately call the ''masters of the universe,'' who met and came up with this 400,000 number, talked to some interest groups out here, and they got an idea somewhere about how many it ought to be. I don't know how they reached that number. I will say this to my colleagues. Earlier this year, when this proposal was raised about a temporary worker program and expressed to me in a way that could actually work, I thought it was a good idea. That is why I voted—reluctantly—against Senator DORGAN's amendment, because I think we need a temporary worker program. But when I asked how many, a member of the Bush administration said 200,000. So now it is 400,000 and over 2 years it becomes, at a minimum, 800,000, and there are accelerators in it that indicate to us—the way my staff calculated the numbers—and I think we are fairly accurate—it would be, in 2 years, almost 900,000 temporary workers alone, not including their family members. So I am not sure that is correct. Professor Borjas at Harvard, himself a Cuban refugee who has studied immigration more deeply than anyone in the country, I would suspect, has written one of the more preeminent books, ''Heaven's Door,'' that deals statistically and quite methodically with immigration and its consequences and how it works out.

It is calculated that the low-income workers in America have received an 8-percent reduction in their wages as a result of a large amount of immigration. So there is no doubt that more and more immigration has an increasingly adverse impact on the wages of hard-working American citizens. I don't think anybody can dispute that. Where did this come from—the 400,000—really 800,000—really almost 900,000? Where did that number come from? I don't know.

Professor Borjas, who is a part of the Kennedy School at Harvard—perhaps Senator KENNEDY needs to meet him sometime—Professor Borjas said in his opinion, 500,000 immigrants a year is the right number. I don't know what the right number is. He is a Cuban immigrant. He came here as a young man fleeing the oppression of Castro. That is what he says.

Where did this number 800,000, almost 900,000 come from? Actually, I think it kicks in with an accelerator. In the outyears, it goes up even 10 to 15 percent a year. It is complicated to read. We just haven't had much time to figure it out.

I think the deal is set up, actually. I think the people who wrote the bill knew we were not going to approve 400,000 people a year and 800,000 over 2 years—that is in the country at a given time, 800,000 to 900,000. I think they knew that. Everybody has known all along. Senator BINGAMAN has filed his amendment to cut that number in half, and then we will go to 200,000 a year, and everybody can say we did something, we made this bill better, so now let's all vote for it.

Regardless, if that is what the deal was about, I suggest to my colleagues that certainly the Bingaman amendment is a move in the right direction. Until we have some very good economic data that shows this country needs a lot more than 200,000, we ought not to be doing it because, remember, the 12 million people we see out here today who are here illegally and those who are here legally are not going to be made to leave America under the amnesty we have here.

If someone came in December 31 of last year, they would be able to stay in this country. So now we are talking about, on top of all of that, on top of the 1 million people who come into the country with green cards that we give each year, that permanent track, we are talking about another track for temporary workers which is in addition to AgJOBS, the agricultural and seasonal workers. So this is a big number.

This bill could be two times plus the current rate of legal immigration into America. I don't think the average

American would believe, when we are supposed to reform this broken immigration system, that we would be creating a system that would double the number of people legally coming into the country because even though we certainly hope any legislation that passes would reduce somewhat the number of illegal entries, we know we will still have illegal entries on top of that.

This probably is a very easy vote for colleagues to vote for the Bingaman amendment. I don't see a reason not to do so. I am not aware of any economic study or objective analysis that says we need these kinds of large numbers of immigrants.

Professor Chiswick at the University of Illinois in Chicago testified before the Judiciary Committee, of which I am a member, when we brought up this issue last year. He cautioned strongly that a large flow of low-skilled workers will pull down the wages of American workers. Alan Tonelson, who wrote about a number of job categories from 2000 to 2005, said wages of workers have not gone up, that they actually have gone down, and in each one of those areas, more than half the workers were American citizens.

This is a matter we ought to be careful about. I believe 200,000 is more than adequate based on what I know. And I support the Bingaman amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MARTINEZ. Mr. President, I rise to speak in opposition to the Bingaman amendment. The idea of 400,000 temporary workers per year was not just pulled out of thin air, but it is based on the estimates of what is needed on a yearly basis to meet the needs of our economy. It, in fact, parallels what takes place each and every year as approximately that many illegal workers cross our borders.

Much has been said about whether there is a need for a workforce. I believe there is. In my home State, the people who are more adamant in pursuing a bill on immigration reform are those very employers who cannot seem to find enough workers to fill their needs. They are in the hospitality industry, the tourism industry, our attractions, theme parks. They are also in agriculture, as well as home construction, which is a huge part of Florida's economy. All of those people seem hard pressed to have enough people available to do the work that is waiting.

So this is a number that was derived according to the Pew Hispanic Center in a March 2005 survey of the migrant population which suggested a group of about 500,000 a year. We think it is a good idea from that standpoint. It is a legitimate number. It is based on the studies of what our needs seem to be.

At the end of the day, it is about supply and demand. It is about the issue that there is a workforce available to meet the demand for workers, and that is the problem in which we find ourselves.

But there is another problem, too, and that has to do with the border. Sure, we are going to do all we can to lessen the likelihood of illegal border crossings. We are going to have more border agents. We are going to have electronic surveillance. We are going to have all that we can build physically and technologically provide, as well as manpower, to provide for safety at the border.

However, wouldn't it be a good idea if to assist safety at the border, if to assist and lower the number of illegal entries in our country, if we disincentivized and legalized the way people come to work in America? At the end of the day, that is what our 400,000 number seeks to do. Reducing it to 200,000 would diminish the effectiveness of our current approach of having a guest worker force that really is coming here legally.

I hope the Bingaman amendment does not receive the support of the Senate. I ask my colleagues to stick with the number that is in the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I made remarks earlier about my estimation of the number of persons who would be admitted. I would like to be a little more precise and explain it this way. In the first year, under the bill as written, when 400,000 would be allowed in, 400,000 would come for a 2 year period. In the second year, we will have a 15-percent escalator clause. If that is met, the next year would be 460,000 new workers. So we are talking about at that point 860,000 workers. Then 20 percent of the people who come as temporary workers are entitled to bring their families.

On average—and the numbers, I think, are undisputed—when a person is allowed to bring their family, it adds 1.2 persons to the number. So I calculate in just 2 years, the temporary worker program, as written in the bill, will allow for over 1 million persons into the country. I believe that is an honest and fair statement of where the numbers are.

I take seriously these numbers because last year my staff worked their hearts out and concluded and shocked everybody that the bill as originally introduced, the McCain-Kennedy bill, would allow 78 million to 200 million persons into our country in just 20 years when it, at the normal rate, would be less than 20 million. Some objected to those numbers. The Heritage Foundation did a similar study about the same time, and their numbers confirmed our numbers.

At that point, Senator BINGAMAN offered two amendments and I offered one and it ended up bringing the number down to 53 million over 20 years to enter legally as opposed to this incredible number. With these accelerators and this large a number, I think we ought to be very cautious.

I would also note, again, that the Bingaman amendment does not reduce the AgJOBS people who would be coming under that track or the seasonal worker people who would be coming. So a number of areas will not be reduced. I think it clearly is the correct thing to do to adopt the Bingaman amendment.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Under the previous order, there will now be 4 minutes of debate on amendment No. 1169, offered by the Senator from New Mexico, Mr. BINGAMAN, with 2 minutes under the control of Senator BINGAMAN and 1 minute each under the control of Senator KENNEDY and Senator SPECTER.

Who yields time?

The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, let me speak very briefly, and then I will reserve the last minute to try to close this debate.

This amendment will reduce the number of people who can come into the country under this new guest worker program. The underlying bill calls for 400,000, up to 600,000 per year coming in under this new guest worker program. The amendment I am offering would reduce that to 200,000 per year, maximum. I think that is plenty.

This is an unproven, untested, brandnew program. We need to see how it is working. We need to see the impact it is having on other wage rates in the country.

I urge my colleagues to support that amendment. I will reserve the remainder of my time in case there is someone speaking against the amendment. Then I will conclude.

Mr. KENNEDY. Mr. President, first, I thank my friend from New Mexico for his presentation on this issue. He has spoken to those of us who have been working on immigration about his concerns on the numbers. He made this

presentation the last time the Senate considered the immigration bill and was successful, and I expect he will be this afternoon.

It was very difficult for us to make an exact judgment about the total numbers. Those numbers were set at about 400,000 because that was a somewhat lower estimate of people who were coming in here who were undocumented, and it was also recommended by the Council of Economic Advisers in terms of the needs of the economy. That is where it is from.

But he makes a legitimate point—we do not have a real definite idea about what these numbers ought to be. We looked at the idea that we establish this program and then try to establish a commission that would make a recommendation to Congress in terms of the numbers on into the future. I think that is probably the best way to proceed in the future.

I will reluctantly oppose the amendment of the Senator from New Mexico, but I thank him for the thought he has given to this issue. We will be willing to work with him regardless of how this comes out.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Who yields time?

Mr. KENNEDY. Mr. President, we are prepared to yield whatever time we have—except for the Senator from New Mexico.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico is recognized.

Mr. BINGAMAN. I thank my colleague from Massachusetts and congratulate him on his leadership in getting us to this point in the debate. I do hope Members will support this amendment. We had 79 Senators support this amendment when it was offered last year. I hope we get a strong vote again this year. I think this is the prudent thing to do. It does not destroy the bill. It does allow for a guest worker program but a much more prudent one than would otherwise be the case.

I urge my colleagues to support the amendment.

I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Will the Senator suspend?

Does the Senator from Pennsylvania wish to be recognized?

Mr. SPECTER. I do. Mr. President, I believe I have 1 minute of argument?

The ACTING PRESIDENT pro tempore. The yeas and nays have been called for, and the impression was at that time that time had been yielded back.

Is there sufficient second for the yeas and nays? There is.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I ask consent—I think I yielded the time back before I knew the Senator from Pennsylvania, who is a cosponsor, desired to speak. It will only be half a minute. I ask unanimous consent that he be able to speak prior to the time of the vote.

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

The Senator from Pennsylvania is recognized.

Mr. SPECTER. May I amend that, Mr. President, to request a full minute?

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

Mr. SPECTER. Mr. President, the 400,000 figure was decided after a very careful analysis and consideration. We had hearings in the Judiciary Committee where prominent economists stepped forward to testify about the importance of immigrant help. We have an economy which relies on immigrants for hospitals, for hotels, for restaurants, for farms, for landscapers, and many lines.

One crucial feature of the Bingaman amendment would take out the adjustment factor, which is important, where we say the needs rise and fall. If the Bingaman amendment is adopted—and I know it was adopted by a large vote last year—at least I hope we will return to provide for the adjustment factor so we can raise or lower the number depending upon the needs of the economy.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) is necessarily absent.

Mr. LOTT. The following Senator is necessarily absent. The Senator from Arizona, Mr. MCCAIN.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 74, nays 24, as follows:

[Rollcall Vote No. 175 Leg.]

YEAS—74

Akaka	Dorgan	Nelson (FL)
Alexander	Durbin	Nelson (NE)
Allard	Ensign	Obama
Baucus	Enzi	Pryor
Bayh	Feingold	Reed
Biden	Feinstein	Reid
Bingaman	Grassley	Roberts
Boxer	Harkin	Rockefeller
Brown	Inhofe	Sanders
Bunning	Inouye	Schumer
Burr	Isakson	Sessions
Byrd	Kerry	Shelby
Cantwell	Klobuchar	Snowe
Cardin	Kohl	Stabenow
Carper	Landrieu	Stevens
Casey	Lautenberg	Sununu
Chambliss	Leahy	Tester
Clinton	Levin	Thomas
Coburn	Lincoln	Thune
Cochran	McCaskill	Vitter
Collins	McConnell	Voinovich
Conrad	Menendez	Webb
Corker	Mikulski	Whitehouse
Dodd	Murkowski	Wyden
Dole	Murray	

NAYS—24

Bennett	Brownback	Cornyn
Bond	Coleman	Craig
Crapo	Hatch	Lugar
DeMint	Hutchison	Martinez
Domenici	Kennedy	Salazar
Graham	Kyl	Smith
Gregg	Lieberman	Specter
Hagel	Lott	Warner

NOT VOTING—2

Johnson	McCain

The amendment (No. 1169) was agreed to.

Mrs. BOXER. I move to reconsider the vote.

Mr. DURBIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, Senator GRASSLEY was here earlier. I understand he may be modifying his amendment. Senator GRAHAM is prepared to move ahead. Then we will alternate back and forth. The Senator from California, Mrs. FEINSTEIN, is ready to go. I see the Senator from South Carolina. If he is prepared to proceed, we will go ahead with his amendment.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from South Carolina.

AMENDMENT NO. 1173

Mr. GRAHAM. I ask unanimous consent that the pending amendment be set aside, and I call up amendment 1173.

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

The clerk will report.

The bill clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for himself, Mr. CHAMBLISS, Mr. ISAKSON, Mr. MCCAIN, Mr. MARTINEZ, and Mr. KYL, proposes an amendment numbered 1173 to amendment No. 1150.

Mr. GRAHAM. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for minimum sentences for aliens who reenter the United States after removal)

Strike subsections (a) through (c) of section 276 of the Immigration and Nationality Act, as amended by section 207 of this Act, and insert the following:

''(a) REENTRY AFTER REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, and imprisoned not less than 60 days and not more than 2 years.

''(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

''(1) was convicted for 3 or more misdemeanors or a felony before such removal or departure, the alien shall be fined under title 18, United States Code, and imprisoned not less than 1 year and not more than 10 years;

''(2) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not

less than 30 months, the alien shall be fined under such title, and imprisoned not less than 2 years and not more than 15 years;

''(3) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years;

''(4) was convicted for 3 felonies before such removal or departure, the alien shall be fined under such title, and imprisoned not less than 4 years and not more than 20 years; or

''(5) was convicted, before such removal or departure, for murder, rape, kidnaping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, the alien shall be fined under such title, and imprisoned not less than 5 years and not more than 20 years.

''(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, and imprisoned not less than 2 years and not more than 10 years.''.

Mr. GRAHAM. Mr. President, as we try to repair a broken immigration system and replace it with a new system that learns from the mistakes of the past, I believe it is time for this body and this country to get serious about enforcing border security violations. After 9/11, the immigration debate has taken on a different tone. After 9/11, it is no longer about economic and social problems associated with illegal immigration. It is about national security problems associated with illegal immigration. In the Fort Dix, NJ, case, there were allegations made that six people were conspiring to attack Fort Dix. Apparently, three of those people came in illegally as children or crossed the southern border, and three of the people charged with crimes overstayed their visas. So it is more than securing the border. That is a central concept to this bill.

Democrats and Republicans are rallying around the idea that the current system is broken in many ways. The borders are not secure. When it comes time to verify employment, fraud is rampant. The way you get a job now is to produce a Social Security card. I could take a Social Security card out of my wallet and have it faked by midnight. We are talking about replacing that kind of fraudulent system with tamperproof identification, which would be a great change in terms of understanding who is here and why they are here and employing people on our terms, not theirs.

In the future, after we begin to control our borders, Senator ISAKSON's amendment says you can't bring new people into the country in a permanent fashion until you meet border security triggers. The employment verification trigger is a great idea. Here is the question I have: After we do all this, after we spend all this money to secure our borders and replace fraudulent systems with tamperproof systems, what do we do to people who try to come across illegally in the future? What message do we send them and the world?

Here is the message: If you come across our border illegally in the future, you violate our border security, you are going to jail. No more catch you and send you back. My amendment would require a mandatory 60-day jail sentence for the first illegal reentry, up to a year but mandatory 60 days. If you come back again illegally, no less than 2 years. So everyone needs to know that America is changing its immigration laws, and we are going to be serious about enforcing them. If you break our laws, you do so at your own peril, and you will lose your freedom. That will help us dramatically make sure we don't repeat the mistakes of the past.

There is another group of people we need to deal with in terms of illegal reentry that is bone chilling. The amendment would create mandatory jail time for people who have been convicted of crimes in the United States, illegal immigrants who have committed violent offenses, nonviolent offenses, who have served jail time, that if you get deported—and you are required to be deported after you serve your sentence—and get caught coming back into this country, you are going to go to jail, not be deported again.

Let me give an example. Angel Resendiz is known as the railroad killer. Let me tell you the story of this criminal. In August 1976, he came across the border illegally. In September 1979, he was sentenced to a 20-year prison term for auto theft and assault in Miami, FL. He was paroled within 6 years and released into Mexico as a result of deportation. Over the next 10 years, he was apprehended and tried in Texas for falsely claiming citizenship. He did an 18-month prison term. He was arrested for possessing a concealed weapon in 1988 in New Orleans and received another 18-month prison term. Every time he was sentenced, he was deported and came right back to commit another crime. He got 30 months for attempting to defraud Social Security in St. Louis. He pled guilty to burglary charges in New Mexico that gained him an 18-month prison term, and he was paroled in 1992. He was apprehended in the Santa Fe rail yard for trespassing and carrying a firearm in 1995.

On June 2, 1999, he was apprehended by the Border Patrol for crossing illegally. Due to a computer glitch, they let him go. Every time he committed a crime and served a sentence, he was deported, only to come right back and commit another crime. Once we caught him, all we did was deport him. He wound up killing two people within 48 hours of being released by the Border Patrol. If this amendment had been in place for people such as this guy, once he was found back on our soil after he served his prison term for a violent crime, he would not have been deported. He would have gotten a 20-year jail sentence with a mandatory minimum of 5 years.

So there are people who have been convicted of rape and murder within the United States who have illegally come across the border, committed a crime, served their time, been deported, who have come right back, committed another crime, and nothing happens.

If this amendment becomes law, once you have been convicted of a violent crime and deported, if you are found in our country, whether you are committing a crime, that is a crime in and of itself, and you are going to go to jail for up to 20 years, with a minimum of 5 years.

Now that, to me, is what has been missing when it comes to our legal system and illegal immigration. It is now time to tell the world—our own citizens and all those who wish to come here—there is a right way to do it and there is a wrong way to do it. If you do it the wrong way in the future, you are going to go to jail.

We need to change the system that would allow nothing to happen to somebody who had been in our country illegally, who was convicted of rape or murder, who served their sentence and had been deported, who illegally comes back into our country. If they cross the border again, if they cross the border in the future, after committing a violent crime, they are going back to jail for serious jail time to protect us against them.

Now, I hope every Member of the body will understand this will make our effort to reform illegal immigration meaningful. If America does not care about enforcing its laws in the future, those who want to violate it will not care either.

So now is the time to start the clock over, learn from the mistakes of the past and make a national commitment to secure our borders and deal with those who violate our immigration law in the sternest fashion. Because this Nation is under siege. After 9/11, illegal immigration is not just about people coming here to work, it is about people coming here to commit crimes and do us harm.

So I am very hopeful this amendment will become part of the bill, and we can say, after this bill passes, we have taken a new approach, a tough approach, a long overdue approach, that we do care about the laws on our books and we are going to enforce them, and if you violate the law in the future by illegally coming across our border, you are going to jail.

Mr. President, I would like, if I could, at this time, to recognize my colleague from Georgia, Senator CHAMBLISS.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise in strong support of the amendment offered by my friend and my colleague, Senator GRAHAM. I am pleased to be a cosponsor of this amendment.

As I have said before, I believe the agreement we reached among a bipartisan group of Members of this body is

a step in the right direction because it gets us to where we are today; that is, we are debating this critical issue on the floor of the Senate.

Bringing this issue to the floor of the Senate allows Members of this body an opportunity to improve upon what has previously been negotiated. Senator GRAHAM's amendment is an improvement that should be adopted because it deals with the very most important part of this particular bipartisan piece of legislation, that is, border security and interior enforcement.

This amendment creates a more effective deterrent against future illegal immigration by ensuring that illegal immigrants who are caught and deported and then return to the United States in violation of our laws again serve minimum jail sentences. There is nobody who is going to be deported and gets caught coming back in who is going to escape going to jail. It is kind of unbelievable to think about that we do not already have this kind of law on the books today. That is why this piece of bipartisan legislation is so critically important to the future of our immigration laws in this country.

Under current law, if an illegal alien is caught entering the United States, that person is deported. This system is subject to abuse because an estimated 20 to 30 percent of those illegal immigrants deported simply return to the United States again in an illegal way. If that same person illegally reenters the United States again, they are subject to fines or imprisonment, but currently there is not a mandatory jail term.

So our Border Patrol agents and our Immigration and Customs Enforcement agents are faced with the problem of removing the same illegal immigrants time and time again. This amendment will ensure that everyone who is deported from the United States and reenters will serve jail time.

This is a most vital piece of legislation in getting control of our borders and in ensuring we have efficient and meaningful interior enforcement. This amendment is critical because it will make sure the resources of our Border Patrol and Customs agents are not expended on the same violators again and again.

It also sends a strong signal to everyone in the world thinking about illegally coming to the United States that we are serious about our laws and are seriously going to punish those who violate those laws.

I have to say, one problem we have, as we debate this bill and we talk with folks back home, is the credibility of this body, as well as the other body, as well as the agencies charged with carrying out the enforcement. Even though we are charged with oversight, the credibility of the U.S. Government in enforcing the current laws on the books is severely lacking.

This is a measure that does put some real teeth into the deporting and reimporting by criminals. In this particular measure, it does give our law enforcement officials an opportunity to not only be serious about enforcement of the law but in a way that is truly meaningful and will go a long way toward stopping illegal immigrants from coming across our borders, as well as doing a better job of enforcing our immigration laws from an interior standpoint.

So I urge all my colleagues to vote in support of the amendment offered by my good friend and colleague, Senator GRAHAM.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have a good deal of respect for my friends from South Carolina and Georgia, but I am somewhat mystified by this proposal. Let me illustrate why.

First of all, this proposal by the Senator from South Carolina is a large Federal mandate. Do you understand? It is a large Federal mandate. Why? Because the Bureau of Federal Prisons now says it takes up to 45 to 60 days for any individual who is found guilty in the lower courts to get to a Federal prison. Who pays for that? The local people pay for that.

First, it takes 45 to 60 days—all of which will be included in this amendment—which is going to be paid by the local people. So we are saddling all the local communities, as they start off in their proposal.

Now, after we hear the speeches about how we are going to be tough on crime, let's look specifically at the current law and what our bill does and then what this amendment does.

For the entry of an alien after removal—no deportation or denied admission, no criminal history—under current law: fine, or not more than 2 years, or both. Our bill is the same as current law. But the Graham amendment says: not less than 60 days in jail—60 days in jail.

So we want to let Arizona, California, Texas, New Mexico know that for all those people whom we all heard about coming back across the border, they are going to be for 45 to 60 days in the local jails. Is there any kind of report about how they can handle it? Is there any sense about whether the jails are crowded? Is there any idea about what the Governors say? Is there any idea about what local communities say? No. But this happens to be the fact. There are seven different places where they put these mandatory penalties in.

Under current law, for the entry of criminal offenders, with three or more misdemeanors involving drugs, crimes against persons, or both, or a felony: fine, not less than 10 years, or both. In the bill, S. 1348, we say, three misdemeanors or one felony gets a penalty of not more than 10 years in jail. What does the Graham amendment say? New mandatory minimum creates minimum penalty of 1 year.

So they say you get 1 year. We say you can get up to 10 years. Why the difference? Because we want the judge to make the decision on the severity of the crime.

Here, we go down to the prior aggravated felony conviction penalty, which under current law is not more than 20 years. We, in the bill, say the penalty can be 15 years, or a fine, or both. Under the Graham amendment, it is 2 years and a fine.

Once more, we leave it up to the judge. If we have the serious kinds of penalties, they ought to get the serious time. Who is being tougher on crime? We are listening to the Senators from South Carolina and Georgia: We are tough on crime. Who is tough on crime? Come on.

The list goes on. If you are caught, you are a repeater, you are caught back across the border with a prior conviction for murder, rape, kidnapping, slavery, terrorism, then the penalty is not more than 20 years. Under the Graham amendment, it is 5 years—the new mandatory is 5 years. Ours is 20 years. We let the judge make that decision, but his is 5 years.

Now, I have been a strong supporter of sentencing reform from the very beginning. We have had these enormous disparities on the issue of sentencing. The Sentencing Commission was supposedly to make an evaluation about the nature of the crimes taking place in the country, the space that exists in the various States and Federal institutions and to make recommendations in terms of what the scope ought to be in terms of various crimes and what the availability is in these various penal institutions and how they compare to other kinds of crimes. It seems to me that is what we ought to be doing with the penalties in this legislation as well.

Let's listen to Supreme Court Justice Kennedy, who has vigorously criticized mandatory minimums as unfair and inconsistent with the fundamental principles of justice. In February, he was very clear in his opposition to penalties in his testimony before the Senate Judiciary Committee. He also said mandatory minimums are wrong because they restrict the ability of judges to strike the best balance between the goal of consistent sentencing and the need to give judges discretion to make the punishment fit the crime in individual cases.

That is what we have in the underlying law.

In 2003, Justice Kennedy said:

> I can accept neither the necessity nor the wisdom of Federal mandatory minimum sentences. In too many cases mandatory minimum sentences are unwise and unjust. The legislative branch has the obligation to determine whether a policy is wise.

Now, I am more than willing to establish tough penalties where appropriate, but we have to draw the line with a rash of mandatory minimum sentences in current law. We have a new Congress and a new opportunity to stop the madness with mandatory minimums that impose long and costly sentences. Moreover, there is no suggestion that these penalties make a

great deal of sense. If anything, they are already causing a terrible burden.

There is no epidemic of leniency in the Federal courts today. We have not heard, in hearings in the Judiciary Committee, about leniency in terms of the crimes—we have not—nor with regard to these different provisions.

The Federal prison population has quadrupled in the last 20 years. Now it is larger than any State system. The addition of new mandatory minimums only places further strains on the Federal prisons, which are already struggling with a growing population, along with diminishing budgets. Justice Rehnquist made the following observation about mandatory minimums: Our resources are misspent, our punishments too severe, our sentences too long.

That is his statement in opposition to mandatory minimums. We have the statements that have been made by the 2006 Conference of Mayors, representing 1,100 mayors and cities with populations over 300 that passed a resolution opposing the mandatory minimum sentences. It called for a fair and effective sentencing policy. The Nation's mayors are opposed to mandatory sentences on both Federal and State levels. Our mayors believe we should have laws that permit judges to define appropriate sentences based on the specific circumstances of the crime and the perpetrator's individual situation, and that States should review the effects of both Federal and State mandatory minimum sentencing and move forward.

As I say, that is my position on this. I am under no illusions about what the desire and the will of this institution is on this particular proposal.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, very briefly, and I will move to have this amendment voted upon, if that is the correct order of business.

To my very good friend Senator KENNEDY, it is my understanding in terms of incarceration costs, the costs are paid by the Federal Government through the State Criminal Alien Assistance Program about 90 percent—90 cents on the dollar. So the Federal Government does help the local communities almost fully to deal with the expense of people who are caught violating or who are put in jail.

In terms of leniency—is there any evidence our laws are too lenient—I would say there are about 12 million pieces of evidence that our laws are too lenient. How can you have 12 million people come across the border and the word not be out that there is not much of a downside to doing it? Now, if you get 12 million people violating the law, it must be common knowledge among that population and others there is not much going to happen to you.

Well, that needs to stop. We need to give people who are here a chance to assimilate. Legal paths, we have more legal paths than we have ever had through this bill.

The illegal part of it has to come to an end and will only come to an end if there is a downside to breaking our law, and this amendment is about mandatory jail time. I am not trying to make it easier on people; I am trying to make it harder on people who take the law into their own hands and violate our border security. That is why we have mandatory jail time. Prior misdemeanors, you are going to go to jail 1 year if we catch you here again. If you served jail time of 2½ years and we find you on our soil again after you have been deported, 2 years. If you got a sentence of 5 years and we find you on our soil again after you have been deported, 4 years in jail. If you are convicted of three or more felonies, 4 years in jail, if we find you here again. If you are convicted of a violent crime, no less than 5 years, and up to 20 years.

It is time to get serious. This is a serious amendment for a serious problem. I know this is going to send the right message and that we need to be tough, not just in words but in deeds.

I urge passage of the amendment.

Mr. KENNEDY. Mr. President, I indicated in my earlier comments about the different provisions that exist in the law, the kind of flexibility that is out there to deal with serious crimes. But with the mandatory minimums you have a blunderbuss solution. There is no ability or flexibility at all to be able to deal with it.

The Federal Bureau of Prisons estimates it costs $67 a day for each person in jail. Estimates are it costs $90 per day to detain an immigrant. Right now each immigrant spends an average of 42.5 days in detention prior to deportation, at an average cost of $3,825. Senator GRAHAM's 60-day mandatory minimum for illegal reentry would increase the total spent in detention by 17.5 days, which increases the cost of detention per immigrant to $5,400. These increased costs couldn't be avoided because the mandatory minimum won't let the judge give any defendant a lower sentence regardless of the facts. This is a major problem with the mandatory, and this amendment would be a costly mistake.

The fact is the States pick up before the individual enters the system, the States pick up the tab. So New Mexico, Arizona, California, and Texas, you are going to have this new mandate and expenditures for it.

Last year, 11,000 immigrants were charged with the offense of improper entry. If this amendment passes, we are looking at increasing the costs by millions of dollars. According to 2005 data, the U.S. Government has the resources to hold 19,000 immigrants. It represents less than 1 percent of the undocumented population. This amendment may also require us to build new facilities to house these people, new prison beds, $14,000 per bed. We don't know how many beds will have to be built if this amendment is adopted.

It seems the provisions we have in the legislation make sense, and if the Senator wanted to alter his amendment and say: Let's let this go to the Sentencing Commission and let them make the recommendations, which we have done on other pieces of legislation to permit the penalty to suit the crime, I would say amen. But this amendment is going to put an important additional burden on the local communities, and it doesn't have the flexibility we have in the existing legislation in terms of dealing with those who are the real bad guys in this process. We have that ability in the existing legislation. The idea we are going to make it mandatory for people to go in for this period of time takes away that kind of flexibility, which is desirable.

I see my friend and colleague from New Mexico on the floor and I know he desires to speak.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I wish to speak briefly in opposition to the amendment. I have great respect for my colleague from South Carolina, but I think this is very misguided.

Chief Justice Rehnquist was speaking in 1994 to a luncheon of the U.S. Sentencing Commission and he said the following:

> Mandatory minimums are frequently the result of floor amendments to demonstrate emphatically that legislators want to ''get tough on crime.'' Just as frequently they do not involve any careful consideration of the effect they might have on the sentencing guidelines as a whole. Indeed, it seems to me that one of the best arguments against any more mandatory minimums, and perhaps against some of those we already have, is that they frustrate the careful calibration of sentences, from one end of the spectrum to the other, which the sentencing guidelines were intended to accomplish.

I think Justice Rehnquist was right, that this is—this, as I understand it, is an amendment that has not been brought up for hearing. These proposed changes in the law have not been brought up for a hearing in the Judiciary Committee. I am not a member of that committee. My colleague Senator KENNEDY is, of course, as is Senator GRAHAM. But my impression is this is not the result of a careful deliberation by the committee of jurisdiction here in the Senate. Instead, this is one of these floor amendments that is intended to demonstrate that legislators want to ''get tough on crime'' and particularly want to get tough on crime if it involves immigrants. So that is what is going on here.

I think the strongest argument I know, and I am sure this is what the Senator from Massachusetts was mentioning, is the cost that is involved in actually going ahead with this amendment. We are talking about taking people, and instead of kicking them out of the country, we are requiring those individuals be incarcerated in this country at very substantial expense to the U.S. taxpayer for a very long period of

time. I don't know that it makes good sense for us to be doing this.

One of the purposes of this immigration legislation that is before the Senate right now is to reduce the burden on U.S. taxpayers of all of the immigrants coming into the country. This amendment does the exact opposite. This amendment puts an enormous additional expense on the taxpayers of the United States by saying: If you come into this country illegally, we are going to lock you up and we are going to be sure you stay locked up for a long time. Well, that is fine, as long as you want to pay—what is it—$30,000, $40,000 per year to keep one of these individuals incarcerated. We are paying a lot more to keep an individual in one of these Federal prisons, I can tell you that, than we pay to keep people in some of our best universities.

I don't think it is a good use of our resources. I think this is one of these feel-good amendments which says we are not being tough enough on immigrants, let's tighten this thing up, let's be real tough on them.

The statistics I have—and these are statistics from the 2006 Source Book of Federal Sentencing Statistics, put out by the United States Sentencing Commission. They have a chart on page 13 where they talk about the distribution of offenders in each primary offense category. It shows that 24.5 percent of the offenders we are incarcerating today are being incarcerated for immigration-related offenses. The only other category that is larger is drugs, where 35.5 percent are being incarcerated for drug-related offenses. So 24.5 percent of our prisoners today are there because of immigration-related offenses. That number is going to go up dramatically if we actually adopt and put into law these mandatory minimum sentences that are contained in this amendment.

I wish also to point out that the penalties, the sentences these people are being given and the actual period of incarceration, the number of months of incarceration for these immigration offenses, is fairly significant. It ranges from 22.8 months up to over 25 months. So we are talking about putting people in prison for a significant period of time. As I say, they are all for immigration-related offenses.

I think it is foolhardy for the United States to be passing immigration reform legislation to reduce the financial burden on U.S. taxpayers for all of the illegal immigration coming into the country and at the same time adopt an amendment that loads an enormous additional cost on to the taxpayer so we can keep these people in prison for a long time and thereby demonstrate we are getting tough on crime.

I urge my colleagues to oppose the amendment.

Mr. GRAHAM. Mr. President, I ask unanimous consent to add Senator MCCONNELL as a cosponsor of the amendment.

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

Mr. GRAHAM. Mr. President, very briefly, to respond to my good friend from New Mexico about some of his concerns, this is not about me feeling good; this is about having the law work in a way that will deter people from crossing our borders illegally.

I point to the Angel Resendez case, and if we had this law in effect where we had mandatory jail time for those who had committed offenses and caught on our soil. In a 10-year period he committed five crimes, got deported each time, and was able to come back and commit another crime. If this amendment had been in place, he would have been in jail for a longer period of time and maybe his murder victims would be alive today. This is a case not about me feeling good; it is about somebody with a great propensity to cross our border illegally and commit crimes and not being held accountable in a serious way.

After the Booker case, the sentencing guidelines are advisory. If we want to send a message that we are flexible when it comes to immigration law violations, we are doing a great job of it. People must believe we are flexible, because they are coming across our borders in droves. Flexibility is being taken as indifference. What we need to do is to make it a crime that will sting people when they come across.

The cost to this country of having laws that are ignored and are virtually a joke is huge. Look at where we are today with illegal immigration. Let's try something new. Let's try doing something that has worked over time: If you commit a crime, you do some time.

With that, I yield the floor and ask for passage.

Mr. KENNEDY. Mr. President, briefly, to quote from the American Bar Association, this was their comment a year ago on the previous immigration bill on the same subject, on the issue of mandatory minimums when this issue came up during that time:

> The American Bar Association strongly opposes the provisions in the draft legislation—

That was the draft legislation a year ago—

> that would enhance or create new mandatory minimums. First, as a general matter, the mandatory minimums produce an inflexibility and rigidity in the imposition of punishment that is inappropriate for a system that we hold out to the world as a model of justice and fairness. To insist that all those convicted of a crime be lumped into the same category and be penalized indefinitely inevitably means the injustice of a sentence in particular circumstances will be ignored. Additionally, we are concerned at the high cost of imposing mandatory minimums. Numerous studies have demonstrated the extraordinary costs of incarcerating thousands of nonviolent offenders in our Nation's prisons and jails.
>
> The provisions to create the new mandatory sentences, coupled with those to increase the mandatory detention, have the potential to greatly increase the number of individuals being incarcerated in immigration-related cases at a significant cost to the American taxpayers.

We have provisions in the legislation that are tough and that a judge can use and must use in those circumstances which require it. But I think to effectively tie the judge's hands in these other circumstances makes little sense.

I see the Senator from California on the Senate floor. I would like to ask how the Senator wants to dispose of this amendment.

Mr. GRAHAM. I urge passage of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. KENNEDY. Mr. President, I suggest that we proceed with the Senator from California and then come back to that.

Mr. GRAHAM. That suggestion is well taken, yes.

Mr. KENNEDY. Mr. President, I ask unanimous consent that we go now to the Senator from California and her amendment.

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

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the manager of the bill. I want to say a few words on the bill in general and then move to an amendment, if I might.

I am a supporter of this bill. It is not a perfect bill. I think it is easy to tell the people on the far right of the political spectrum and the far left of the political spectrum are not happy with this bill. But what this bill accomplishes—like nothing I have ever seen in my 15 years in the Senate—is that it is a piece of work that is a product of people on both sides of the aisle sitting down and trying to work something out that can get 60 votes in this Chamber and move on, and not be a useless piece of legislation, but rather one that offers a kind of comprehensive reform that has definition.

People use the word ''comprehensive,'' and nobody really knows what they are talking about. But in the case of this bill, anyone who carefully looks at the bill will understand what the word ''comprehensive'' means because the word means addressing all sides of the immigration issue, taking borders that are broken and repairing them, stabilizing a border with additional border patrol, prosecutors, detention facilities, and also strengthening interior enforcement.

Three major sections—called titles—of this bill really deal with enforcement of our borders, enforcement of the interior. Then there is the question of how do you deal with the 12 million people who have been here for some time illegally, most of whom are engaged in legitimate, bona fide work. How do you deal with what has developed to be an entire subterranean economy in this country, with its own special shops, stores, and special points of congregation for work? How do you remove the element of fear that drives all of this further and further underground?

The more the ICE agents—formerly INS—pick up people in the workplace for deportation, the more you see the inequality and injustice—there was one family, about a week ago in San Diego, by the name of Munoz, who had been here for a long period of time. They both worked and raised three children who were born in this country. They owned their home and their furniture.

Well, in came the agents, who picked up the parents. The parents were out of the country and the children were left. The home was sold and the furniture was gone. And this is a family who had the piece of the rock of America. They were contributing to the economy of America. But they were destroyed.

Many of us in this body believe you cannot find and deport 12 million people. My State of California has the largest number of people living in undocumented status, which is estimated to be in the vicinity of 3 million people. They are a vital part of our workforce. They are 90 percent of California's agricultural workforce, which is the largest of the 50 States. They also work in service industries. You see them in hotels and in restaurants, and you see them in construction and housing. So they have become an indigenous part of the California workforce.

This bill puts together reforms in immigration with a process to bring those people out of the shadows. What has bothered me over these days, as I listen to the television and read in the newspapers, is I hear the drumbeat, and I even see small signs on automobiles that simply say ''amnesty.'' This bill is not amnesty.

What is amnesty? Amnesty is the categorical forgiveness of a crime, an event, or whatever the issue may be. This does not do that. This sets up a roadmap, which is complicated for someone who wants to remain in this country, to be legal, to be able to work legally, and perhaps even someday get a green card, and maybe someday further off, become a citizen.

Well, there is an 8-year road created in this bill. There are fines of $5,000 plus an additional $1,500 fee for processing. There is a touchback, which may be changed in a further amendment, but at this stage in the debate it is this: If during that 8-year period the individual who has now achieved this Z visa, which gives them the right to work in this country, decides they want to pursue a green card, they would go to their country of origin, to the nearest U.S. consulate, and with the Z visa they can come in and out of the country at will. They don't have to stay in their country of origin. What they would do is file their papers. They would submit their fingerprints, and they would turn around and come back into the United States. Then, electronically, the evaluation would be done after the present line for green cards expires. Everybody waiting in line legally for a green card gets it. They would have the opportunity to get a green card. This is estimated to be between 8 and 13 years. During that period of 8 years, they would have to re-up, come in and prove that they have done the things the bill requires them to do. This is not an amnesty.

Now, the other part is that there are changes made in what is called chain migration. Currently, one person on a green card can bring in any number of family members. This is changed to the nuclear family. The person holding the green card can bring in their spouse and their minor children. That future green card, after the 8 years—after the list is expunged, future green cards would be granted on the basis of the point system, which deals with merit in the sense of the availability of job, work, the educational attributes of the individual, the family, and other things. I think it is as close as we are going to get to solving this problem and creating the interior enforcement, the border stability, and the laws that are necessary to secure the rule of law when it deals with immigration.

Mr. President, many Senators from both sides of the aisle worked long hours over the past several months to address immigration reform. And through the process of negotiation and compromise a tough, fair, and workable bill has been crafted.

The bill before the Senate provides solutions to restore the rule of law, fix our broken borders, protect our national security, and bring the 12 million people now living illegally in the U.S. out of the shadows.

I believe this bipartisan bill is a strong first step toward addressing illegal immigration in a fair and balanced way.

IMMIGRATION ENFORCEMENT

The bill is predicated on several fundamental principles. The first is that we must control our borders and protect our national security.

The bill ensures that before a single temporary visa is issued, or a single undocumented alien in the United States can earn their green card, several important ''triggers'' must be met—''triggers'' that show the Federal Government is taking a hard stance on enforcing the law and enforcing the border. The triggers include:

Installing at least 200 miles of vehicle barriers as well as 370 miles of fencing, 70 ground-based radar and camera towers, and deploying 4 unmanned aerial vehicles along the southern border; detaining all illegal aliens apprehended at the southern border, rather than continuing the ''catch and release'' policy; establishing and using the new Employment Verification system to confirm who can work in the United States legally and who cannot, and hiring 3,500 new border patrol agents to increase the total number of agents on the border from 14,500 to 18,000.

Then later, after the first 3,500 border patrol agents are hired, the bill requires that an additional 10,500 more border patrol agents are hired. So, the total number of border patrol agents will increase from its current level of 14,500, to 18,000 under the trigger, to eventually 28,500 by the end of five years.

The bill also requires hiring 1,000 new immigration agents, 200 new prosecutors, and new immigration judges and Board of Immigration Appeals members.

Next, the bill increases the penalties for people who illegally enter the U.S. or who overstay their visas.

Under current law, if an individual enters the U.S. illegally or overstays their visa they are barred from returning to the United States for three years, and could be barred for up to 10 years if they stayed in the U.S. illegally for over a year.

However, under the bill, if an individual is in the United States illegally the penalty is increased so that the person would be barred forever—and never be allowed to come to the United States.

The bill also includes provisions to fight passport and visa fraud based on the bill that Senator Sessions and I introduced this year.

These new provisions would punish people who traffic in 10 or more passports or visas, and increase the penalty for document fraud crimes to 20 years.

By including these tough new enforcement measures, this bill goes a long way to protecting our borders and takes a hard stand against individuals who violate the law.

EMPLOYMENT ENFORCEMENT

The bill also takes a hard stand against employers who violate the law and hire illegal immigrants.

For too long, the administration has not enforced the laws on the books, and the negligible fines for hiring illegal aliens were just a part of doing business—this bill changes that.

Under current law, an employer can be fined $250 to $2,500 for hiring an unauthorized worker; the bill increases that fine to $5,000.

The bill also increases the penalties for employers who repeatedly violate the law and hire illegal aliens. Under current law, the highest penalty that can be assessed against an employer is $10,000 for a repeat violation; this bill imposes a new larger fine of $75,000 for repeat violations.

The bill creates a new employment verification system—mandating that within 3 years, all employers must verify with the Government that all of their employees, foreign and American, are who they say they are.

This new system will require employers to submit each employee's name and social security number or visa numbers to the Department of Homeland Security. DHS will then confirm whether the employee is in fact legally allowed to work.

If the DHS says the employee is not legally allowed to work or his legal status is in question, the employee then has 10 days to challenge the Government's conclusion, and while the employee is taking steps to contest his rejection, the Secretary must extend

the period of investigation and the employee cannot be fired.

This new verification system should ensure that individuals who are hired by American businesses are actually legally permitted to work in this country.

GRAND BARGAIN

Once the security and enforcement measures were established, the negotiators sought to devise a pragmatic solution to deal with the approximately 12 million illegal immigrants currently living in the United States.

This solution to this issue is what has been referred to as ''the grand bargain.''

In order to bring Democrats and Republicans together a compromise was adopted that creates a new ''Z'' visa that will establishes a strict path for those individuals who are already in the United States to be able to earn a legal status.

In exchange, the bill reforms the current immigration system and eliminates policies that allow for ''chain migration.''

PRACTICAL SOLUTION TO 12 MILLION NOW HERE

With respect to the first part of the grand bargain, I firmly believe we have to develop a practical solution to the deal with the 12 million illegal immigrants already in the country.

While some have complained that all 12 million undocumented aliens should be deported, such a solution is not practical nor is it reasonable—for many of those individuals and families who have become integrated into the fabric of their communities deportation would be a severe outcome.

For example, in my home State of California, the Munoz family from San Diego is facing exactly what a policy of absolute deportation would mean.

In 1989 Zulma and Abel Munoz came to the United States seeking medical care for their infant son who was sick—sadly, despite their efforts, 2 months later he died. At the time, Mrs. Munoz was pregnant with her second child, a girl, and a medical worker who had helped her son urged Mrs. Munoz to stay longer in the United States to make sure their infant daughter received proper care. They took that medical workers advice, and have remained in the United States since then. Both parents found work; they bought a home, and they repeatedly tried to legally adjust their status, but their attempts failed.

Then last month, at 7:30 p.m. on a Thursday night, Mrs. Munoz was arrested and led away from the house in her pajamas. Later when Mr. Munoz returned from Home Depot, he was handcuffed and taken away—leaving behind their three children, now 16, 13, and 9.

There are many families, like Mr. and Mrs. Munoz, who are not criminals, who have lived and worked in their communities for years, and who are productive members of society, but who are also in the U.S. illegally.

Families like these should be given the opportunity to come out of shadows, to earn a legal status, and to eventually apply for a green card—and that is what this bill provides through the Z visa program.

Let me be clear, this is not an amnesty. For those who say it is, I think it is important to define what amnesty means. Amnesty is automatically giving those who broke the law a clean slate no questions asked. This bill does not do that.

Instead, to qualify for a green card each individual must wait until the backlog has been cleared—approximately 8 years—and during that time these individuals and families would need to pass a national security check; apply for a Z-visa that allows them to stay in the U.S. legally; work or get an education; pay taxes; learn English; pay a fine of $5,000, plus processing fees of at least $3,000; not commit crimes; reapply and undergo additional background checks; return to their home country for a ''touch-back'' for at least a day, to submit their application, provide a fingerprint , biographical and biometric information; and earn enough points under the same merit system that all future applicants will use.

This is not amnesty. This is not simply giving a green card to anyone who is in the country illegally. Instead, through the Z visa program and the new merit system, each individual must meet these significant demands in order to earn a green card.

GREEN CARD BACKLOG

The second component of the ''grand bargain'' is to clear up the current backlog of individuals who have been waiting for green cards and to reform how green cards are awarded by creating a point system that is based on merit.

To achieve this, the bipartisan bill would provide about 200,000 new green cards annually that will go to those individuals who have followed the rules and applied for a green card prior to May 1, 2005.

For anyone who applied after May 1, 2005, they will now be required to reapply through the new merit-based point system. This new point system is based on what has been done in other countries, including Canada and Australia. It sets up a framework to allow individuals to earn points that would qualify them to earn a green card.

Under this new system, individuals will get points for education, work history, ability to speak English, as well as whether they have U.S. citizen family members. This new point system is a balanced approach that considers multiple factors and allows individuals to earn their green cards.

TEMPORARY WORKER PROGRAM

Finally, the third component in the ''grand bargain'' is to ensure that temporary means temporary—meaning workers who come to the United States on a ''temporary worker visa'' must return to their home countries when the visa expires.

Under the new ''Y-visa'' there are 2 temporary worker programs—one that brings in workers for 2 years, and then requires the worker to leave for a year; and a second, seasonal Y-visa where workers can come in for 10 months, and then are required to leave for 2 months.

Workers who come to the United States under the longer ''2 years in the country, 1 year out of the country'' program can renew their visa so that they can work up to 6 years total; but every 2 years they must leave the United States for a year.

However, if Y-visa holder wants to bring their family with them to the United States then they would be limited to only 1 renewal and they would have to demonstrate that they can support their family. They would do this by showing that the family has health insurance and that they will earn a wage above 150 percent of the Federal poverty guidelines.

Finally, the new Y-visa program is capped at 400,000 foreign workers a year for the 2-year/1-year program and 100,000 visas for the seasonal 10-month/2-month program. Both of these caps contain escalation clauses that allow the Secretary of Homeland Security to issue additional visas up to 600,000 per year for the longer program and up to 200,000 per year for the seasonal program.

The escalation clause in the longer program gives the Secretary the discretion to increase the number of Y-visas by as much as 10 percent or 15 percent each year. According to some estimates, this means that in 10 years well over 3.4 million foreign workers could come into the United States through the longer Y-visa program.

I am concerned about the impact on our economy and our country if such a substantial number of visas were to be issued. Senator BINGAMAN has an amendment that would eliminate the escalator and reduce the cap to permit only 200,000 Y-visas each year to be issued under the longer program. I am a cosponsor of the Bingaman amendment and I voted for it last Congress.

While I agree with the grand bargain principle that temporary means temporary, I am concerned that the high cap on the longer Y-visa program and the inclusion of the escalator means that the numbers of temporary workers coming in through this program are just too high.

But with the adoption of the Bingaman amendment I believe the temporary worker program adopts the right balance and still fulfills the principles of the ''grand bargain.''

NEED FOR AGRICULTURAL LABOR

In addition to these important principles that were developed as part of the ''grand bargain'', the bipartisan bill contains two more important provisions: the DREAM Act and AgJOBS.

Last Congress, Senators CRAIG, KENNEDY, and I repeatedly tried to pass AgJOBS. This bill reforms the current H–2A agricultural temporary worker program and creates a path to legalization for undocumented farm workers currently in the U.S.

There is no industry that is suffering more from a labor shortage than agriculture. Foreign workers make up as much as 90 percent of the work force and over half of the foreign workers are undocumented—as many as 1.5 million.

But for years now we have heard from farmers and growers that they can not get the labor force needed to harvest their crops.

California growers tell me that their labor forces are already down 30 percent this year. For example, Larry Stonebarger, a cherry packer in Stockton, CA, has said that his packing house only has 650 workers, instead of 1100 he needs.

California provides a vital part of our Nation's food source. Half of this country's fruits are grown in California and, in fact, California is the only U.S. producer of almonds, figs, kiwi fruit, olives, and raisins. The importance of having locally grown produce cannot be underestimated.

This Sunday, the Washington Post reported that the Food and Drug Administration detained 107 food imports from China at U.S. ports just last month. They found dried apples preserved with a cancer-causing chemical; mushrooms laced with illegal pesticides; juices and fruits rejected as ''filthy''; and prunes tinted with chemical dyes not approved for human consumption. This situation is unacceptable. But, amazingly, as we fight to keep out foreign produce that is not protected by safety and quality controls, our own immigration policies undermine the ability of U.S. growers to produce high quality fruits and vegetables right here in our own country.

The reality is, if there are not enough farm workers to harvest the crops in the United States, we will end up relying on foreign countries to provide our food. This is not good for our economy or for ensuring that Americans are receiving safe and healthy foods.

The best way to avoid this outcome is to ensure that American farmers and growers have the workers they need to harvest the crops, and the best way to ensure we have a stable agriculture labor force is to pass AgJOBS.

Our bill will stabilize the labor shortage on our farms by allowing undocumented farm workers who have worked in agriculture and agree to continue to work in agriculture for 3 to 5 years to earn a Z–A visa and eventually a green card. This will create a path to earn legal status for those ag workers already in the country.

Secondly, AgJOBS will streamline the H–2A program so that it is usable, so that growers and farmers can have access to a consistent supply of temporary workers in the future.

AgJOBS is a bipartisan bill that needs to be enacted to ensure that farmers, growers, and farm workers can continue to provide Americans home-grown, safe and healthy produce.

Immigration reform is certainly a difficult area to tackle, but this bill strikes the right balance and reflects the best thinking on how to accommodate all the various concerns and interests.

While it is easy to sit on the sidelines and criticize, it is harder to stand up, take on the tough issues, make the hard decisions and do what is right to fix our immigration system. I want to commend Senators KENNEDY, SPECTER, SALAZAR, and KYL for their hard work in undertaking this difficult issue and crafting this important legislation.

This is not a perfect bill, but it is a good bill, and it is a bill that I hope the Senate will pass.

AMENDMENT NO. 1146 TO AMENDMENT NO. 1150

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 1146, and I ask unanimous consent to add Senator MARTINEZ as a cosponsor.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, and Mr. MARTINEZ, proposes an amendment numbered 1146 to amendment No. 1150.

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

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

The amendment is printed in the RECORD of Monday, May 21, 2007, under ''Text of Amendments.'')

Mrs. FEINSTEIN. Mr. President, about 6 years ago, I was sitting at home and I was watching television. What I saw was, I believe, happening in Seattle. It was a 14-year-old Chinese youngster who had come to this country in a container. Her parents died in the container. She had survived. She had been in a detention facility for 7 months prior to coming before the judge. What I saw on television were tears streaming down her face, her hands in cuffs, and the chain went around her waist. She was unable to wipe away her tears. I thought this was very strange, something really must be wrong.

I found out that she is not alone. There are 7,000 unaccompanied youngsters who come to this country every year. Many of them—at least up to a recent point—were held in detention facilities for unlimited periods of time. They don't speak the language, they have no friends, they have no guardians, and they have no one to represent them. Often, they are sexually abused. It is a real problem.

This amendment is the same as a bill that passed the Senate last year by unanimous consent. There are a few changes, and those changes remove provisions that were contained in the previous version that are no longer necessary because of changes in agency practices to bring this bill in line with other laws, and to require promulgation of regulations and reporting of statistics on children affected by this bill.

Now, in the Homeland Security Act, the responsibility for the care and placement of unaccompanied alien children was transferred from the Immigration and Naturalization Service to the Department of Health and Human Services, Office of Refugee Resettlement. This amendment provides guidance and instruction to the Office of Refugee Resettlement, the Department of Homeland Security, and the Department of Justice, for how to handle the custody, release, family reunification, and the detention of unaccompanied alien children.

The amendment clarifies that any child who was deemed to be a national security risk, or who has committed a serious crime, will remain under the jurisdiction of the Department of Homeland Security or the Department of Justice and will not be released to the Office of Refugee Resettlement. For those who pose no danger to themselves or others, the amendment requires that the children be placed in the least restrictive setting possible, and it defines what those settings are.

This is the order of preference: One, licensed family foster care; two, small group care; three, sheltered care; four, residential treatment center; five, secured detention. So the least restrictive place for these children—remember, in any given year, there are a substantial number of these children. The amendment also would establish minimum standards for this custody or, where appropriate, detention of these children, including making sure they have access to medical care, mental health care, some access to phones, legal services, interpreters, and supervision by professionals trained to work with these children.

I am delighted that Senator MARTINEZ is a cosponsor, and I hope he will come to the floor because I believe he just said to me he found himself in a similar situation. I mentioned to him a case with which we are all familiar, Elian Gonzalez, who landed on the shores of Florida, whose mother drowned trying to get here. He had relatives in Florida. Florida has moved to create certain centers where these children are, in fact, secure, but many States have not.

The amendment also requires that wherever possible, these children are returned to their place of origin if there is a family member who can receive them. So a juvenile is sent home if there is a suitable placement for that child. If not, another appropriate placement must be secured for that child.

I think this legislation is very good legislation. As I said, it has passed the Senate before. We have amended it to comply with bills that have passed the Senate, and I am very hopeful that this amendment might even pass by unanimous consent today.

I will not ask for the yeas and nays at this time.

I do not see Senator MARTINEZ in the Chamber at this time, so I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will not take much time. I commend and thank the good Senator from California. This is an extraordinary humanitarian need. I have listened to the Senator from California on the floor, I have listened to her in committee, and I have listened to her at hearings. This is a matter of enormous importance. It relates to minors, children, vulnerable people, and the record of exploitation. This amendment is well thought out. She has had strong bipartisan support for it. In the past, there has not been objection to this amendment. I know of no objection to it. It is an extremely worthwhile amendment.

I have spent a good deal of time commending her and talking about the amendment, but she has done an excellent job in its presentation. I certainly hope we will accept this amendment. I believe we are prepared to accept it.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I have 1 minute of comments to make on the amendment of the Senator from South Carolina, and then I wonder if we can proceed with the possibility of three amendments being disposed of in quick order so that then the Senator from New Hampshire can begin with his amendment.

Let me make my comments about the amendment offered by Senator GRAHAM. I support this amendment because it provides a deterrent to future illegal immigration. While there are a great deal of statistics I would like to cite, in the interest of time, let me make this point.

There is a very interesting operation going on right now in the Del Rio, TX, sector, in something called Operation Streamline in which they actually have the jail space available to detain, for up to 180 days, illegal immigrants caught coming across the border. This has been in operation now since 2005. Anyone caught entering the United States illegally faces prosecution under this particular operation unless for humanitarian reasons they need to be released. It has proven very effective in reducing the number of crossings in that area. The word has spread very quickly to people in Mexico that if they try to cross in this sector and they are caught, they are not just going to be returned home, they are going to spend time in jail. That totally disrupts their lives. They cannot afford not to be back working someplace, either in their own country or in the United States. As a result, the word has spread quickly: Don't try to cross in that sector or you are going to go to jail.

As a result, I think the amendment of the Senator from South Carolina is very well taken. It will provide a deterrent for future illegal crossings into the United States. And that is what this legislation should be all about, the stopping of illegal immigration. So I support his amendment.

Mr. President, if I may address the Senator from Massachusetts, would it be possible at this point to address three amendments that have been offered and dispense with them?

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, if the Senator will yield, I ask unanimous consent that the previous incomplete voice vote on amendment No. 1173 be vitiated and the amendment be agreed to. This is the Graham amendment.

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

The amendment (No. 1173) was agreed to.

Mr. KENNEDY. I had hoped we could voice vote the amendment of the Senator from California. I have been notified that we cannot voice vote it, so we will have to have a rollcall vote on that amendment. I believe the Senator from California is prepared to go ahead.

Mr. GREGG. Mr. President, will the Senator from Massachusetts yield for a question?

Mr. KENNEDY. Yes, I will be glad to yield for a question.

Mr. GREGG. I understand I am next in order to offer an amendment.

Mr. KENNEDY. Yes.

Mr. GREGG. If the Senator from Massachusetts is not ready to go to Senator FEINSTEIN's amendment at this time, I suggest I offer mine and then we do the two amendments in sequence.

Mr. KENNEDY. That is an excellent suggestion, if the Senator from Pennsylvania thinks it is a good idea.

Mr. SPECTER. Mr. President, I think it is an excellent idea. Do we have Senator GRASSLEY's amendment to voice vote?

Mr. KENNEDY. I think we ought to do that in a few minutes. I am hopeful we will be able to do it. I hope that request will be made either during or after the debate on the amendment of the Senator from New Hampshire.

Mr. SPECTER. Mr. President, that is satisfactory.

Mr. KENNEDY. So, Mr. President, just before the Senator from New Hampshire begins, we are moving along. We are going to take up the amendment of the Senator from New Hampshire, and then it will come back to our side. We have several Senators who have indicated a desire to offer an amendment. Then I believe it will go back to the other side, and I believe Senator CORNYN has an amendment. That is how we will proceed. We intend to go back and forth. We have quite a list here. We are making progress. I am grateful for all the cooperation we have had.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 1172 TO AMENDMENT NO. 1150

Mr. GREGG. Mr. President, I ask unanimous consent to set aside the pending amendment, and I call up my amendment, which is No. 1172.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 1172 to amendment No. 1150.

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

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

The amendment is as follows:

(Purpose: To ensure control of our Nation's borders and strengthen enforcement of our immigration laws)

Strike section 1 and insert the following:

SECTION 1. EFFECTIVE DATE TRIGGERS.

(a) IN GENERAL.—With the exception of the probationary benefits conferred by section 601(h) of this Act, the provisions of subtitle C of title IV, and the admission of aliens under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by title IV, the programs established by title IV, and the programs established by title VI that grant legal status to any individual or that adjust the current status of any individual who is unlawfully present in the United States to that of an alien lawfully admitted for permanent residence, shall become effective on the date that the Secretary submits a written certification to the President and the Congress, based on analysis by and in consultation with the Comptroller General, that each of the following border security and other measures are established, funded, and operational:

(1) OPERATIONAL CONTROL OF THE INTERNATIONAL BORDER WITH MEXICO.—The Secretary of Homeland Security has established and demonstrated operational control of 100 percent of the international land border between the United States and Mexico, including the ability to monitor such border through available methods and technology.

(2) STAFF ENHANCEMENTS FOR BORDER PATROL.—The United States Customs and Border Protection Border Patrol has hired, trained, and reporting for duty 20,000 full-time agents as of the date of the certification under this subsection.

(3) STRONG BORDER BARRIERS.—There has been—

(A) installed along the international land border between the United States and Mexico as of the date of the certification under this subsection, at least—

(i) 300 miles of vehicle barriers;

(ii) 370 miles of fencing; and

(iii) 105 ground-based radar and camera towers; and

(B) deployed for use along the along the international land border between the United States and Mexico, as of the date of the certification under this subsection, 4 unmanned aerial vehicles, and the supporting systems for such vehicles.

(4) CATCH AND RETURN.—The Secretary of Homeland Security is detaining all removable aliens apprehended crossing the international land border between the United States and Mexico in violation of Federal or State law, except as specifically mandated by Federal or State law or humanitarian circumstances, and United States Immigration and Customs Enforcement has the resources to maintain this practice, including the resources necessary to detain up to 31,500 aliens per day on an annual basis.

(5) WORKPLACE ENFORCEMENT TOOLS.—In compliance with the requirements of title III of this Act, the Secretary of Homeland Security has established, and is using, secure and effective identification tools to prevent unauthorized workers from obtaining employment in the United States. Such identification tools shall include establishing—

(A) strict standards for identification documents that are required to be presented by the alien to an employer in the hiring process, including the use of secure documentation that—

(i) contains—

(I) a photograph of the alien; and

(II) biometric data identifying the alien; or

(ii) complies with the requirements for such documentation under the REAL ID Act (Public Law 109-13; 119 Stat. 231); and

(B) an electronic employment eligibility verification system that is capable of querying Federal and State databases in order to restrict fraud, identity theft, and use of false social security numbers in the hiring of aliens by an employer by electronically providing a digitized version of the photograph on the alien's original Federal or State issued document or documents for verification of that alien's identity and work eligibility.

(6) PROCESSING APPLICATIONS OF ALIENS.—The Secretary of Homeland Security has received, and is processing and adjudicating in a timely manner, applications for Z nonimmigrant status under title VI of this Act, including conducting all necessary background and security checks required under that title.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the border security and other measures described in subsection (a) shall be completed as soon as practicable, subject to the necessary appropriations.

(c) PRESIDENTIAL PROGRESS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter until the requirements under subsection (a) are met, the President shall submit a report to Congress detailing the progress made in funding, meeting, or otherwise satisfying each of the requirements described under paragraphs (1) through (6) of subsection (a), including detailing any contractual agreements reached to carry out such measures.

(2) PROGRESS NOT SUFFICIENT.—If the President determines that sufficient progress is not being made, the President shall include in the report required under paragraph (1) specific funding recommendations, authorization needed, or other actions that are or should be undertaken by the Secretary of Homeland Security.

(d) GAO REPORT.—Not later than 30 days after the certification is submitted under subsection (a), the Comptroller General shall submit a report to Congress on the accuracy of such certification.

Mr. GREGG. Mr. President, the essence of this bill for most Americans, I believe, is the need and the desire to secure the border, to make sure that people coming across our border are coming across legally, that we know who they are, and that we are able to manage our border.

It is a national disgrace that we have been unable to control the illegal flow of people into our country, especially the massive illegal flow of people across the southwestern border into this country. So I don't believe there is really ever going to be a consensus around major immigration reform, which I happen to strongly support.

I supported last year's bill introduced by Senator KENNEDY and Senator MCCAIN. I support the effort this year in concept, although I still want to see how it is going to end up in detail. But there will never be a consensus support for major immigration reform, which we need so dearly in this country, unless the American people can be confident that the border is secure as the first condition of immigration reform. Thus, I think it was really a touch of genius—and I don't think I overstate that—by Senator ISAKSON from Georgia to come up with this idea of a trigger over a year ago so that it would be clear that the precondition of major immigration reform would be that the border would be secure, especially the southwestern border. I congratulate Senator ISAKSON for that initiative, and it is included in this bill in concept in that the trigger is in place.

The concern I have is that the elements which exercise the trigger, so that we then move on to the policies of this bill relative to other elements of immigration reform, such as the guest worker program, making sure we have adequate employer verification, doing the things that are necessary in the area of creating more capacity for people to come into this country who are qualified in the area of skills, those elements are subject to a trigger today which is in this bill, and I believe the specifics around that trigger do not lead, unfortunately, to what we want, which is a secure border. It is a movement down the road, but it is a movement down the road which appears in some way to have been set not on the basis of what is necessary for controlling the border but on the basis of what would be necessary to make sure the operative part of this bill goes into action or occurs within 18 months of passage of the bill.

So it seems that the numbers which have been put down in this bill relative to how many Border Patrol agents we need, how many detention beds we need, relative to how many observation facilities we need along the border for a virtual fence, relative to other structural needs of the southern border control, those elements were not defined in terms of what would lead ultimately to full security and operational control of the southwestern border, but those elements were defined as to what was perceived as being doable in the next 18 months.

The difference between what is necessary for operational control of the border and what those numbers are is not dramatic, quite obviously, but it is significant, very significant. I had the good fortune for a number of years to chair the Homeland Security Subcommittee of the Appropriations Committee, and I served on it for a long time. So I do believe I am fairly familiar with this issue, as familiar, probably, as anybody in this body with this issue since there were a number of initiatives which I began both as a chairman of the Commerce-State-Justice Subcommittee, which was a precursor to the Homeland Security Subcommittee, and then as chairman of the Homeland Security Subcommittee which were targeted directly on the issue of upgrading the Border Patrol capability, the port control capability, the Coast Guard capability, and the detention bed capability so that we could get operational control over the border.

Throughout this period, as we have been ramping up—and we have ramped up dramatically. We have come really from a marginal capability of controlling the southwestern border to a capability that is quite high, and we are making dramatic strides every day in that area. The numbers that are necessary were fairly well vetted as we stepped with intensity into this process 3 or 4 years ago. The numbers in this bill, therefore, should reflect what was the consensus position at that time and what I continue to believe is the consensus position as to the type of resources and the number of people they need and the type of support they need on the border to gain operational control of the border.

This bill we are dealing with calls for 18,000 Border Patrol agents, of whom it is assumed 16,000 will be boots on the ground on the border. It calls for something like 21,000 detention beds. It calls for something like 70 towers where we do virtual fence activity. We just let out a contract called SBInet, the purpose of which is to replace a program which was a total failure, which would put an electronic surveillance system along the border. That SBInet is a fairly complex technological initiative which involves ground sensors, visual sensors, and heat sensors, and it involves unmanned aerial aircraft to cover that part of the border which cannot be effectively and should not be covered with physical fencing. It is a complex initiative, but it is one which will work, we hope, and one which we are well down the road toward doing. But for it to work effectively and for it to be properly built, the amount of resources that needs to be committed to it exceeds by a factor of about 30 percent what is in this bill. The same is true in the area of Border Patrol agents and in the area of detention beds, although less is needed.

So what I have done in this amendment is essentially propose that we take the numbers that we know are necessary to gain operational control over the border and put those numbers into this bill. And that we allow the trigger, which is this exceptional idea Senator ISAKSON came up with, to function off those numbers, rather than backing into the trigger by using the number of months which we think we want to use before we move on to the rest of the bill.

The difference, as I said, is not dramatic, significant but not dramatic. For example, instead of 18,000 border agents—we had a lot of testimony, a lot of discussion, and the head of the Border Patrol at the time, Robert Bonner, said he needed 20,000 agents on the border—not 16, 20. So there is a 2,000 agent difference. Now, the issue will be hiring, the issue will be how quickly you can work them through the system and bring them on board.

The issue is attrition. But the fact is, that is the number where there was consensus, pretty much, that we needed in order to get the right number of agents on the Southwest border—20,000; so 2,000 additional agents over what the bill calls for.

In the area of detention beds, the bill calls for 21,000. We are already headed well past that with the appropriations process, so that was almost picking a number that was already done. It is like saying we are going to approve this event, the trigger will occur if the Sun comes up in the east. The Sun was going to come up in the east. The fact is 21,000 beds is not enough. We know that. We know we need closer to 30,000 beds in order to have the adequate detention capability to stop completely the catch-and-release issue, which is a huge issue.

There are a couple of amendments that have already been offered. I think Senator GRASSLEY has offered that amendment. I am not sure of that, but certainly Senator GRAHAM's amendment, which was just accepted, is related to that point. So instead of 21,000 beds, the number I have put in my amendment is 31,000, which is the consensus position. Again, it is not hard to get to 31,000 from 21,000 because we are already over 21,000, or we are headed over 21,000. We can certainly get well above that number fairly quickly.

In fact, 21,000 may be wrong. Maybe the bill calls for 27,000. I apologize. The number here is 27,000. Somewhere I had seen 21,000, but if it is 27,000 the bill calls for, we are only asking for another 4,000 beds in order to accomplish the goal that was agreed to in order to reach the capacity to handle people coming into this country and not have to release them and ask them to come back, which they do not do, for their hearings.

In addition, on the virtual fence side and on the hard fencing side, this amendment doesn't call for any additional hard fencing. The hard fencing language is 370 miles. I happen to believe that is probably as close to the number as we need. Hard fencing is needed in urban areas, but most of the border is not urban. In the nonurban areas, hard fencing is not functional and doesn't add a whole lot to our security or to our ability to control the border. But we do need additional vehicle barrier fencing, probably another 100 miles over what this bill calls for, which is 200 miles, which is already in place and we are headed toward, so this calls for 300 miles of vehicle fencing, which was what we agreed to back when we did the Safe Border Initiative.

On the virtual capability, this bill calls for 70 towers. Well, we are already headed toward 70 towers. We know we can build 70 towers, but 70 towers isn't what we need to make the system work. We need significantly more than that. We believe, within a reasonable timeframe, we can build 105 towers, which would have us on track, so this language calls for 105 towers.

It also eliminates the arbitrary language in here which is a sense of the Senate that everything has to be done within 18 months. As I mentioned, if you look at these numbers, you can see basically what happened here, I suspect, was somebody said, what numbers can we be absolutely sure we are going to hit in 18 months so we can exercise the trigger and the numbers? They were good numbers that were put in, but they weren't the numbers there had been consensus built around 2 years ago, 3 years ago, even as recently as 1 year ago, that were needed in order to actually gain operational control of the border. So this amendment simply says, let us use the trigger mechanism. It is an excellent idea, and let's take it forward but use it as a real trigger that functions off of numbers that we know, if they are in place, will create operational control and which will not unduly delay the execution of the rest of this bill.

With proper resources, almost everything I have proposed in my amendment could be accomplished fairly quickly. It is more than a statement of commitment to operational control; it is a commitment to operational control before the trigger gets pulled. In addition, to make sure we are getting the operational control we need, the amendment has an independent review by the Government Accountability Office of the effort by the Department to meet these different benchmarks so we, as a Congress, will know when there is a certification that the benchmarks have been reached, the benchmarks actually will have been reached and they will have been reviewed by an independent group, specifically the Government Accountability Office, to confirm they have been reached.

The amendment's purpose is to accomplish what the bill wishes to accomplish. The purpose of this amendment is to make sure the first step in this effort of immigration reform is to secure specifically the Southwest border so we have a situation where people are not continuing to cross into this country illegally after we have passed immigration reform—or at least there is a clear roadmap which will get us to the resources and the number of people we need on the southwestern border to assure people won't be coming into this country illegally along that border because we will have the necessary support to accomplish that. It is, I believe, an extremely reasonable amendment.

Ironically, the numbers in this amendment have been offered from the other side of the aisle on numerous occasions, or pretty close to these numbers, by Senators who feel, as I do, that the border needs to be secure. I would note especially Senator BYRD has had a number of amendments right along this course where he has said, let us do what we have to do in the area of resources to assure that Homeland Security has the people they need in Border Patrol agents, has the resources they need in the area of detention beds, has the resources they need in the area of a virtual fence and regular fencing in order to adequately control the border—not adequately, but to have actual operational control over the border.

I hope this amendment would be accepted. This is an amendment which toughens up our commitment to border security and it does it in the context of what is an idea that makes a lot of sense, which is the Isakson trigger and, therefore, it is, in my opinion, a significant effort to improve the bill and give people the confidence that when we pass this immigration reform, it will have as its first element our ability to make sure we know who is coming into this country, especially across the Southwest border.

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

The PRESIDING OFFICER (Mr. WHITEHOUSE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. 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. GREGG. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Massachusetts.

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

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

AMENDMENT NO. 1146

Mr. KENNEDY. The Senator from California, Mrs. FEINSTEIN, had an amendment. I understand now that we are prepared to voice-vote that amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the Feinstein amendment has been cleared on this side of the aisle. I agree with Senator KENNEDY, we can voice-vote it.

The PRESIDING OFFICER. Is there further debate on amendment No. 1146?

The question is on agreeing to amendment No. 1146.

The amendment (No. 1146) was agreed to.

AMENDMENT NO. 1172

Mr. KENNEDY. Mr. President, now we have the Gregg amendment that is pending; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, I will say a brief word about this amendment. If others want to say a word

about it, that is fine. Then I intend to make a motion to table it.

Mr. President, the Judiciary Committee, long before we developed this legislation, had extensive hearings about border security. We listened to Secretary Chertoff speak. We listened to him both in open session and in closed session.

I am convinced those recommendations were the best information that we had in terms of our border security and they are incorporated in this legislation.

It is a reflection of a bipartisan effort to make sure that we are going to do everything that is necessary and can be done to provide a secure border. We are using the latest in technology. They are using the fence areas where they believe that is appropriate and have the support to do it.

They are using the latest in terms of aerial drones, the latest in terms of barriers that are out there. All of the latest in technology will be used in terms of securing our border.

Now, the Senator from New Hampshire says he wants additional kinds, as well as dramatic increases, in the total number of Customs agents.

What we have to understand, what has been clear since we have started this whole kind of a process is, if we are going to control our border, as we have heard from Homeland Security, the leader of Homeland Security, it has to be comprehensive.

You have to have a secure border, but you also have to have some opportunity to have a border which permits individuals to be able to come through the front door if you are going to help them.

What I mean is, you are going to have to complete this in a timely way. If we just think we are going to be able to delay the completion of a comprehensive program, which the Gregg amendment will do, we are going to find out the borders are going to continue to be penetrated over the foreseeable future. That just happens to be the fact.

We made those points at the time to those who have said they want to abolish or close out a temporary worker program. If you think you can build a border and have border security there and have no opportunity for any individuals to be able to come in legitimately, you have not listened to the record and you have not listened to the testimony and you have not listened to those who have been responsible for national security.

They say you have to have some opportunity for individuals to choose the more hopeful aspect rather than risk their lives out in the desert. Now, with the Gregg amendment, what that will do is effectively ensure that we are denied a temporary worker program, we are denied the opportunity to have any chance for individuals to come through the front door.

As Governor Napolitano pointed out very clearly in her record materials that we have used previously, if you build a 50-foot high fence, those who want to come in will build a 51-foot high ladder. That happens to be the fact. That is why we have heard from those who have been involved in national security and border security who say: You need the comprehensive approach that is the underlying bill.

I think the Gregg amendment will delay the opportunity for us to do the underlying kind of effort to which we have been committed. I think, therefore, we should not accept that.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I urge my colleagues to vote against the amendment by the Senator from New Hampshire. The changes he makes are only modest in nature. I think they are not directed to accomplish a significant change: from 1,800 Border Patrol agents to 2,000; from 200 miles of vehicle barriers and 70 ground-based radar and camera towers, he moves for 300 miles and 205 ground-based radar and camera towers.

He changes the detention service from 27,500 to 31,500, and a change in some additional protection.

This has been very carefully calibrated. We are looking for an 18-month period for the completion of these triggers. The Secretary of Homeland Security, Michael Chertoff, has assured us, in testimony before the committee and in the extensive negotiations, that these are realistic. We have questioned Secretary Chertoff about whether it can be done within this period of time because they are conditions precedent. Until these barriers and fencing and Border Patrol agents are in place, the balance of the bill cannot go forward. That is the assurance to those who wonder if we are serious about securing our borders before going ahead with the other parts of the program. We do not want to tamper with what the Secretary has articulated. The additional requirements obviously will take longer to complete. We have this bill in place. I urge my colleagues to stay with the negotiated arrangement and to reject the Gregg amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I move to table the Gregg amendment and ask for the yeas and nays.

Mr. SALAZAR. Will the Senator withhold?

Mr. KENNEDY. I will.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The pending question is the Gregg amendment No. 1172.

Mr. SALAZAR. I ask unanimous consent to speak for 2 minutes against the Gregg amendment.

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

Mr. SALAZAR. Mr. President, I join my colleagues, the floor managers of this bill, Senators Kennedy and Specter, in urging our colleagues to vote against the Gregg amendment. There is broad agreement among all Members who have been working on this reform package that we need to secure the border. Indeed, when you look at what Secretary Chertoff has said we need to do to secure the border, he has said we need to do a number of different things which we have incorporated in this legislation. We call for 18,000 Border Patrol agents. We call for 370 miles of fencing, 200 miles of vehicle barriers, 70 ground-based radar and camera towers, 4 unmanned aerial vehicles, new checkpoints and ports of entry, and a host of other things. Those numbers were not just picked out of the sky and put into this bill; those are the numbers the Secretary of Homeland Security said we need in order to secure the borders. He has been a constant presence in the fashioning of the immigration reform proposal that is before the Senate. The Gregg amendment essentially would derail the triggers that have been set up and is inconsistent with what we have heard from the Department of Homeland Security.

I join Senator KENNEDY and Senator SPECTER and my colleagues in urging a ''no'' vote on the Gregg amendment.

Mr. KENNEDY. Mr. President, I see the Senator from New Hampshire. I would be glad to withhold if the Senator wanted to address the Senate; otherwise, I will make a motion to table the Gregg amendment.

Mr. GREGG. Mr. President, I appreciate the Senator's courtesy. I wish to respond briefly to the points which were made.

The numbers in this bill are numbers which are a fait accompli. They are numbers which we already know we will reach within the next 18 months, if we stay on the appropriations path which was set up by myself and Senator BYRD 2 years ago, but they are not the numbers on which there was consensus needed in order to bring operational control to the borders. They are not those numbers. They are good numbers. They are a-step-in-the-right-direction numbers. That is why we funded them and put in place a path to continue to fund them. But there was absolute consensus—and don't let anybody come to this floor and say something else—that the numbers for gaining control over the border are different than these numbers. If they weren't, then we wouldn't have let the contract on creating the virtual fence, because the numbers in this bill do not come anywhere near the completion of the virtual fence.

The numbers in this bill do not come anywhere near what is needed to have the detention beds necessary to completely end catch and release, nor do they reach the numbers necessary to have the number of people on the border necessary to control the border. The Commissioner of Customs, Mr. Bonner, made it very clear in testimony 3 or 4 years ago that they needed 20,000 agents on the ground on the border.

This amendment hasn't asked for a radical change from what the bill suggests. It says the bill makes a great stride, but if we are to use the Isakson trigger effectively, which we want to—and the purpose of the trigger is to make sure the border is secure before we move to the next step in the bill—then we have to have the resources on the border to accomplish that security. The resources necessary to do that are 20,000 agents, which is an increase of 2,000 over what the bill calls for; the addition to 31,000 beds is an increase of about 2,500 over what the bill calls for; an additional 100 miles of vehicle barrier over what the bill calls for; and within a timeframe we believe is reasonable, so you could still hit the 18 months or be close to it, not 70 towers of virtual fencing, which is where the communications and the optics will be operated out of, but 105. That won't be the end of the towers, but that would be enough to allow operational control over the border.

This is not dramatic or radical. It is not even a grand change from what the bill suggests. It is simply a change that meets the conditions which we know are necessary in order to give operational control over the border. The point which this amendment makes is that operational control of the border should not be determined by an arbitrary number of months going by—in other words, if 18 months go by, we will lose operational control over the border. It should be set by the resources being in place on the border which will limit the ability of people to come across the border illegally. That is what this language does. How much more will this language cost than what the bill costs? About $700 million more. That certainly should be within the funding capabilities of the Appropriations Committee. In fact, if the administration wanted to, they could send up a supplemental to accomplish that. That is a very doable event.

Then it has a second condition, which is, it simply says the certification that these numbers have been met shall be reviewed by GAO. I do think as a Congress we would want that independent review. That is reasonable.

It takes the number of Border Patrol agents up by 2,000 and gets it to the number that was agreed to as being needed. It takes the number of beds up by about 2,500 and gets the number which was agreed to. It takes the number of vehicle barriers up by 100 and gets to the number that was contracted for. It does not change the fencing requirement. It keeps that at 370 miles. It adds 35 towers for the virtual fence, which is what the contract called for.

To represent this is some sort of amendment which therefore fundamentally undermines the core agreement is absurd on its face. The core agreement was, we would put in place, using the Isakson trigger, which was a stroke of genius for resolving this issue, resources on the border which would allow for operational control of the border. This simply calls for those resources to be consistent with what the testimony has been over the last few years as to what is needed in order to accomplish that.

The great irony is less than 6 months ago, we passed the Safe Fence Act. The Safe Fence Act essentially put in place the mechanism which got us to these numbers. The Safe Fence Act called for this action. The Safe Fence Act got 92 votes. It seems to me if 6 months ago we believed these were the numbers that should be used for fencing—and that is one element of it—how can we change 6 months later and say: We are going to step back from that and that is not the number we need in order to have the trigger occur? If this were a dramatic shift, a radical shift, an undermining shift in the exercise of this bill, I would say, fine, oppose it; it is an attempt to kill the bill. But just the opposite is the case. I am one of the few people on my side of the aisle who actually voted for the Kennedy-McCain bill the last time it came through here. I am on record and my commitment is to do immigration reform.

I also know the American people will not be sold on the idea that we are going to do immigration reform until they are confident our border is secure, especially the southwestern border where the vast numbers of people are coming in illegally. The northern border is a whole other issue and a serious one, especially from the view of terrorism. But on the southern border, people want it stopped. They want to know there are in place the resources to allow us to control that border before we take the next step into immigration reform, which next steps are critical and necessary. That is, of course, the genius of the Isakson trigger for which he deserves great credit, and which this language will essentially make more effective because it accomplishes the underlying goal of the trigger mechanism.

How long will this delay over the 18 months, which appears to be the arbitrary number? In fact, a sense of the Senate in this bill says everything has to be done in 18 months. How long will these numbers I have suggested we meet, which aren't my numbers but are numbers that have been around and on which there was consensus before this bill came out of committee or came out of the working group—it never came out of committee, obviously—came out of the working group around which there was so much consensus last year that we had a 92-to-2 vote on the Safe Fence Act, how much will that extend that time period beyond 18 months? Actually, it might not extend it at all.

With proper dollars, Homeland Security could probably do all of these things within the next 18 months. Certainly, they could do the extra hundreds of miles of vehicle barrier. I am told they can do the extra 35 towers without the contractor. We have talked to the contractor. He thinks that is a very doable event. The detention beds are certainly doable because you can actually, if you can't build them—of course, what we should be doing is putting up tent cities, which we are doing, but in any event, you can contract them out, potentially. We are talking another 2,000 beds. The border agents is an issue, but if it is going to be an issue at 18,000, it will be an issue at 20,000. Hiring border agents has become a function of finding the people we know we want to do the job. But it is still very doable within that timeframe.

I am not sure it will delay it at all. I suspect you could still do all this within 18 months, but there should not be a set series of months at the end of which we are going to say: OK, we have operational control of the border, and we can move on to the next things. What we should have, rather, is a set of very determinable benchmarks which will allow us to say that benchmark has been met and there is consensus that that benchmark will accomplish what we say it will. In this instance, that is the issue of operational control of the border.

So I would hope people would not vote to table this amendment. I would note that many Members on the other side of the aisle have voted for these types of resources in the past, when the amendment had been offered by Senator BYRD. So you may want to ask yourself, are you going to be consistent if you vote against this one?

But, more importantly, I think you have to ask yourself, are these changes—an additional 2,000 border agents, an additional 100 miles of vehicle barriers, an additional 2,500 beds—so onerous that they are deal killers? If that is the case, then this bill must be dead because we just passed an amendment to cut the number of temporary workers in half. Now, that is a serious issue. This is taking procedure and putting it over policy when you take that position to the extreme.

So I hope Members will support this amendment. If the Senator from Massachusetts is inclined to move forward at this moment, I have no problem.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will include in the RECORD the Homeland Security proposal that was shared with the members of the committee. We asked what was going to be necessary for secure borders. I have in my hand the proposal of Homeland Security. That is what we have included in this legislation, their recommendations. I am sure we could always do more and more and more, but what we have done is taken what has been the recommendations of Homeland Security in each and every one of these areas.

They have made it very clear that in carrying forward and reaching these recommendations it is going to take a combination of different elements. It is going to take their own kind of manpower to be able to reach this. It is

going to take the technology to be able to reach it—over what period of time in terms of the contracting, and all the rest.

But as to what was necessary in terms of securing the border, that was it. We are all for it. This is what they told us. That is what we have accepted. We have gone over the list. I will make it part of the RECORD. It goes over the numbers of hires, going all the way into the Border Patrol agents. They come into the whole issue of border barriers and surveillance, the number of miles each year planned, what they believe is necessary. They review what they believe is the timeline for the catch and return, the number of beds that are going to be necessary. They go through the various milestones, the start-up costs, the actual recurring costs.

They have outlined all of this in very careful detail. That is what we have done. Every Member of the Senate ought to understand, these are Homeland Security's recommendations to secure the border, and that is what we have included in the legislation. It is always possible, I am sure, to be able to do more. We have done what was recommended to secure it, and I think it is a very effective program.

Mr. President, I ask unanimous consent that the material be printed in the RECORD.

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

STAFF ENHANCEMENTS FOR BORDER PATROL—GOAL: INCREASE BORDER PATROL AGENTS BY 6,000 BY DECEMBER 31, 2008

Projections	FY07	FY08	FY09	Total
Starting Onboard	12,319	14,819	17,819	18,319
Hires	3,900	4,350	850	9,100
Addition	2,500	3,000	500	6,000
Attrition	1,400	1,350	350	3,100
End of Year Onboard	14,819	17,819	18,319	.....

STRONG BORDER BARRIERS AND SURVEILLANCE

[Dollars in millions]

	FY06 actual [1]	FY07 planned	Calendar year 08	Total estimated cost FY06–FY08
Miles of primary fence	75	+70	[1] +225	$998M
Miles of vehicle barriers	57	TBD	200	$176M
Ground-based radar and camera towers (technology)	0	TBD	70	[2] $737M
Unmanned Aerial Systems (UAS) (A&M)	1	+1	[3] +2	$85.6M

[1] Equals 370 miles total.
[2] Reflects the fully loaded costs of the integrated technology solution, including engineering, unattended ground sensors, communications, etc.
[3] Equals 4 total UAS.

KEY ASSUMPTIONS OF TIMELINE

USCIS will publish regulations governing the TWP within 6 months of enactment, pursuant to expedited rulemaking authority.

USCIS will begin accepting and adjudicating applications 6 months after enactment of the legislation.

USCIS will stop accepting applications 18 months after enactment.

A total of 12.5 million unauthorized aliens may be eligible for the immigration benefits associated with the TWP, of which approximately 93% are expected to apply for the program.

Additional temporary sites will be established, equipped, and manned to support processing requirements above the current Application Service Center (ASC) capacity.

Not every applicant will require an adjudication interview (based upon S. 2611 requirements—currently constructing plans for interview of all applicants).

TWP applicants will be screened against all relevant security checks.

USCIS will receive the funding and resources necessary to upgrade systems infrastructure to handle increased processing demand. Funding must be made available to DHS at least 6 months before applications can be accepted.

Mr. KENNEDY. Mr. President, I now move to table the amendment of the Senator from New Hampshire.

Mr. GREGG. Mr. President, I make a point of order a quorum is not present.

Mr. KENNEDY. Mr. President, I would make a motion to table the amendment of the Senator——

Mr. GREGG. Mr. President, I will make a point of order a quorum is not present.

Mr. KENNEDY. From New Hampshire, and I ask for the yeas and nays.

Mr. GREGG. I make a point of order a quorum is not present, Mr. President.

Mr. KENNEDY. Yeas and nays, Mr. President.

The PRESIDING OFFICER (Mr. OBAMA). Is there a sufficient second?

Mr. KENNEDY. Yeas and nays.

Mr. GREGG. Mr. President, a quorum is not present. I make a point of order that a quorum is not present.

Mr. KENNEDY. The yeas and nays, Mr. President.

The PRESIDING OFFICER. There is not a sufficient second.

The clerk will call the roll on the quorum.

The assistant legislative clerk called the roll.

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, if I could have the attention of the Senator from New Hampshire, we were necessarily absent during the earlier presentation by the Senator from New Hampshire at a meeting with——

The PRESIDING OFFICER. The Senator is advised that a motion to table has been made. It is not debatable.

Mr. KENNEDY. I withdraw the motion to table.

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

Mr. KENNEDY. Mr. President, I was under the impression we had gone through the debate and discussion. I had indicated I was going to make a motion to table. When the Senator from New Hampshire came to the floor, I was glad to withhold as the Senator remembers. The Senator, as I understood it, had finished his comments, and I made brief comments.

I am more than glad, if the Senator wants to address the amendment. We have just been in the process of trying to move along. I have no intention of cutting him off. We have not attempted to cut anyone off. So if he had that impression, I regret it. I say to the Senator from New Hampshire, we have been longtime friends, and we have been trying to have a process of moving this along. I had not known, at least on our side, we had other people prepared to speak. I had not heard there were others who were prepared to speak on the other side. So that was basically the reason for moving ahead.

But I am glad to withdraw the motion, as I was earlier. I would hope the Senator would understand, and we would hear from the Senator, if he so desires. We want to, at some time, reach some judgment on the amendment, but I am glad to work that out with the Senator, as I have tried to over the years.

Mr. GREGG. Mr. President, I appreciate the courtesy of the Senator from Massachusetts, and I will take 2 minutes to respond to his comment, and then I would be happy to have the Senator renew his motion. That was all the time I wished to use to respond—the issue being I had not been aware the Senator was going to respond to my comment. But I did believe his comments deserved a response, and that is what I was seeking recognition to do at the time I was cut off. However, I do appreciate the Senator's courtesy.

In response to the specifics of the Senator's representations that the Department's position is that these numbers, as contained in the bill, will accomplish operational control of the border, I find that to be entirely inconsistent and unsupportable, first, from the testimony of the Department's lower level individuals—who are in charge of these agencies—before the Appropriations subcommittee which I chaired at the time, specifically, the Director of the Border Patrol, Mr. Bonner, who made it very clear he needed 20,000 border agents; and, secondly, the fact they had let a contract which has in it significantly more numbers in the area of virtual fencing towers than are in this bill. If they did not need those, why did they have a contract which calls for them?

So I think on its face the representation of that proposal may be that is what they can do in 18 months, but it is not what they need to do for operational control.

The proposal I have is the numbers necessary to obtain operational control: 2,000 more border agents than called for in the bill, 2,700 more beds than called for in the bill, 35 more towers for virtual fencing than called for in the bill, and 100 miles more of vehicle fencing.

It is not outrageous, not inconsistent, not inappropriate, and will actually strengthen this bill and make the American people believe we are doing something constructive in the area of border security.

With that, I appreciate the courtesy of the Senator from Massachusetts in allowing us to reopen the debate and ask unanimous consent that further

debate on this amendment be ended and that the Senator be allowed to make his motion, which he has a right to do anyway.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. 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. KENNEDY. 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. KENNEDY. Mr. President, I ask unanimous consent to vitiate the yeas and nays on the Gregg amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, we are prepared to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1172) was agreed to.

Mr. KENNEDY. Mr. President, I thank the good Senator from New Hampshire. We continue to make progress. I thank him. I know his strong views on this, and we will continue to work on it as a matter of enormous importance. I know the Senator from Arizona and others feel very strongly. We want to have a secure border. People have differing views, but we will work very closely to try and achieve the objectives, and we will work very closely with him as we go to conference and in conference as well. We all understand this is a work in progress.

Now, for the Members, I know Senator CORNYN wanted to offer an amendment. As I understand it, he is still in the Armed Services Committee. We were ready to go on our side. We had an amendment of the Senator from North Dakota which is going to sunset the temporary worker program. He is giving thought to that. If he would like to—I see Senator CORNYN is here now. We may go out of sync here, but if we wanted to go ahead with that—I see my friend from Arizona.

I yield the floor.

Mr. KYL. Mr. President, in order to take the next 10 minutes or so, my understanding is that Senator CORNYN will be ready in a few minutes, but in the meantime, a couple of people have been waiting patiently to speak for maybe no more than 5 minutes or so. I think the Senator from Tennessee would like to do that.

Mr. CONRAD. Will the bill managers yield for a question?

Mr. KENNEDY. Sure.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, for the information of the body, could the Senators give us some picture on the voting circumstances this evening? Is there a clear picture on whether you might expect additional rollcall votes tonight or would they be debated tonight and held over until the morning? What do the bill managers anticipate?

Mr. KENNEDY. Mr. President, I think we would like to try to at least get another vote, possibly two. I think we will know more clearly in about 15 minutes and we will notify our colleagues. I think we have made some good progress. We had several of our colleagues—as always, these are enormously important—from the Armed Services Committee and others. We will probably have a brief window tomorrow.

The Senator from Arizona, Senator MCCAIN, was here earlier and wants to do an amendment on back taxes, and I have indicated I thought we could probably do that in the morning and we will try to work out a time with him. We are trying to follow going back and forth, but if there are people here from a particular party who are prepared to go ahead, we want to try to deal with that.

I think we will have a limited time in the morning. I don't know when we are going to get the supplemental, but I am hopeful we would have at least a window in the morning.

Mr. KYL. Mr. President, if I could interrupt my colleague to give a couple of bits of further information, the next opportunity for an amendment should be from the Democratic side. Senator CORNYN is ready to proceed with an amendment, and also Senator HUTCHISON has an amendment I think that is cleared on both sides that we could do by voice vote, when that is appropriate. But the next amendment should come from the Democratic side.

My suggestion would be, while we are deciding the immediate future ahead of us, that Senator ALEXANDER be allowed to proceed on a matter that is unrelated, and then we could go to the Democratic side.

Mr. KENNEDY. That would be fine. I see the Senator from Iowa here who wanted to make a comment as well.

Mr. KYL. Mr. President, up to 5 minutes for Senator ALEXANDER.

Mr. CONRAD. Mr. President, might I inquire, is there any possibility of having further debate tonight and votes in the morning in lieu of additional votes this evening?

Mr. KENNEDY. That is always possible. We would like to check with the leadership. Senator CORNYN has been extremely patient through this process and has indicated at the start of the day that he would like to be able to address the Senate on an issue. He has now returned. I would like to see if we can't have maybe a short period here and then I could try and make an assessment and let the Senator know. But I would be very hopeful that we would be able to address Senator CORNYN tonight, and then I could talk to the Senator from North Dakota and Senator MCCAIN. If we can get those lined up for the morning, maybe we will be able to give an announcement about where we are.

Mr. CORNYN. Mr. President, if the Senator from Massachusetts will yield, I am happy to offer my amendment tonight and wait to vote on it tomorrow, if that suits the schedule of the bill managers. I wanted to offer that. I would like to offer it tonight and have the debate tonight, but if you would like to stack the vote up with others tomorrow, that is fine.

Mr. KENNEDY. If we could proceed with the Senator from Tennessee for 5 minutes and the Senator from Iowa for 10 minutes, and then we will announce what the plan is for the evening and for the morning. I ask unanimous consent to do that.

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

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

INTERNET TAX FREEDOM EXTENSION ACT OF 2007

Mr. ALEXANDER. Mr. President, today, Senator CARPER and I introduced the Internet Tax Freedom Extension Act of 2007. Other cosponsors were Senators FEINSTEIN, VOINOVICH, and ENZI. All of those Senators have been interested in this subject for the last few years.

The bill would, very simply, extend a moratorium on Internet access taxes by State and local governments for another 4 years. This is a commonsense compromise of what can sometimes be a very complicated discussion about continuing the moratorium, without blowing a hole in the budgets of State and local governments.

We all want to be careful about so-called unfunded Federal mandates. We want to respect State and local governments. But at the same time we want to create an environment that encourages technology. We believe this would do that.

The background of all this is, briefly, that originally Congress passed the Internet Tax Freedom Act in 1998, which did an extraordinary thing. It said State and local governments could not tax Internet access for three years. That sounds like a good thing, but we could just as easily pass a bill we might call the food tax freedom act, because that would keep State and local governments from taxing food; or because we are against income taxes, we might say the income tax freedom act and ban Tennessee from having an income tax; or we might say the sales tax freedom act, or the property tax freedom act, or the telecommunications tax freedom act. But instead we created the Internet Tax Freedom Act, meaning, in effect, that States could not tax Internet access. The rationale was that the Internet and electronic commerce is a fledgling industry, and Congress extended that in 2001.

In 2004, after extensive debate, we worked out a compromise extending this moratorium over the next 4 years.

The compromise we worked out in 2004, according to the National Governors Association, may have saved

State and local governments up to $12 billion in revenue. All of us want to keep taxes low, but here is where I am coming from. When I was Governor, nothing made me angrier than for Members of Congress coming up with a big idea to pass a law, take credit for it, and send the bill to the Governors, legislators, mayors, and county commissions. That is what we will do if we are not careful about the Internet access tax because, as we saw 4 years ago, telephone calls moved to the Internet. If we banned taxes on telecommunications as part of Internet access, telephone calls over the Internet would be free from taxation.

That sounds good, except States might have to increase college tuition, increase sales tax on food, or some States might have to put in, for the first time, a State income tax.

Mr. President, $12 billion in revenue is a lot of money. The definition of Internet access that is in this new compromise that Senator CARPER and I introduced on the moratorium would, for the next 4 years, protect State and local governments, while continuing the moratorium on Internet access. It is sensible. I think we will debate it more over time. Maybe it will even be accepted by all parties. I wanted to signal on my behalf, Senator CARPER's behalf, and on behalf of the National Governors Association, the National Conference of Mayors, and the National Association of Counties, that we believe it is very important to do no harm to State and local government. If we want to give a tax break to the telecommunications companies or to Internet companies, then we in Congress should pay for that and not send a bill to State and local governments.

This avoids our having to do that because the moratorium carefully defines Internet access to mean States are free to continue to make their own decisions. This doesn't mean States should attempt to tax the Internet; it means States may, if they choose, impose a sales tax on Internet services, just as States may impose a tax on food, or on medicine, or on gasoline, or may impose a tax on income. That is the job of State and local government. That is not the job of the Congress.

I am glad to join with Senators CARPER, FEINSTEIN, VOINOVICH, and ENZI in introducing the Internet Tax Freedom Extension Act of 2007. I am glad to extend a commonsense moratorium on State and local taxation of Internet access, and I look forward to passage of that legislation before long.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

(The remarks of Mr. HARKIN pertaining to the introduction of S. 1469 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

Mr. SPECTER. Madam President, I believe we are now prepared to turn to the Cornyn amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, is there a pending amendment?

The PRESIDING OFFICER. There is.

AMENDMENT NO. 1184 TO AMENDMENT NO. 1150

(Purpose: Establishing a permanent bar for gang members, terrorists, and other criminals)

Mr. CORNYN. Madam President, I ask unanimous consent to set aside the pending amendment, and I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

Mr. SPECTER. Madam President, if the Senator from Texas will yield for a question.

We are trying to determine what is going to happen on the balance of the evening. Senators, understandably, at 6 o'clock, are asking if there is going to be a vote this evening. I understand from our conversation in the cloakroom that there are two Senators who are considering joining with you and you are not now prepared to enter into a time agreement. But if those Senators would come to the floor and let us know what they intend to do, we will be in a position to see if we can vote. We wish to vote this evening, but we don't want to keep people around here if we are not going to vote.

Mr. CORNYN. Madam President, I agree with the distinguished Senator from Pennsylvania and will certainly try to work to accommodate everybody. It is not my intention to keep people hanging around here if we are not going to vote, but I can't enter into a time agreement specifically yet until we can get some people who are examining the amendment, the cosponsors who might wish to speak on it.

Mr. SPECTER. Maybe I could direct the question to the Senator from Texas. Would it be out of line to identify the Senators we have in mind so we can direct them to the floor to get this resolved?

Mr. CORNYN. I hate to identify them until they have made a decision to cosponsor the amendment or to speak on it, because they may want to study in confidence and then make a decision whether they want to cosponsor it or come to the floor. We are in communication with them, encouraging them.

Mr. SPECTER. Madam President, they know who they are. We would ask them to come to the floor.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN] proposes an amendment numbered 1184 to amendment No. 1150.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. CORNYN. Madam President, I know we are all anxious to proceed. No one is more anxious than I to proceed with the hearing of amendments and debate. I think colleagues will, when they hear what this amendment is about—and I apologize that, due to the legislative counsel being backed up drafting amendments, we have only recently been able to distribute the amendment text, but I think as I describe this amendment, my colleagues will share my concern with two problems that are in the underlying bill.

First, this amendment would do two things: The amendment would provide technical corrections to what I can only assume are drafting oversights in the underlying bill as well as close loopholes in the current law. These technical corrections include closing loopholes that fail to permanently bar from the United States and prohibit awarding of any immigration benefits to the following categories of individuals: No. 1, persons associated with terrorist organizations; No. 2, violent gang members; No. 3, sex offenders; No. 4, alien smugglers who use firearms; and, No. 5, repeat drunk drivers.

The question I put to my colleagues is whether Congress should permanently bar from the United States and from receiving any immigration benefit the persons in the categories I have just described and others who are dangerous to our society. I sincerely hope none of my colleagues would answer this question in the negative.

Let me point out a couple of examples of what I will call the technical fixes that are sorely needed. Current law prohibits U.S. citizens convicted of sex crimes against minors from bringing a relative into the country. This bill, however, does not specifically prohibit aliens who would be removed from the country because they are sex offenders and fail to register as such from entering the United States and getting legal status, such as lawful permanent residence status.

This, as I say, is what I believe to be an oversight. Perhaps in the haste in which the bill was drafted it has been left out, but it needs to be fixed, obviously.

The bill also retains a loophole under current law that would allow an alien who has been repeatedly convicted of driving while intoxicated to remain in the United States and get legal status, such as a Z status or a green card.

The bill also retains the loophole in current law that allows an alien who belongs to a terrorist organization, or perhaps even committed terrorist acts

and has not yet been removed from the United States, to get legal status.

Now, lest my colleagues think I am exaggerating, let me provide a real-world example of this loophole. Last year, Mohammed El Shorbagi pleaded guilty to providing material support to Hamas. His act of providing material support to Hamas would not have barred him from establishing good moral character under current law because it is not one of those grounds specifically included in the list of acts that prevent an alien from establishing ''good moral character'' under our immigration laws.

Now, I would hope these what I would call technical fixes are the kinds of commonsense solutions my colleagues would support. We have to ensure those aliens who have committed crimes, such as failure to register as a sex offender, or alien smuggling while using a firearm, are permanently barred and ineligible for benefits. We must also ensure those aliens who have committed acts or who engage in conduct in association with a terrorist organization, or perhaps have even committed terrorist acts themselves, are rendered permanently ineligible for any legal status and are barred from our country.

Finally—and this is not a technical fix; this, I believe, is a conscious decision on the part of the bill drafters to omit this category of individuals—my amendment would close the loophole in this bill that allows legalization of those illegal aliens who have already had their day in court and violated court-ordered deportations. These are known as absconders and, in fact, have committed a felony, if found guilty of their failure to deport once ordered deported, or if they have been deported and simply reentered the country.

Unlike the first half of my amendment, this is not a technical correction. In other words, the decision to legalize this population of illegal aliens was no drafting oversight.

Mr. LEAHY. Madam President, I ask the Senator from Texas to do me the courtesy of allowing me 1 minute to take care of something that is going to be accepted, and that is going to modify an amendment that is to be accepted.

Mr. CORNYN. Madam President, I yield for that purpose but claim my right to the floor.

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

The Senator from Vermont.

AMENDMENT NO. 1165, AS MODIFIED, TO AMENDMENT NO. 1150

Mr. LEAHY. Madam President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 1165.

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

Mr. LEAHY. Madam President, I ask unanimous consent that Senators CASEY and SCHUMER be added as cosponsors.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. KOHL, Mr. CASEY, and Mr. SCHUMER, proposes an amendment numbered 1165, as modified, to amendment No. 1150.

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

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

The amendment, as modified, is as follows:

In section 218E(d) of the Immigration and Nationality Act (as added by section 404(a)), strike paragraphs (2) and (3) and redesignate paragraph (4) as paragraph (3).

At the end of section 218E, add the following:

''(i) SPECIAL RULE FOR ALIENS EMPLOYED AS DAIRY WORKERS.—Notwithstanding any other provision of this Act, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a dairy worker——

''(1) may be admitted for a period of up to 3 years;

''(2) may not be extended beyond 3 years; and

''(3) shall not be subject to the requirements of subsection (h)(4).

In section 218G of the Immigration and Nationality Act (as amended by section 404(a)), strike paragraph (11) and insert the following:

''(11) SEASONAL.—

''(A) IN GENERAL.—The term 'seasonal', with respect to the performance of labor, means that the labor—

''(i) ordinarily pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

''(ii) because of the nature of the labor, cannot be continuous or carried on throughout the year.

''(B) EXCEPTION.—Labor performed on a dairy farm shall be considered to be seasonal labor.

At the end of section 404, add the following:

(c) CONFORMING AMENDMENT.—Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by inserting ''or work on a dairy farm,'' after ''seasonal nature,''.

Mr. LEAHY. Madam President, this modification is required by the authors of the bill in order for dairy provisions to be accepted into this bill. I have attempted through this language to ensure as best we can that our Nation's dairy farmers have adequate access to labor in the future. This amendment only deals with prospective immigration and is focused on dairy only.

Dairy is a year-round operation where interruptions to a farmer's labor force can have significant consequences—the H–2A provisions as they exist in the bill now do not adequately address the unique needs of dairy because they permit only 10-month terms of work. This sort of interruption does not work for dairy farmers, who need year-round, dependable employees.

In the AgJOBS legislation that this body passed last year and that we reintroduced this year, I supported a much broader provision to address the unique needs of the dairy industry. That provision had the overwhelming endorsement of America's family dairy operations. Unfortunately, there were objections from the Bush administration and the authors of the bill now pending, so I have worked with the managers of this bill to craft this compromise.

This modification would enable dairy farmers to have multiple avenues to employ legal workers in the future. First, under the H–2A program, dairy farmers would have the ability to hire workers for a 3-year period after which time the workers would return home. Second, this amendment would refine the H–2A program to allow dairy farmers to more easily obtain workers under the normal H–2A time frame of 10-month work periods. In combination with available opportunities under the Y visa program, these changes should provide significant opportunities for America's dairy farmers to obtain future legal workers to meet their needs. I urge support for this modified amendment to ensure that essential changes for dairy farmers become part of this legislation.

Madam President, I thank the Senator from Texas for his courtesy.

Mr. GRAHAM. Madam President, there is no objection on our side to this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1165), as modified, was agreed to.

AMENDMENT NO. 1168 TO AMENDMENT NO. 1150

Mr. GRAHAM. Madam President, if I could request the indulgence of Senator CORNYN, on behalf of Senator HUTCHISON, I call up amendment No. 1168 and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM], for Mrs. HUTCHISON, for herself Mr. BINGAMAN, Mr. DOMENICI, Mr. MCCAIN, Mr. KYL, Mrs. FEINSTEIN, and Mr. CORNYN, proposes an amendment numbered 1168 to amendment No. 1150.

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

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

The amendment is as follows:

(Purpose: To provide local officials and the Secretary of Homeland Security greater involvement in decisions regarding the location of border fencing)

On page 6, line 11, strike the second period and insert the following: ''.

(C) in paragraph (2), as redesignated—

(i) in the header, by striking ''SECURITY FEATURES'' and inserting ''ADDITIONAL FENCING ALONG SOUTHWEST BORDER''; and

(ii) by striking subparagraphs (A) through (C) and inserting the following:

''(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

''(B) PRIORITY AREAS.—In carrying out this section, the Secretary of Homeland Security shall—

''(i) identify the 370 miles along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

''(ii) not later than December 31, 2008, complete construction of reinforced fencing along the 370 miles identified under clause (i).

''(C) CONSULTATION.—

''(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

''(ii) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to—

''(I) create any right of action for a State, local government, or other person or entity affected by this subsection; or

''(II) affect the eminent domain laws of the United States or of any State.

''(D) LIMITATION ON REQUIREMENTS.—Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.''; and

(D) in paragraph (5), as redesignated, by striking ''to carry out this subsection not to exceed $12,000,000'' and inserting ''such sums as may be necessary to carry out this subsection''.

Mrs. HUTCHISON. Madam President, I rise today to speak to an amendment and resolve an issue impacting the citizens of our country that live along the U.S.-Mexican border.

I have long stressed the need to secure the borders of the United States—not only our southwest border with Mexico but also our northern border with Canada and our maritime borders, coastlines, and ports of entry.

I have consistently supported and voted in favor of border security efforts—such as the installation of reinforced fencing in strategic areas where high trafficking of narcotics, unlawful border crossings, and other criminal activity exists. I have also supported installing physical barriers, roads, lighting, cameras and sensors where necessary .

The Secure Fence Act of 2006 was passed by Congress and signed into law by the President, and it signaled a major initiative to secure the border with Mexico and Canada.

We must address border security so that we can move forward to address comprehensive immigration reform.

I will continue to champion border security measures and strongly support the efforts of my colleagues to strengthen our southwest border—protecting our citizens from threats of terrorism, narcotic trafficking, and other unlawful entries. However, I am concerned that Congress is making decisions about the location of border fencing without the participation of State and local law enforcement officials working with the Department of Homeland Security. The location of fencing should not be dictated by Members of Congress who have never visited our border.

Our border States have borne a heavy financial burden from illegal immigration, and their local officials are on the front lines. Their knowledge and experience should not be ignored. Texas shares approximately one-half of the land border between the United States of America and the Republic of Mexico. Our State and local officials and those in California, Arizona, New Mexico, and Texas should not be excluded from decisions about how to best protect our borders with their varying topography, population, and geography.

Local officials and property owners in my home State of Texas—particularly in the areas of El Paso, Del Rio to Eagle Pass, and Laredo to Brownsville—cited in the Secure Fence Act, under current statutory law, do not have an opportunity to participate in decisions regarding the exact location of fencing and other physical infrastructure near their communities.

To address this issue, I hosted a meeting in my Washington office, on January 17, 2007, with DHS Secretary Michael Chertoff, my colleague from Texas, Senator JOHN CORNYN, mayors from the border cities in Texas, and representatives of the private sector. That meeting began a dialogue with our local representatives in Texas and the Federal Government. I look forward to helping ensure that this dialogue continues.

The Hutchison-Bingaman Amendment, No. 1168, cosponsored by Senators CORNYN, KYL, MCCAIN, FEINSTEIN, and DOMENICI, addresses these issues and provides local and State officials greater involvement in decisions regarding the location of border fencing.

I urge the adoption of my amendment.

Mr. GRAHAM. Madam President, I urge the adoption of the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1168) was agreed to.

The PRESIDING OFFICER. The senator from Texas.

AMENDMENT NO. 1184

Mr. CORNYN. Madam President, I ask unanimous consent that my amendment be reinstated as the pending amendment.

The PRESIDING OFFICER. The amendment is once again pending.

Mr. CORNYN. I thank the Chair.

Madam President, I have discussed what I would call technical corrections or oversights that have been left out of this bill, in haste, perhaps, because I know that following the negotiations that went on for several weeks leading up to the announcement of an agreement by a bipartisan group of Senators on Friday, there was a lot of effort made to try to then turn that agreement into bill text. It wasn't until roughly midnight, I believe on Saturday night, that an original, or I should say a rough draft for discussion purposes was created; and then, if I am not mistaken, it was the night before last, about 9 o'clock, when this original amendment was laid down, this substitute amendment, which actually reflects bill text, that we could then go to legislative counsel to try and craft our amendments to be addressed.

Before I talk a little bit more about the second part of my amendment, which I think was consciously omitted from the bill, I ask unanimous consent that Senator BEN NELSON of Nebraska and Senator DEMINT of South Carolina be added as original cosponsors to my amendment.

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

Mr. CORNYN. Madam President, the second part of my amendment has, I think it is fair to say, a substantial impact on the underlying bill, but one I hope my colleagues will agree is necessary and important to adopt.

My amendment would close the loophole in this bill that allows legalization of those illegal aliens who have already violated court-ordered deportations. They are sometimes known as absconders because they literally have absconded from the law, but they are, in fact, under section 243 of the Immigration and Naturalization Act felons by virtue of their having absconded either after they have been ordered deported—they have simply gone on the lam and been fugitives from justice—or they have left the country pursuant to their order of deportation and then reentered the country illegally. They are, under section 243 of the Immigration and Naturalization Act, felons if found guilty of those offenses.

Unlike the first half of my amendment, this is not, as I said, a technical correction. In other words, the decision to legalize this population was no drafting oversight. It was a conscious part of the negotiated package that is now represented by the substitute amendment pending before the Members of the Senate. The drafters of this bill have made a conscious decision that Congress will allow exceptions for individuals who are illegally in the United States, in defiance of a court order, as well as those who have previously been deported from the United States pursuant to a court order and have again reentered illegally.

It is important to note that Congress has determined that each of these crimes is a felony. The laws, as I said, are already on the books. These acts of defiance of our legal system are not actions which would signal an individual's likelihood of future compliance with the laws of the land. I don't think Congress should be in the business of allowing exceptions to a class of individuals who can reasonably be dubbed as fugitive aliens.

In fact, it was Secretary of the Department of Homeland Security Michael Chertoff who said during our negotiations that illegal aliens who have defied our court system after having been given full due process of law do not deserve to be rewarded with legalization. Unfortunately, the drafters of this bill, in an effort to accommodate certain advocacy groups, have ignored Secretary Chertoff's commonsense observation, what is being peddled as ''discretion'' by way of a ''waiver.''

We can't guarantee the American people that future Presidents will appoint, nor the Senate confirm, Secretaries of Homeland Security with the good sense and judgment of Secretary Chertoff. Thus, I think we need to eliminate any discretion in allowing these individuals to remain in the country and obtain the benefits of this legalization. I submit that discretion is something Congress gives away to a bureaucracy when Members don't have the intestinal fortitude to create a bright-line rule. This bright-line rule would affect roughly 700,000 absconders who are still in the United States. The underlying bill would allow them a path to legal status and perhaps even to citizenship. My amendment would say these people have had their opportunity to have their day in court and do not deserve the benefits that this underlying bill would give to other persons who have not similarly defied our U.S. legal system and, indeed, have committed, perhaps, felonies.

I ask my colleagues this. What is the message we send about the rule of law in America when Congress would not even categorically prohibit rewarding those illegal aliens who have defied lawful orders? What is the message we are sending to immigrants who are lawfully waiting outside the country when we reward those who have not simply violated our laws by entering illegally but who have also thumbed their noses at our legal system, after having been ordered or actually been removed?

I urge my colleagues to reject the policy in this bill that would reward felony conduct with legal status. I hope my colleagues will support me in that effort.

I yield the floor.

Mr. DORGAN. Madam President, the Senator from Texas asked a question. I think the answer is probably fairly obvious. What is the message we send to people around the world who applied for status to come to this country through the immigration quota process? There is a process that is our legal immigration process. What is the message to those folks who, perhaps 3 years ago, 5 years ago, 9 years ago, filed a petition only to discover that if they had walked across the border on December 31 of last year, they would, with this legislation, be deemed to have been here legally? That is the message. It is sort of a Byzantine message as far as I am concerned.

Yesterday something happened that was quite interesting. I attempted to eliminate the so-called guest worker program or the temporary worker program by which millions of additional people who do not now live in this country would be invited in to take American jobs. I attempted to eliminate that. I failed to do that. I will next offer an amendment at some point, perhaps tomorrow morning, that will sunset the temporary worker program. If we cannot eliminate it, at least let's put an end to it—put a sunset on it.

During the debate yesterday, something fascinating happened. We are told repeatedly on the floor of the Senate that this bill is a piece of legislation that provides border security because most of us know that when you start dealing with immigration, the first step, the first baby step is to provide border security. If you do not do that, all you do is set up, another 10 or 15 years from now, exactly the same debate and provide amnesty for another 10 or 15 million people.

We have done that before, in 1986. We have heard exactly the same arguments: We are going to have border security, we are going to have employer sanctions, we are going to shut down illegal immigration, and we are going to have nirvana. The fact is, none of that worked. We have done this before.

What happened yesterday was fascinating to me. In an attempt to shut down the temporary worker provision, I was told by the people who constructed this proposal that if you shut down the temporary worker provision by which we will bring people into this country who are not now here to take American jobs—if you shut down the temporary worker provisions, what will happen, they said, is people will come across illegally anyway.

I said: I don't understand your point. First, you said you have written a bill that provides border security and stops illegal immigration. Now you are saying if we get rid of the temporary worker provision, what will happen is we will have illegal immigration anyway. You can't have it both ways. Either this bill does what is advertised and provides real border security or it doesn't.

Those who put the bill together told us yesterday it doesn't have that border security because they believe they have to designate those who are coming across as legal, therefore, temporary workers, because if they did not do that, they would come across and we would call them illegal. That is the most unbelievable thing I ever heard.

They cobbled together this proposal. I said yesterday it reminds me of the old saying that a camel is a horse produced by a committee. They have cobbled together this camel of policy here with several different pieces, saying, first, because I believe they understand the politics of it that requires them to say this, we have provided for border security when, in fact, they have not. That is not the case. All they have done is created the same promises I heard 21 years ago.

Then they say, but we must, even as we decide to say to this 12 million who are here, including those who came across the last week of December last year: By the way, you are now legal and given a work permit—we must, in addition to that, allow millions more to come in.

Yes, you get millions more when you do 400,000 a year for 2 years, have them go back for a year, come back 2 more years, have them go back a year, and have 2 more years and accumulate that, and you have at the very least, without even counting families, 12 million workers in a few years. They say we have to do that—invite others to come in to take American jobs—because if we don't, they will come across the border anyway. That is a serious admission of failure, in my judgment, in the bill that is brought to the floor of the Senate.

I didn't intend to come here to say anything, but I heard my colleague from Texas ask, What is the message? The message is a Byzantine message to those who believed there was a legal way to try to come to this country, a legal process by which we have immigration quotas from various countries and they, thinking it was all on the level, actually made application to say I would like to come to the United States of America and I am willing to wait. I waited 5 years or 7 years, they say, only to discover that as of today, if this bill passes, we say you should have come across on December 28 or so into this country. You could have gotten on a plane on a visitor's visa with a full intention of never going back, or walked across the border someplace, and this Congress with this legislation would say to you: We have a great surprise for you. You came across illegally and we now desire to say to you: You are legal, you have legal status and a work permit.

What kind of message? We know the answer to that. It is a Byzantine message that makes no sense at all.

Is immigration an issue? Yes, it is. But this bill will not solve it. I intend to offer an amendment in the morning that will establish a sunset on the provision called the temporary worker provision. But even that will not solve the problems of this legislation.

I yield the floor and 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. CORKER. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Tennessee is recognized.

Mr. CORKER. Madam President, I rise today to, first of all, thank our leadership for allowing a true debate to take place on this issue. I know at one time it was discussed that we would pass this huge piece of legislation, that affects so many people, in 3 days. Because of the acquiescence of the bill

managers and leadership, we are truly going to have 3 weeks of debate.

You heard the Senator from Texas offer an amendment to make this legislation better; and the Senator from North Dakota, to offer his views. I think this whole process has been very healthy.

One of the things we are trying to address in this bill is a situation where our immigration has been broken, the system has been broken for many years. In 1986, legislation was offered to try to solve this problem. What has happened is it has gotten even worse, so there has been, obviously, more thought put into this bill.

I appreciate again the many amendments and the discussion that has taken place. Many of the things we have talked about have addressed the legalities, have addressed some of the technicalities in our immigration system. It seems to me, one of the things we have not addressed—while we have tried to address fairness to businesses, we tried to address fairness to immigrants, we tried to address fairness to families—one of the things I think we have not addressed is a sense of fairness to the American citizen.

What I mean by that is this. There is a sense of fairness that we see many times on the floor that is not addressed by the fact that we have about 12 million people in this country today illegally. People see this bill as straight amnesty, where all of a sudden we are going to make it legal that if you have been here working, for however long, you become legal in this country by virtue of being here.

In many cases, people have talked about some of the draconian measures that require people to actually return home to their countries. Yet this bill, in some cases, does that. Certainly, to become a green card holder, somebody has to return home to their country before coming in. That is something Americans think is fair.

If you want to be a temporary worker in this country, according to this bill, what you would do is work here for 2 years, as the Senator from North Dakota responded, then you would leave and go back for a year, and then you would come back into our country. Yet that is not perceived to be draconian and I do not think it is at all. But the one provision that seems to me to hit at the essence of the American frustration that is not in this bill, is the fact that we have some triggers that are going to cause our borders to be secure and make us be able to track people in an appropriate way—the administration said this can take place over the next 18 months—but what we are not doing is asking the people who are here in our country illegally to actually return home and come back through legal channels.

It is that point, I think, that has divided the American people, the fact that this bill does not address the inequity of allowing those people to remain here. These are people who came here, obviously, to support their families, and we understand what the motivation is for many people to be here, but this bill does not address that inequity.

What I propose tonight and I am working with other Senators to hopefully make happen after we come back from recess, is to actually have a provision in this bill that treats people who are here illegally like those who wish to have a green card, like those who would be temporary workers in this bill. I would ask that other Senators work with me and others to create an amendment to this bill that actually would cause, over a reasonable amount of time, people who are working in this country to return to their home country and then come back through legal channels. I think that strikes at the very core of what so many Americans believe is so inappropriate about having illegal immigrants, illegal workers, automatically made legal.

I think that is a central fallacy in this bill as it has been offered today. After many of these technical amendments are agreed to over the course of the next few days, and as we come back from recess, I look forward to working with other Senators to try to ensure that if this immigration bill passes, it passes in a way that meets the sense of fairness the American public believes this bill ought to have; that it addresses that inequity of people who jumped in front of the line and came here, being here illegally and yet being able to benefit without, during a reasonable period of time, returning home and coming back through legal channels, once we have the mechanisms in place to allow people to do that. I hope to have the opportunity to work with others in this body to make that happen.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from New Jersey.

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

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

Mr. MENENDEZ. Madam President, I wish to rise briefly to speak to the amendment of the Senator from Texas. I think I caught him describing it as a ''technical one.'' At first blush, having just seen it for the first time, looked at it and having seen the intersection of what he seeks to do throughout title II of the bill, it is far from technical; it is very substantive. I appreciate that he has very substantive positions that might be different from mine, but they are very substantive, they are not technical. They go, in some cases, to the heart of due process for individuals, and they go to the heart of undoing what some cases in the appellate division and beyond have decided is the appropriate law of the land.

I just wish to start off by saying that I certainly hope this amendment will not come to a vote tonight because I think all of us need to understand the nature, the scope, the breadth, the width of what, in fact, is being offered here, which I truly believe is far more than technical. So I just wanted to, so to speak, wave my saber early for the distinguished Senator from Texas and say that I am sure he is going to get a vote, but I will have to object if there is any intention to seek a vote tonight. You have to take all of the 12 pages that were just presented, intersect them, and see how they affect different sections of the underlying statute, and those have real meaningful consequences at the end of the day. I might agree with some; I might strongly disagree with others. So I just wanted to make it clear to the body that, from my perspective, it is a little bit more than technical.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I appreciate the concerns of my distinguished colleague. It is a fair point; this is more than a technical amendment. He may not have heard my entire earlier statement. I indicated that some aspects of my amendment were what I thought were technical, but there was a second part that was far from technical, it was very substantive, and I knew it would be controversial because we discussed it during the course of the negotiations in which the distinguished Senator from New Jersey participated, as did I, and it was, the best I can tell, consciously omitted from the draft. So my effort here is to insert it by way of amendment. I do believe it deserves full and fair consideration. People need to understand what the impact of it will be.

Indeed, this whole subject matter has a lot of ramifications and a lot of moving parts, and that is the reason I am so glad we have not only this week but also a second week after the recess which the majority leader has scheduled to conclude the debate and vote on the bill.

I certainly understand the Senator's concerns, and I would welcome the debate that will ensue, but I can understand why he would object to a vote tonight. We have actually talked with the bill managers and suggested that perhaps, if unanimous consent can be obtained, this amendment would be set aside temporarily and perhaps other amendments can be laid down and even voted on tonight but that we can wait until tomorrow, perhaps, to schedule a vote on this after everyone has had a chance to digest it and consider its ramifications.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Madam President, I appreciate the offer from the distinguished Senator from Texas, and I certainly hope we will take his offer because I would have to object if we were

to try to proceed tonight to a vote on his amendment. I think his amendment is important. I think it has real consequences. There are real consequences of substantive law, there are real consequences of due process, and there are real consequences of equal protection. So these are major legal issues which affect potentially millions of people.

I appreciate the spirit in which he has offered it. I appreciate him saying he is more than willing to give time. I hope the bill managers would pursue that course of action and make sure that a vote on this does not take place until sometime tomorrow so that we can digest all of this and have the appropriate debate because legal protections are very important in the context of what we are doing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I wish to spend, if I can, just a few moments—I see my colleague from New Jersey is still on the floor, and he will be joining me at an appropriate time in offering an amendment dealing with parents of U.S. citizens. The Senator from New Jersey speaks eloquently about this issue on a very personal level. I am proud to be the author of an amendment with him and others to try to improve this legislation.

This amendment would unite parents with their families in the United States by increasing the cap on green cards issued to them, extending the duration of the newly created parent visa, and ensuring that penalties imposed on people overstaying this visa are not unfairly applied to others, as they would be in this legislation.

Under current law, parents of U.S. citizens are defined as immediate relatives, along with spouses and minor children, and are exempt from green card caps. Under the proposed legislation, S. 1348, parents would be removed from this category and subject to an annual cap of 40,000 green cards. This amendment increases the cap on green cards in this bill to 90,000. That is about the average annual number of green cards issued to parents of U.S. citizens.

Second, we are trying to extend the duration of the newly created parent visitor visa to 180 days. Under this bill, the amount of time a parent could stay here under a parent visitor visa is limited to 30 days per year. On the other hand, a tourist visa is valid for 180 days per year. The idea that your parent can only come here for 30 days is something that is offensive to a lot of Americans who believe in the value and importance of children and parents being together.

This amendment would also ensure that penalties imposed on overstays are not unfairly applied to others, as they would be in this legislation. If the number of overstays exceeds 7 percent, individuals from disproportionately high-risk countries could be barred from coming to the United States on this visa program or the entire program could be terminated.

I hardly think it necessary to make the case about the value of parents and children being united for a period of time and what it means, if you are parents yourselves, to be able to have grandparents spend some time with their grandchildren.

We take great pride in that. We extol the value of family. One would be hard pressed to hear a speech given by someone in public office today, regardless of the subject matter, that doesn't at some point or the other talk about how important it is to value families, to do everything we can to keep families together, the importance of intergenerational communication, grandparents and grandchildren, parents and children, the value of that to a nuclear family. Certainly, we all recognize we have serious issues of security that need to be dealt with at our borders, doing what we can to provide for the legal status of those who are seeking to come here through traditional means. It is a major step backwards for a country that prides itself on allowing for families to be together, understanding the importance of it, that we would be talking about legislation that cuts by more than half the average annual number of green cards needed for parents to visit their children, dealing with them in a separate category, and providing actually a longer visa for tourists than for parents.

No one knows who gets excluded when you go from no cap down to 40,000. Obviously, a lot of parents would be excluded in any given year. As evidenced over the years, once parents do come for a limited amount of time, that usually completes the family unit. They are not likely to sponsor other relatives. U.S. citizens with parents abroad should not be treated differently than those with parents here, to provide that opportunity in time for them to be together.

This amendment would increase the green card cap to 90,000 so we are meeting the average annual need and not creating an insurmountable backlog. It would make sure that sufficient numbers of green cards are available to parents who come to the United States. We extend the parent visa to 180 days and make it renewable and valid for 3 years. Those are already accepted time frames for the validity of visas. 180 days is the length of a tourist visa. H–1B visas are valid for 3 years.

This legislation limits parents to an annual stay of 30 days. It does not specify any long-term validity. This is far too short a time allotment, I think most would agree, particularly for parents who come for health reasons or to help their children during and after childbirth.

Lastly, this amendment would make penalties for parent visa overstays applicable only to them. Under the legislation before us, if the overstay rate among visa holders exceeds 7 percent for 2 years, all nationals of countries with high overstay rates can be barred from this program or the program can be terminated. Sponsors of overstays are also barred from sponsoring other aliens on this visa. This amendment strikes that language that unfairly collectively punishes those who have not violated the law, allowing law-abiding parents to continue to unite with their children.

The amendment is comprehensive and touches on all three points of family reunification: parents with their children, grandparents with their grandchildren. Again, it hardly needs a lengthy explanation of the value. I regret deeply that my children don't have the benefit of their grandparents. They passed away too many years ago. How many times on a daily basis I think of what a value it would be to my children to know their grandparents, not to mention what it would have meant to my wife when she gave birth to be able to have her mother around during that period of time or the weeks thereafter to have her come and spend a couple of months. To be with the family as they are getting on their feet, I don't know of a single American who doesn't understand this basic concept.

At the appropriate time, I will offer this amendment. I am pleased my lead cosponsor on this amendment is my colleague and friend from New Jersey. I thank him for his support. He told me the story of his family. I think maybe more than anything else I heard over the last several weeks, thinking about what it would have meant for his family coming from Cuba and not being able to come here moved me to the point where I thought this was something we ought to offer on this legislation.

At the appropriate time I will offer the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Madam President, I thank and applaud the distinguished Senator from Connecticut for soon offering this amendment. I am proud to join him in this effort. I want to build upon a couple of things he said as to why this amendment should be accepted, not voted but accepted.

First, I have listened to a new definition of what a nuclear family is. It is amazing. I have heard so many speeches over my 15 years in the Congress about family. All of a sudden, the nuclear family doesn't involve mothers and fathers. All of a sudden it doesn't involve children, just because they happen to be over the age of 21. All of a sudden brothers and sisters are not part of a nuclear family.

What is a nuclear family? Certainly as people travel throughout the country making speeches about nuclear families—about families period—they certainly mean their parents, people who gave life to them; certainly they mean their children, individuals to whom they gave life; certainly, they

mean their brothers and sisters. I have been amazed at some of the comments I have heard on the floor of the Senate about what is not nuclear family.

What else is this about? This is about the right of a U.S. citizen to apply for their mother and father. That is what the amendment of the Senator from Connecticut is all about, the right of a U.S. citizen already to apply. Do everything right. Pay your taxes, serve your community, serve your country, you want to have a right, which you have under the law today, to simply bring your father and mother, or either one depending if they are not both alive, the opportunity to be reunited with you, a nuclear family, be reunited with you because you need them, be reunited, as the Senator from Connecticut says, because you have a child and now there is the opportunity to have the love and care a grandparent can offer, to create a sense of family, which is the essence of stability in our communities. Of any faith, it is the very core.

What we see in the underlying bill is an elimination for the most part, a significant right of U.S. citizens dramatically reduced. The Senator's amendment actually will allow not for everybody. It still will have a certain degree of limitation because last year we gave 120,000 visas to parents. The Senator—which I think is reasonable—has looked at the historic average, and this says this is the amount that at least generally has taken place in family reunification of a U.S. citizen claiming their parents.

When I hear chain migration, how dehumanizing. Chain migration, it makes me think of a bunch of paper clips hanging together. Chain migration, is that what we have come to? Parents are part of a little chain? There is this concern that they will be able to claim someone else. Who can they claim if they are being claimed by their son or daughter? That's it. You can't claim anybody else. Chain migration. How easy it is to try to take something that has so much significance in our lives and dehumanize it. Chain migration? No, this is about family reunification. It is the core of what our society is all about. It is what we hear speeches about all the time in terms of strengthening families. Families will be strengthened when they are together, not torn apart.

In the universe of visas, this is very small, but it has a big consequence. Therefore, I salute the Senator from Connecticut for offering the amendment. I am proud to join with him when he offers it at the appropriate time. I hope we are not going to now say that parents are not part of the nuclear family.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1158 TO AMENDMENT NO. 1150

Mr. COLEMAN. Madam President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 1158.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Minnesota [Mr. COLEMAN], for himself and Mr. BOND, proposes an amendment numbered 1158 to amendment No. 1150.

Mr. COLEMAN. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to facilitate information sharing between Federal and local law enforcement officials related to an individual's immigration status)

At the appropriate place, insert the following:

SEC. ____. INFORMATION SHARING BETWEEN FEDERAL AND LOCAL LAW ENFORCEMENT OFFICERS.

Subsection (b) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended by adding at the end the following new paragraph:

''(4) Acquiring such information, if the person seeking such information has probable cause to believe that the individual is not lawfully present in the United States.''.

Mr. COLEMAN. Madam President, following the attacks of 9/11, we made a promise to the American people to make this country safer. We identified on all levels cracks in our system. Most alarming, we found that intelligence agencies were not talking to one another. We found that when the left arm doesn't know what the right arm is doing, the consequences can be disastrous. The gathering of intelligence is not an abstract concept that only happens on the streets of Afghanistan or Iraq. It happens every day on the streets of Duluth or St. Paul, MN. Our local law enforcement agencies are on the front lines of our communities and often know exactly what is happening on our streets.

Sadly, in what is reminiscent of pre-9/11 days, municipalities have identified a loophole in the law—or in many ways I don't even call it a loophole, they have simply circumvented Federal law and have banned the practice of officers inquiring about a suspect's immigration status, allowing cities throughout the country to become what are called sanctuaries for illegal immigrants.

My amendment seeks to end the practice of sanctuary cities. These are cities that seek to evade their obligations under section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. That law expressly prohibits any Federal, State, or local government entity from preventing a law enforcement officer from sharing information with the Federal Government regarding the immigration status of a person with whom they come in contact.

The law is very clear. Section 642, subsection (b) states:

no person or agency may prohibit, or in any way restrict—

In any way restrict—

a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

It goes on to say, you cannot restrict ''sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.'' You cannot restrict, in any way, ''maintaining such information.'' You cannot, in any way, restrict ''exchanging such information with any other Federal, State, or local government entity.''

So that is what the law states.

Several cities have passed ordinances or issued executive orders forbidding local law enforcement from even asking the question as to whether a person is in the United States lawfully, and thereby evading their legal responsibility to report their suspicions to the Federal Government.

In other cases, police department policies forbid or severely restrict their officers from asking a person about immigration status.

Essentially, the philosophy is ''don't ask, don't tell''—don't ask suspects about their immigration status, so then you don't have to follow the dictates of the Federal law. These cities have decided the rule of law does not apply to them.

Scores of law enforcement officers have chafed at the gag order. I had a meeting last week with law enforcement officers from Minnesota in my office, and they mentioned this. They mentioned the frustration they have with what they think is their responsibility to report if they think somebody is not here legally, that—who knows?—this person could be somebody who had been deported before, and that is a felony. They are absolutely prohibited from even asking the question or having the conversation.

Many say they routinely come in contact with dangerous persons they know have been deported already—they know it—yet their local sanctuary policy is to prevent them from being able to do anything about it.

Supporters say sanctuary policies are intended to be humanitarian because they allow illegal immigrants to cooperate with the police without fear of deportation. But the consequences of these policies are anything but for the law-abiding members of these communities: in some cases, dangerous criminal aliens remaining on the streets, muzzled law enforcement officers, and scarce local resources being wasted on

noncitizens who should be turned over to the Federal authorities.

Opening the channels of communication between local and Federal law enforcement will help prevent crimes against other members of the communities. Consider some recent examples.

Two young women who were killed in an accident near Virginia Beach earlier this year were struck by a drunk driver who had three previous alcohol-related convictions and an identity theft conviction, but because he had never been sent to prison, there had never been an examination of his immigration status. Reportedly, many area police officers knew the individual was in the United States illegally. Yet they never reported it to Federal immigration authorities.

In April 2005, a Denver police officer was shot and killed by an illegal immigrant who had been stopped three times for traffic violations and even appeared in court just 3 weeks before committing the murder. Strict rules in the police manual deterred officers from inquiring about his immigration status, so Federal immigration authorities were never notified.

In June 2003, a 9-year-old girl was kidnapped in San Jose, CA, by an illegal immigrant who had been arrested previously for auto theft. Because the San Jose Police Department's policy manual forbids officers from initiating police action intended to determine a person's immigration status, Federal authorities were never contacted.

In December 2002, a 42-year-old mother of two was raped in Queens by a group of men. Four of them were illegal immigrants, and three had previously been arrested for such crimes as assault, attempted robbery in the second degree, criminal trespass, illegal gun possession, and drug offenses, but were later released.

In May 2002, three women in Houston, TX, were raped and murdered by Walter Alexander Sorto, an illegal immigrant who had been ticketed several times for traffic violations.

This is not to suggest all aliens are violent criminals or that all violent criminals are illegal aliens. We caught Al Capone on tax evasion. We can protect our communities by allowing police officers to find out whether a person has broken our immigration laws.

Sanctuary city policies do not just leave their own citizens at risk. Mohammed Atta, the leader of the 9–11 hijackers, was stopped and ticketed for driving without a license in Broward County, FL, in early 2001. His visa was expired. Under these policies, no one would ever know that.

Just this month, we saw a terror plot unfold in Fort Dix that might have been prevented sooner had the local officials, who pulled the suspects over on numerous traffic violations, inquired about their immigration status. Make no mistake, this is a national security issue.

To address this problem, I am offering a simple amendment to make it clear a police officer has the right to ask immigration-related questions of a suspect, and to report his or her suspicions to Federal authorities. My amendment restores the original intent of the 1996 law, which I read before, by stating that Federal, State, and local governments may not prohibit law enforcement from acquiring information about immigration status where there is probable cause. That is what the 1996 law says, and yet cities have been able to circumvent this. Let us, then, go back to the original intent of that law.

My amendment does not require local law enforcement to use their scarce resources enforcing immigration laws. It does not enable local law enforcement to conduct immigration raids or act as Federal agents, or even determine a person's immigration status. Instead, my amendment simply gives law enforcement officers the ability to pursue a person's immigration status as part of their routine work, and thus to report any suspicions to the appropriate Federal authorities through already established channels, such as through the Law Enforcement Support Center at ICE, or ICE's Criminal Alien Program.

In essence, sanctuary cities are thumbing their noses at Federal law. The Justice Department has concluded that States have the inherent sovereign right to make arrests for both criminal and civil immigration violations. Section 642 of the 1996 immigration reform bill expressly states local law enforcement officers must communicate with Federal authorities. Yet their leadership or their local government or their city council is actually preventing them from doing so. In this day and age, we cannot allow for such law enforcement-free zones.

Finally, and perhaps most importantly, the bill before us today takes away the strongest argument that sanctuary city supporters have; namely, that illegal immigrants will be so frightened about being deported that they will never go to the police.

As currently written, this bill will give a legal status to these aliens. Any alien participating in the program should not fear an encounter with a police officer. The only aliens who would fear contact with the police are those who have committed some crime.

Sanctuary cities take away the ability of a police officer to use his or her own judgment in the course of their routine police work to inquire about a person's immigration status and share their concerns with the Federal Government for followup action.

The reality is law enforcement officers ask a wide range of questions of suspects every day that touch upon many aspects of the person's behavior. But in sanctuary cities, they cannot ask about immigration. The artificial wall relative to immigration status is illogical—and I would suggest perhaps even unconstitutional—and in this day and age harmful to our national security. We ought to give this tool back to our local law enforcement.

Finally, one other point. One of the challenges we have with the bill before us—by the way, a bill where I would like to see us deal with the immigration issue. The system is broken. It needs to be changed. Clearly, we know that. We all know that.

We have had a group of Senators on both sides of the aisle, from a broad political spectrum, come together to try to find some common ground, to try to deal with the issue of strengthened border security, which we must deal with—to do those things—to ensure greater employer responsibility, and then to figure out some way to deal with the 11 million who are here, to know who they are, have them learning English, have them pay taxes, and not to provide amnesty but to provide fines and a series of sanctions and a path before one can even consider proceeding to something like citizenship.

But one of the problems we are having—I am having it now. I have gotten thousands of calls on this issue, most against this bill, even though people have not even read the bill yet. I think it is, in part, because folks do not trust us, do not trust the Federal Government to do what we say we are going to do. They do not trust us to absolutely uphold the rule of law. They do not believe when we say we are going to secure our borders that we are actually going to do it.

In many ways, this issue I raise today is a rule of law issue. If we tell people across America that in sanctuary cities the rule of law does not apply when it comes to immigration, how are we going to get the American public to believe we are serious about border security—when we then try to figure out a way to do a guest worker program, to deal with the 11 million who should come out of the shadows into the sunlight?

I suggest by supporting this amendment what you are doing is supporting respect for the rule of law. We need to do more of that to gain the trust and the confidence of the American people.

I urge my colleagues to support this amendment.

Mr. President, with that I yield the floor.

The PRESIDING OFFICER (Mr. CASEY). The majority leader is recognized.

UNANIMOUS-CONSENT REQUEST

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of a resolution honoring the life of Rachel Carson, a scientist, writer, and pioneer in the environmental movement, on the occasion of the centennial of her birth, which was introduced early today by Senators CARDIN, SPECTER, and others; that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements thereon be printed in the RECORD.

Mr. COLEMAN. Mr. President, I object on behalf of another Senator, another Republican.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I appreciate the obligation my friend from Minnesota has. But I am going to continue offering this unanimous consent request. To think that we would not honor Rachel Carson on the anniversary of her 100th birthday—a woman who did as much for the environmental movement in this country as any human being who has ever existed.

Somebody has objected to this? I have heard the reason for the objection is she relied on flawed science to come to her conclusions. I do not know anything about flawed science, but I do know this woman turned the minds of young people to the environment, turned the minds of the academic world to the environment. As a result of her work—as a result of her work—we became conscious of our need to make sure we do things to protect the environment.

So, Mr. President, I am going to continue to move on this. I will tell you, I feel strongly about this, as do Senators—both Democrats and Republicans—that we will have a couple more objections, and then I am going to have a vote to invoke cloture on a motion to proceed to this piece of legislation.

I think it is too bad, first, that the person who objected to this would not have the—I should not say courage, but that person who objects to this should come and do it on their own behalf, not have some other Senator object.

Rachel Carson was a scientist, a writer, and a pioneer in the environmental movement to make this world a better place. This is a simple resolution. It does not cost a penny. All it does is give recognition to someone who certainly deserves that. So I am terribly disappointed that there is an objection to this, but we will do it again at another time.

YUCCA MOUNTAIN

Mr. President, for 25 years, there has been an effort made to do something that is degrading to the environment and that would jeopardize the health and safety of millions of Americans. It is a project to bury nuclear waste in the deserts of Nevada.

Originally, when this project started, there was a program that would have had three sites that would be selected for places to characterize; that is, to prepare them for the taking of nuclear waste. One was in Washington, one was in Nevada, and one was in Texas. There was a time that came in the 1980s where, because of political maneuvering, Washington and Texas were eliminated, and they thought because Nevada was a place that set off atomic bombs and did other things, it was a big desert wasteland and it didn't matter. But it has mattered. The DOE has done a terribly bad job. They have botched what has taken place out there. The scientific community basically recognizes now it is a very bad idea to try to bury nuclear waste in Nevada.

One reason for that is not only is the science bad, but since 9/11, think of trying to haul 70,000 tons of the most dangerous substance known to man across our highways, our railways, past schools, homes, and businesses. This would be a field day for terrorists. Seventy thousand tons of the most dangerous substance known to man—plutonium—hauled from more than 100 nuclear generating facilities across this country, some more than 3,000 miles to Nevada. It hasn't happened and it will never happen. It will never happen.

So I rise today because some of my colleagues have introduced legislation to salvage this dying project, a project that threatens the health and safety of Americans everywhere. The proposed Yucca Mountain nuclear waste dump is not a solution for our nuclear waste problems. The science behind Yucca is corrupted with politics, and it doesn't take into consideration the problem with the transportation of this poison.

The administration and the sponsors of this bill know that Yucca is a flawed and dangerous project and that it cannot move forward without passing legislation designed to circumvent existing laws. Many of the laws are environmental laws. If Yucca was truly scientifically sound and safe, this administration would not need to gut laws that protect our environment, public health, transportation, and security. This legislation exempts the Department of Energy from longstanding Federal laws designed to make Americans safer. This is unacceptable to the Senate. It is unacceptable to our country. It is unacceptable to the Senate.

Senator ENSIGN and I have worked together on this project for many years. That is why we introduced the Federal Accountability for Nuclear Waste Storage Act earlier this year. Under our proposal, the Department of Energy will take ownership of nuclear waste and store it safely at nuclear power plants where it is produced, as is happening as we speak. Calvert Hills, a short distance from here, is a nuclear generating facility, and they store nuclear waste as Senator ENSIGN and I say they should store it.

So I challenge all my colleagues who have concerns about this to sit down with Senator ENSIGN or with me or with both of us, as many have already done, to begin discussing a scientifically sound solution to our nuclear waste problems. Let's take the focus away from this dead-end project and find real solutions for our energy future.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I see my friend and colleague from Hawaii who has an amendment which I hope we will be able to consider and accept. I have talked briefly to the Senator from Arizona and others. I ask unanimous consent that the Senator's amendment be in order.

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

The Senator from Hawaii is recognized.

AMENDMENT NO. 1186 TO AMENDMENT NO. 1150

Mr. AKAKA. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I send my amendment to the desk.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Hawaii [Mr. AKAKA], for himself, Mr. REID, Mr. DURBIN, Mr. INOUYE, Mrs. BOXER, Mrs. MURRAY, and Ms. CANTWELL, proposes an amendment numbered 1186 to amendment No. 1150.

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

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

The amendment is as follows:

AMENDMENT NO. 1186

(Purpose: To exempt children of certain Filipino World War II veterans from the numerical limitations on immigrant visas)

At the appropriate place, insert the following:

SEC. ____. EXEMPTION FROM IMMIGRANT VISA LIMIT.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by inserting after subparagraph (G), as added by section 503 of this Act, the following:

''(H) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and who have a parent who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).''.

Mr. AKAKA. Mr. President, my amendment seeks to address and resolve an immigration issue that, while rooted in a set of historical circumstances more than seven decades old, remains unresolved to this day. I am happy to say I am joined by Senator REID, Senator DURBIN, Senator INOUYE, Senator BOXER, Senator MURRAY, and Senator CANTWELL. It is an issue of great concern to all American veterans and citizens with an interest in justice and fairness.

In 1941, on the basis of 1934 legislation enacted prior to Philippine independence, President Franklin D. Roosevelt issued an Executive order through which the President invoked his authority to:

Call and order into the service of the Armed Forces of the United States all of the organized military forces of the Government of the Commonwealth of the Philippines.

This order drafted more than 200,000 Filipino citizens into the U.S. military, and under the command of General Douglas MacArthur, Filipino soldiers fought alongside American soldiers in the defense of our country.

The enactment of the First Supplemental Surplus Appropriations Rescission Act of 1946 included a rider that conditioned an appropriation of $200 million on a provision that deemed that service in the Commonwealth Army should not be considered service in the Armed Forces of the United States. The individuals impacted were those members of the organized military forces of the Commonwealth of

the Philippines called into the service of the U.S. Armed Forces in the Far East by President Roosevelt's 1941 Executive order.

The enactment of the Second Supplemental Surplus Appropriations Rescissions Act included language that deemed that service in the New Philippines Scouts had not been service in the U.S. military. The individuals impacted were those Filipinos who had served with the U.S. Armed Forces from October 6, 1945 to June 30, 1947.

Of the 200,000 Filipinos who served in the U.S. Armed Forces during World War II, either as members of the Commonwealth's Army or New Philippines Scouts, only 20,000 survive today—13,000 in the Philippines and 7,000 in the United States.

In 1990, the World War II service of Filipino veterans was finally recognized by the U.S. Government through the enactment of the Immigration Act of 1990, which offered Filipino veterans the opportunity to obtain U.S. citizenship. There are currently 7,000 naturalized Filipino World War II veterans residing in the United States. The opportunity to obtain U.S. citizenship was not extended to the veterans' sons and daughters, approximately 20,000 of whom have been waiting for their visas for years.

While the Border Security and Immigration Reform Act of 2007 raises the worldwide ceiling for family-based visas to 567,000 per year until the backlog in the family preference visa categories is eliminated, the fact remains that many of the naturalized Filipino World War II veterans residing in the United States are in their eighties and nineties. My amendment stresses the need to expedite the issuance of visas to these veterans' children.

Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I thank the Senator from Hawaii for offering this amendment. He offered this amendment in the last immigration bill. We accepted it at that time. I am confident that will be the case on this time, but given the hour of the evening, we are unable to get this cleared.

Basically, as he has expressed so well, he is talking about the immediate family members of those who served with American forces in World War II. Under the broad scope of the underlying legislation, they would be included to be able to come to the United States. Under the bill, it would take an 8-year period. What the Senator from Hawaii is saying is these are older men and women who would otherwise be able to come here. They are the brothers and sisters of those who fought with American forces in World War II, and we want to move them up and have them come more quickly, given the fact of their age. It is a very decent thing to do. We would be entitled to do it under the underlying framework of the bill. It doesn't change the underlying framework of the bill.

It is a humanitarian gesture. It is a noble gesture. It is typical of the Senator from Hawaii to be thoughtful about this, always being concerned not only about individuals but members of the Armed Forces. He continues to be a champion on the Veterans' Committee. I speak for the veterans of my State as well as in this case the veterans of World War II for their immediate family, and I am very hopeful we can get this cleared at an early time tomorrow. I wish to commend him for this amendment. He had indicated to us early on that this was a matter of high importance to him, and it is, I think, and should be a high priority here.

So we would ask the Senator if we may move along, and I will try to get the clearance for that amendment on tomorrow, and we will notify him when that happens. We thank him again for bringing this to the attention of the Senate and for being thoughtful about these extraordinary family members of those who served so nobly, courageously, and heroically in World War II. So I thank the Senator. He can be assured of my support and help and assistance and hopefully we will have good news for him tomorrow on this amendment.

Mr. President, I think we have probably reached about as far as we are going to go this evening. We are examining in some detail Senator COLEMAN's amendment, and we would like to try and see if we can't work that out through the evening. There is one aspect of it I would like to understand more completely in terms of whether it deals with emergency services and others. So I think we probably, for all intents and purposes, have gone about as far as we can go tonight.

We have a number of amendments. We are very much aware that we have the supplemental that will be here. We have been told so by the majority leader. But we will have a good opportunity in the morning through noontime and into perhaps the early afternoon to continue our progress. We have made good progress today. I thank all the Members for their cooperation. We have several amendments which are lined up. We will probably start with Senator DORGAN's amendment tomorrow. We have a number of amendments, including Senator CORNYN's amendment which he offered this evening, and there will probably be side-by-side consideration sometime in the late morning. There are a number of other amendments that have been brought to our attention. We are in the process of prioritizing those and notifying their sponsors to make sure they can be here in a timely way so we will have a productive time and as few quorum calls as possible.

As I mentioned, we will continue on the Cornyn amendment and the Dorgan amendment. There is a Feingold amendment on the study of refugees; a Sanders amendment, scholarship for Americans in connection with the H–1B program. There are some of the family amendments which Members have talked with us about and the McCain amendment as well. So we have talked to most of these Members, and we will do as much as we possibly can to move these along.

They are all important matters. I think, as far as today is concerned, we are very grateful for the cooperation we have had from all Members. I think we have made some important progress. We look forward to making further progress in the morning.

I see my colleague here who would like to address the Senate on other matters. We look forward to further consideration of the underlying legislation tomorrow.

Mr. DODD. Mr. President, I regret that I could not join last night's debate on amendments to the comprehensive immigration reform bill. Had I been present, I would have supported the amendment offered by Senators DORGAN and BOXER, which was designed to eliminate the bill's guest worker provision. Though it was not adopted, I salute its principles and hope that they will find their way, once again, into our national debate on immigration.

The immigration bill was set to allow 400,000 foreign guest workers into America each year, eligible for two-year stays, alternating with a year in their home countries. In their eloquent remarks last evening, Senators DORGAN and BOXER rightly identified this provision's shortcomings.

First, as Senator BOXER observed, ''We are setting up a system of exploitation.'' I am concerned that the immigration bill offers insufficient protection to guest workers, leaving them open to victimization by low wages, long hours, and dangerous conditions. It threatens to import into America a permanent underclass, rootless in our communities and ignorant of our language, valued for nothing more than its muscle power. A labor system like that is suited to an empire, not to a republic of opportunity and not to the principles of immigration we have long honored in America.

No one denies that much of America's economy depends on immigrant labor. But if we want to do more than exploit that labor—if we want to sew it into our social contract, if we want to treat immigrants with justice and dignity—a path to citizenship is a necessity. That brings me to the guest worker provision's second shortcoming: It lacks such a path. If we are willing to offer the opportunity of citizenship even to those who entered our country illegally, it is inconsistent to deny it to those who come with our sanction.

Third and finally, the guest worker provision harms American workers. Threatened by outsourcing and globalization, their expenses for healthcare and education skyrocketing even as their incomes fail to keep pace, American workers now face 400,000 competitors, each year, in their own country, willing and able to do their jobs for lower wages. Last night, Senator DORGAN told us a moving story of

furniture-makers in Pennsylvania whose jobs were eliminated and shipped to China. As their plant shut down, each one of those craftsmen signed the bottom of the last piece of furniture their company would make in America. As we import wage pressures onto our own shores, we will be hearing hundreds of similar stories in the years to come. The guest worker provision threatens to eat away at our middle class.

It has the potential to harm guest workers and American workers alike. Who, then, does it benefit? I don't think I need to tell my colleagues the answer. But unless we reform our standards for guest workers, we will be putting the demand for cheap labor above the dignity of immigrants and Americans alike.

I voted to strip the guest worker provision from last year's immigration bill; and I supported stripping it this year. And while the amendment offered by Senators DORGAN and BOXER did not pass, I am heartened that we adopted Senator BINGAMAN's amendment to limit the program to 200,000 guest workers per year. And as we move forward in this debate, I hope that we will also have chance to strengthen protections for guest workers and reduce wage pressure on Americans.

MORNING BUSINESS

Mr. KENNEDY. Mr. President, I ask unanimous consent that we have a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak longer than 10 minutes. I don't intend to speak for more than 25 minutes and maybe not that long. I would at least like to have the freedom of going beyond 10 minutes.

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

ENERGY

Mr. GRASSLEY. Mr. President, I am going to talk about an energy issue. I am sure people listening, and my colleagues, might think I am talking about an energy issue because gasoline is at the highest price it has ever been in the history of the country. I assure you I would be giving these remarks even if the price of gasoline was only $1 a barrel, because it involves, in an overview, testimony that was given by oil company executives before the Judiciary Committee some time ago. What is being reported are policies of oil companies. I have become aware of an article in the Wall Street Journal. So I am going to be referring, during my remarks, to evidence I got from the Wall Street Journal, letters that I have sent to the CEOs of major oil companies, and testimony that was given before the Judiciary Committee of the Senate—I might say that it was sworn testimony—and what I consider to be some inconsistencies. I will be referring to that testimony from the record.

I will be referring to the letters I have sent to the CEOs. As an overview, I am going to be pointing out inconsistencies between sworn testimony and what oil company executives say are their company policies regarding ethanol, and particularly the 85-percent ethanol that we call E85; and then, of course, letters I sent to the oil companies, raising questions that were raised because of this article, to have the oil companies give me their story, in case this article was wrong.

Across the country, American families and businesses are suffering from the economic impact of rising gasoline prices. As many families begin to plan their summer vacations, they are being forced to dig deeper into their pockets to fill up the family car.

The rising cost of gasoline is a result of many factors. Global demand for crude oil and refined products is way up constantly, as a result, driving up the price. The Organization of Petroleum Exporting Companies—what the people of this country know as OPEC—has curtailed some production. Refineries are offline for maintenance or have experienced outages. As a result, these refineries are operating at 5 to 10 percent below normal.

Once again, refinery outages have, coincidentally, occurred just as the summer driving demand kicks into gear, and this has led to an average price of over $3.15 a gallon as a national average. In my State of Iowa, I think it is $3.33 today.

The impact of these increased prices is being felt across the country by working families, farmers, businesses, and industry. The increased cost for energy has the potential to jeopardize our economic security, our economic vitality.

Because we are dependent upon foreign countries for over 60 percent of our crude oil, our dependence on them is a threat to our national security.

In recent years, many Members of the Senate have touted the value of increasing our domestic energy resources. I have been one of those—particularly for ethanol and particularly for biodiesel. In Iowa, I am the father of the wind energy tax credit. Iowa is the third leading State in the production of electricity from wind energy.

Increasing domestic resources, whether it is ethanol, biodiesel, wind, biomass, you name it—all of these are from alternative sources that are good for our economy and particularly good for our national security. Diversity of supply can go a long way toward reducing the impact of price spikes and volatility. That is why I have been such an ardent supporter of the development of these domestic renewable fuels. Each gallon of homegrown, renewable ethanol or biodiesel is 1 gallon of fuel that we are not importing from countries such as Iran, or Venezuela, which are very unpredictable—or Nigeria, where we get 10 percent of our oil, which might be unpredictable because of revolutionaries there kidnapping American workers, such as they did 2 weeks ago, or German workers over the period of the last year. It is a very nervous environment we are in.

The supply from the Saudi oil wells to our gas tank is maybe a 17-day inventory. So any little thing happening, according to the business pages of the newspaper, causes the price to spike. So I have been an ardent supporter of these domestic renewable fuels.

In the past few years, domestic ethanol production has grown tremendously. Right now, we are consuming about 5 billion gallons of ethanol annually. With all of the new ethanol biorefineries under construction, we will be producing as much as 11 billion gallons annually by 2009.

Ethanol's contribution is a significant net increase to our Nation's fuel supply. But as the industry grows, it is imperative that higher ethanol blends be available to consumers. When I say higher ethanol blends, I mean beyond the 10 percent mixture that we have right now. We even have cars right now that can burn up to 85 percent ethanol. That is why we refer to it as E85. That is what we are talking about, increasing the 10 percent as cars are manufactured, to be able to consume it without hurting the engine. That is where the automobile companies are headed. That is where the ethanol industry is headed to back it up. But the point I will make in a minute is that the distribution for E85 is a problem, and it looks to me like big oil is a major part of that problem. That is what I am going to point out.

We are quickly approaching a time when ethanol will be produced in a quantity greater than that needed for the blend market as we continue down the road that has been pioneered by Brazil—and that is the best example—to use cars that will, in fact, burn 100 percent ethanol. For sure, we must continue on this path of reducing foreign oil dependence and greater renewable fuel use.

To do that, then, it is critical that we develop the infrastructure and the demand for E85, an alternative fuel comprised of 85 percent ethanol, 15 percent gasoline.

Our domestic auto manufacturers are leading the effort to expand what we call the flex-fuel—meaning flexible fuel—market. Our domestic manufacturers of automobiles are doing this. Our domestic automakers have produced approximately 6 million flex-fuel vehicles over the past decade. In fact, you might be driving a flex-fuel vehicle and don't even know it, burning 100 percent gasoline, or the 90/10 percent mixture of gasoline and ethanol. Look at your book. If you can burn E85, do it—if you can buy it. I am going to point out how that is a problem—the distribution—and the oil companies' involvement in it.